



REPUBLIC OF KENYA



KENYA LAW
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**China Railways Seventh Group Ltd v Wanguru (Appeal E031 of 2025)
[2025] KEELRC 3210 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3210 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E031 OF 2025
NJ ABUODHA, J
NOVEMBER 13, 2025**

BETWEEN

CHINA RAILWAYS SEVENTH GROUP LTD APPELLANT

AND

DANIEL NDIRANGU WANGURU RESPONDENT

(An appeal against the decision contained in the Judgment given by Honourable Peter Omuyele Mukholi dated 26th of September 2024 in GITHUNGURI CMELR CAUSE NO. 1 OF 2023 DANIEL NDIRANGU WARUGURU VERSUS CHINA RAILWAYS SEVENTH GROUP LTD)

JUDGMENT

1. Through the Memorandum of Appeal dated 30th September 2024, the Appellant appeals against the Judgment of Honourable Peter Omuyele Mukholi.
2. The Appeal was based on the grounds that:
 - i. The Learned Magistrate erred in law in his judgment dated 26th of September 2024 by allowing the Claimant's suit with costs.
 - ii. The Learned Magistrate erred in law in his judgment by holding that the Claimant was irregularly terminated, due to the fact that the Respondent demanded the Claimant to respond to a Notice to show cause within 48 hours.
 - iii. The Learned Magistrate erred in law in his judgment by awarding the Claimant 4 months' salary worth of damages plus costs of the suit.
3. The Appellant prayed that the Appeal be allowed with costs, the aforesaid decision be set aside and the Claimant's claim be dismissed with costs as against the Respondent.
4. The Appeal was disposed of by written submissions.



Appellant's Submissions

5. The Appellant's Advocates RBZ Advocates LLP filed written submissions dated 25th June 2025.
6. On the issue of whether the Learned Magistrate erred in law in his judgment by holding that the Claimant was irregularly terminated, due to the fact that the Respondent demanded the Claimant to respond to a Notice to show cause within 48 hours, counsel relied on the case of Muthoni (suing as Legal Representatives of the Estate of Michael Anjere) v Namadi & another (Environment and Land Appeal E024 of 2023) [2024] KEELC 7421 (KLR)(7 November, 2024) (Judgment), on duty of a first appeal court as to consider evidence as produced before the subordinate court to reach its own conclusion.
7. Counsel submitted that a notice to show cause dated 28th October, 2022 was issued by the Appellant requiring a response before the 31st of October 2022, to the allegations of theft that occurred on the 25th October, 2022.
8. Counsel submitted the Respondent failed to totally confirm receipt of the notices and appear when summoned by the Appellant which led to the Appellant terminating his employment. The Appellant granted the Respondent a right of Appeal within the next 7 days but the Respondent did not appeal the said decision nor appear at his workplace. Counsel further submitted that the 3 days' notice issued for a response and appearance before the disciplinary committee was sufficient and if the period was not sufficient the respondent should have communicated and asked for more time to respond. Counsel submitted that the Respondent did not request for more time and or appear physically and inform the committee of the difficulty it would have faced. In this regard counsel relied on the case of Kenya County Workers Union v Bomet Water and Sanitation Company Limited (Cause E015 of 2021) [2022] KEELRC 12999 (KLR)(27 October 2022) (Judgment) to submit that if an employee feels the notice period to respond is not sufficient, the employee is required to request for more time.
9. Counsel further submitted that the respondent did not give reasons why he did not attend the hearing yet notified. Counsel relied on the case of Nebert Mandala Ombajo v Institute of certified Public Accountants of Kenya (ICPAK)[2017] eKLR to submit that each case is peculiar and further the claimant must establish prejudice caused by the 3 days' notice to attend the hearing. That the Respondent has not stated any prejudice it has suffered having not appeared when summoned. That the Respondent having been involved in theft and fled away from the scene it was imperative that the issue was dealt with as soon as possible and further the Respondent ignoring phone calls and communication sent its way while other employees had been arrested and his presence required to get to the root cause of the theft, the three 3 days' notice was sufficient.
10. Counsel further relied on the case of Robert Khamala Situma & others v Acting Clerk of Nairobi City County Assembly [2022] KEELC 1716 (KLR) and section 90 of the *akn ke act 2015 4 fair Administrative Action Act* and the Black Law Dictionary to submit that the doctrine of exhaustion of remedies provides that if an administrative remedy is provided by statute, a Claimant must seek relief first from the administrative body before judicial relief is available.

Respondent's Submissions

11. The Respondent's Advocates Mburu Machua & Company Advocates filed written submissions dated 18th September, 2025 and submitted on the issue whether the learned Magistrate erred in his judgment by holding that the Claimant was irregularly terminated, due to the fact that the Respondent demanded the Claimant to respond to a notice to show cause within 48 hours, counsel relied on Section 41 of the *akn ke act 2007 11 Employment Act* and the case of Hosea Akunga Ombwori v Bidco Oil



