



**Furukha v Thika Coffee Mills Limited (Cause 10 of 2019)
[2025] KEELRC 3074 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3074 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 10 OF 2019
CN BAARI, J
NOVEMBER 6, 2025**

BETWEEN

BENARD SITATI FURUKHA CLAIMANT

AND

THIKA COFFEE MILLS LIMITED RESPONDENT

JUDGMENT

Introduction

1. This judgment relates to the Claimant’s Memorandum of Claim dated 9th January, 2019, and filed in court on 11th January, 2019. Under the claim, the Claimant seeks a declaration that his termination amounts to constructive dismissal, a declaration that he was unlawfully and unfairly terminated, an order for payment of terminal dues comprising salary arrears, salary in lieu of notice, leave days and an award of damages for unlawful termination. The Claimant further seeks an order for issuance of a certificate of service, costs of the suit and interest thereon.
2. The Respondent entered appearance on 28th January, 2019 and filed a Memorandum of Response to the claim on even date.
3. The Claimant’s case was heard on 28th February, 2023, followed by the defence hearing on 21st June, 2024, 4th March, 2025 and concluded on 28th May, 2025.
4. Submissions were filed for both parties in the matter.

The Claimant’s Case

5. The Claimant’s case is that he was employed by the Respondent as a General Manager under a contract dated 27th March 2015. He avers that he performed his duties diligently and in accordance with his job description.



6. The Claimant states that on 9th February 2018, he was arrested without prior notice or being informed of any charges, and that he later discovered that his arrest had been instigated by the Respondent, allegedly on accusations of conspiracy to commit theft, leading to his arraignment in Gichugu Criminal Case No. 81 of 2018.
7. It is his case that after the arrest, the Respondent did not formally terminate his employment or facilitate his return to work, but instead, he was subjected to a hostile work environment and denied access to his tools of trade, which made it impossible to perform his duties. He avers that as a result, he wrote to the Respondent on 10th March 2018 seeking clarification on his employment status.
8. The Claimant further states that the Respondent, in a letter dated 15th March 2018, failed to clarify his employment status, and instead accused him of absenteeism while demanding work reports, which the Claimant could not provide because his laptop had been confiscated.
9. The Claimant states that he replied to the Respondent's letter on 16th March 2018, explaining that he had not absconded duty, had attempted to meet with the Respondent, and that incomplete reports were due to lack of access to his tools. The Claimant further described the situation he was in as constructive leave, and again sought clarification on his status.
10. The Claimant avers that despite his efforts, he received no pay for about four months and was formally terminated on 16th May 2018. He states that he later issued a demand letter dated 19th November 2018 seeking his terminal dues, but the Respondent did not respond, prompting this claim.
11. The Claimant maintains that his termination was unlawful and unfair, that he was denied due process, and that the Respondent's actions amounted to constructive dismissal.
12. It is the Claimant's prayer that the court grants him the reliefs listed in his statement of claim.

The Respondent's Case.

13. The Respondent's case is that the Claimant was employed as General Manager, but contends that he absconded duty in February 2018, thereby justifying his termination on 16th May 2018.
14. It is the Respondent's case that during the Claimant's tenure, on the night of 19th November 2017, 120 bags of coffee worth over Ksh.4 million were stolen from the Rupingazi Coffee Factory, one of its facilities.
15. It is its case that the Claimant, as General Manager, was responsible for authorizing the movement of coffee, ensuring adequate security, and obtaining coffee movement permits from the Coffee Directorate of Kenya, as required under the Crops Act, 2013.
16. The Respondent states further that the Claimant contravened company policy and statutory requirements by authorizing the movement of the coffee from Kirigi Factory which had armed security to Rupingazi Factory which had only one watchman, without a movement permit, and using a private transporter instead of company vehicles.
17. The Respondent further avers that the coffee was stolen within 24 hours of being moved, and that despite several requests, the Claimant failed to report the theft to the police or to conduct internal investigations as required.
18. It states further, that their Chairman reported the matter to the police and considered the Claimant's reluctance to act as suspicious, particularly since prior incidents of coffee theft under the Claimant's management had not been reported.