- Refineries Limited (2017) eKLR to submit that to satisfy the requirements of section 41, the employer is required to issue a show cause notice which outlines the allegations or charges against the employee and also request him to respond within reasonable time.
12. Counsel further relied on the case of *Kiilu v Isinya Resorts Limited (Cause E022 of 2021) [2022] ELRC 13240 (KLR)* to submit that an employee is entitled to be given adequate notice to respond to a show cause letter and adequate notice to attend disciplinary hearing. Minutes of a disciplinary meeting must be clear on issues discussed and must clearly indicate whether the employee was given an opportunity to be heard.
 13. Counsel submitted that the Respondent was given a show cause letter dated 28th August, 2022 on Friday that required him to put in a response within 24 hours and appear for a hearing on the 31st August, 2022. The time given was not reasonable and or adequate and the Appellant did not explain why they had to rush through the process. The time given to the Respondent could not help him get someone to accompany him during the said meeting.
 14. Counsel submitted that the Appellant did not even produce minutes of what happened during the hearing and how the panel ended up in deciding to have the Respondent dismissed.
 15. Counsel further submitted that the Appellant terminated the services of the Respondent on grounds that he was caught siphoning fuel from the vehicles belonging to the Appellant but did not produce any evidence whatsoever before the court other than the O.B extract. The Appellant had the onus of proving that investigations were done and that the respondent indeed was caught siphoning fuel. The O.B was not evidence enough to show that the Respondent was guilty of what he was accused off.
 16. Counsel relied on Sections 43 and 45 of the *akn ke act 2007 11 Employment Act* to submit that for an employer to terminate the services of an employee, it should be for good cause or sufficient reasons.

Determination.

13. The decision of the trial court was that judgment was entered in favour of the Claimant against the Respondent while finding that the termination was unfair for lack of procedural fairness and awarded the Claimant notice pay of Kshs 27,000 =, 2 months compensation of Kshs 54,000 =, salary for month of October of Kshs 27,000 = with costs and interests.
14. The Appellant being dissatisfied with the above judgment appealed fronted three grounds of appeal. The court however is of the opinion that the issues placed by the parties for determination in the appeal are:-
 - a. Whether the trial court erred by finding that Respondent’s termination of employment was procedurally unfair and unlawful
 - b. Whether the trial court erred in awarding the Respondent his reliefs as sought in his claim.

Whether the trial court erred by finding that Respondent’s termination of employment was procedurally unfair and unlawful
13. The trial court found that the Appellant had valid reasons for dismissing the respondent but faulted the procedure for the reasons that the Respondent was issued with a show cause letter on 28th October, 2022 and terminated within 48 hours after being issued with the said show cause letter.
14. Procedural fairness in the process of termination of employment contract is governed by section 41 of the *akn ke act 2007 11 Employment Act*. In that regard, the Court is guided by the holding in the



case of Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited [2014] eKLR that: -

Section 41 of the *Kenya Employment Act 2007* is couched in mandatory terms. Where an employer fails to follow these mandatory provisions, whatever outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing in the presence of their union representative.

13. Whereas the Respondent acknowledged he received the show cause letter of 28th October, 2022 which contained the allegations of siphoning fuel and he acknowledged oil was siphoned by other persons while he was out for lunch, the said show cause letter required him to respond within 24 hours.
14. While the Respondent alleged that he responded to the show cause letter and the Appellant alleged that it never received any response the Respondent did not produce any such response in evidence. Further the show cause letter invited the Respondent for disciplinary hearing on 31st October, 2022 which the Respondent failed to show up to request for a longer period to prepare.
15. In addition, the termination letter provided for avenue of appeal within 7 days which the Respondent did not utilise if he felt the time given was short. It was clear the termination letter was sent on 31st October, 2022 around 5 pm. While the Respondent was supposed to appear around 2:30pm. It was expected after the Respondent failed to respond to the show cause letter and failed to appear for the scheduled disciplinary hearing the Appellant was left with no other option but to dismiss the Respondent summarily.
16. This court disagrees with the trial court that after finding that the Appellant had valid reasons which amounted to gross misconduct under section 44(3) of the Act, the termination was unfair due to the short notice given to the respondent to attend disciplinary hearing. The Appellant gave the Respondent an opportunity to be heard and he choose not to attend to complain about the short notice and request for more time. The termination cannot therefore be termed unfair. In the case of *Sheer Logic Management Consultants v Baha* (Appeal E253 of 2024) [2025] KEELRC 2867 (KLR) (9 October 2025) (Judgment) the court held as follows: -

All that the law enjoins the employer to do is to provide an adequate opportunity for the employee to be heard on the accusations made against him before rendering a final decision on the disciplinary matter. When such an opportunity is afforded, but the employee chooses not to avail himself of it, the employer is permitted to proceed and reach a decision; however, the decision must be substantively justified. The employee could not thereafter successfully contend that the termination of his employment or summary dismissal was procedurally unfair.

13. In this particular case this court finds the 24 hours period to respond to the show cause letter and the three days' period to appear for disciplinary hearing was reasonable since the Respondent received the same through his WhatsApp but chose not to respond or attend meeting or request for more time if he felt the notice was short.
14. The Respondent was an author of his own misfortunes since he was accused of a gross misconduct which could lead to summary dismissal as per his employment contract.
15. The trial court therefore erred in finding that the termination was unfair due to the short notice for disciplinary hearing is sued to the respondent. This ground of appeal therefore succeeds.



16. On the issue whether the trial learned Magistrate erred in awarding the Respondent the reliefs as sought in his claim, the Court having found that there were justifiable reasons for terminating the claimant's service and that he squandered an opportunity to defend himself against the accusations against him, the awards by the trial are not sustainable and will be set aside as well except the award of salary for the month of October, 2022 which was payable regardless of whether the termination was found fair or not.
17. In the upshot the Appeal partially succeeds with the only award of salary for October 2022 (Kshs. 27,000 -) being retained.
18. The appeal being partially successful, each party shall bear their own costs.
19. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025

DELIVERED VIRTUALLY THIS 13TH DAY OF NOVEMBER, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