19. The Respondent states that following police investigations, the Claimant was arrested and charged with theft by servant and conspiracy to steal in Criminal Case No. 81 of 2018. It avers further that after his arrest, the Claimant stopped reporting to work and only wrote on 10th March 2018 seeking clarification on his employment status.
20. The Respondent states that it replied to the Claimant on 15th March 2018, requesting detailed reports on the theft and other pending matters, but the Claimant refused to comply.
21. It is the Respondent's case that a meeting scheduled for 19th March 2018 was not attended by the Claimant, and that despite further correspondence, including a letter dated 27th April 2018, the Claimant neither resumed duty nor submitted the required reports.
22. The Respondent states that the Claimant's claim that he lacked access to a computer was false, as his tools had been made available to him.
23. The Respondent contends that the Claimant's unauthorized absence, failure to obey lawful instructions, and refusal to perform his duties amounted to gross misconduct, absconding duty, and breach of his employment contract.
24. The Respondent further states that it gave the Claimant sufficient opportunity, approximately four months to explain himself, but he failed to do so, compelling the company to terminate his employment in accordance with Clause 8(a) of his contract.
25. It is the Respondent's case that the Claimant is not entitled to salary arrears and notice pay, since salary is only payable for work done. It avers further that the claim for leave days was unsubstantiated, as leave could not accrue without written approval.
26. It avers further that the Claimant never applied for leave and his continued unauthorized absence constituted absconding duty and willful disobedience of management instructions, justifying termination.
27. The Respondent prays that the court dismisses the Claimant's claim with costs.

The Claimant's Submissions

28. It is submitted for the Claimant that the allegations of absconding duty is an afterthought as correspondences exchanged between the parties clearly shows that the Claimant proactively sought clarity on his employment status and made attempts to report to work, only to be denied meaningful engagement.
29. The Claimant submits that Section 41 of the *Employment Act* behooves an employer to explain to the employee in a language the employee understands the reasons for which termination is being considered. He placed reliance in the case of *Hosea Akunga Ombwori v Bidco Oil Refineries Limited* (2017) eKLR to support this position.
30. The Claimant submits further that he was not subjected to any disciplinary hearing as required under Section 41 of the *Employment Act*, 2007. He sought to rely in the case of *Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited* [2014] eKLR where the court emphasized that Section 41 is couched in mandatory terms and any failure to comply with its provisions renders the process and resulting termination unfair.



31. The Claimant finally urges this Court to find that the Respondent's failure to subject him to any form of disciplinary hearing or to accord him an opportunity to be heard, rendered his termination unlawful and procedurally unfair.

The Respondent's Submissions.

32. The Respondent submits that the Claimant has failed to discharge the burden of proof as required under Section 107 of the *Evidence Act* to show that he was unfairly terminated.
33. The Respondent further submits that the Claimant's allegations that it constructively terminated him were not proven, but instead, from the evidence availed by the Respondent it was proved that the Claimant absconded work despite repeated request by the Respondent that he should resume his duties. It placed reliance in *Daniel Mueke v Bhogals Auto World [2014] KEELRC 1455 (KLR)* to buttress this assertion.
34. It is its submission that the Claimant by absconding work, and failing to obey the Respondent's request to report the theft of coffee on the 19th November 2018, as well as refusal to do the work that he was assigned was insubordination and in breach of the Claimant's contract of employment.
35. The Respondent submits that the notice of termination dated 16th May 2018, clearly indicates that the Claimant was issued a one month's notice of termination in accordance with clause 8 (a) of the contract of employment. It is its further submission that the termination of the Claimant by giving him 30 days' notice was therefore not unfair as it was a term of contract, and a procedure for termination of employment that accords with the provisions of Section 35 (1) (c) of the *Employment Act*.
36. It is submitted for the Respondent that the Claimant did not at any time allege nor state that the Respondent had refused to approve his leave and neither has he provided any evidence that he applied for and was denied leave, which renders his claim for the 70 days leave days not taken, without merit and not awardable. It sought to rely in the case of *Rael Namasa Likhayo v Lake Fill Station [2022] KEELRC 591 (KLR)* where it was held that;
- “The Claimant did not disclose whether she applied for leave and was denied or whether the leave was accrued with the approval of the Respondent. Without a proper evidential foundation and in consideration of section 28(4) of the *Employment Act*, 2007, the Court declines to allow this head of the claim.”
37. The Respondent finally prays that the court uphold its submissions herein, and find that the Claimant's claim against it lacks merit and that the Claimant is not entitled to any award whatsoever and the suit be dismissed with costs to the Respondent.

Analysis and Determination

38. I have carefully considered the pleadings, documentary evidence together with the rival submissions. The issues for determination are;
- i. Whether the Claimant's termination was unlawful and unfair;
 - ii. Whether the Claimant absconded duty; and
 - iii. Whether he is entitled to the reliefs sought.
39. It is not in dispute that the Claimant was employed by the Respondent as General Manager under a written contract dated 27th March 2015. It is also uncontested that the employment relationship



came to an end on 16th May 2018. The dispute concerns the circumstances leading to the separation, and whether the Respondent followed due process in ending the employment relationship with the Claimant.

40. The Claimant contends that his termination was unlawful and unfair on the premise that he was never accorded a hearing, was denied access to his work tools, and was subjected to a hostile working environment following his arrest, which he maintains was instigated by the Respondent.
41. Conversely, the Respondent maintains that the Claimant absconded duty, failed to perform his responsibilities, and violated company policies by irregularly authorizing the movement of coffee contrary to legal and internal requirements, leading to the loss through theft of coffee worth millions of shillings.
42. Sections 41, 43, and 45 of the [Employment Act](#), 2007, collectively require that an employer must prove both the validity of the reason for termination and the fairness of the procedure adopted in effecting the termination. Section 41 mandates that before termination, an employee must be informed of the charges against them and afforded an opportunity to respond in the presence of a fellow employee or union representative of their choice.
43. Section 43(1) on the other hand, places the burden on the employer to prove the reasons for termination, and where the employer fails to do so, such termination is deemed unfair within the meaning of Section 45.
44. In the instant case, the Respondent's case is anchored on allegations of gross misconduct, specifically neglect of duty and absconding work. The Claimant, on his part, maintains that he was never issued with a notice to show cause, never subjected to a disciplinary hearing, and was instead kept in the dark regarding his employment status after his arrest, even after writing to the Respondent to clarify the same.
45. From the evidence on record, the Claimant in his letter dated 10th March 2018 sought clarification on his employment status, which suggests that the Respondent had not communicated any formal suspension or termination as at that time.
46. The Respondent's reply of 15th March 2018, while accusing the Claimant of absenteeism, did not expressly notify him of any disciplinary action or invite him to a hearing, and nor did it in any way answer the Claimant's question as to his employment status.
47. The Respondent's subsequent letters appear to have been requests for reports and meetings, rather than disciplinary notices as contemplated under Section 41 of the [Employment Act](#).
48. In the case of *Angela Wokabi Muoki v. Tribe Hotel Ltd* (2016) eKLR, it was held that the process of hearing and ensuring that an employee is given a fair chance to know the allegations against him, is a mandatory requirement of the law. The Supreme Court of Kenya re-affirmed this position in the case of *Kenfreight (EA) Limited v Benson K. Nguti* (2016) eKLR, where it held that it is not enough to terminate employment by notice or payment in lieu thereof, termination should be based on valid reasons and fair procedure.
49. In my considered view, the absence of a documented disciplinary process undermines the procedural fairness of the termination and which renders the termination procedurally unfair.
50. With regard to substantive justification, the Respondent cited the theft of coffee as the primary reason for loss of confidence in the Claimant. Further, although the Claimant was charged in court, it is admitted that though he was not acquitted of the charges, the case was withdrawn and was therefore



not convicted of the alleged offence. The charges against the Claimant without a conviction, does not automatically justify dismissal. The employer was under obligation to undertake an independent internal process to determine his culpability, which was not done in this case.

51. It is evident from the Respondent's evidence that the Claimant was arrested and briefly detained, and that communication between the parties thereafter became strained. Nonetheless, the employer bore the obligation to clarify his employment status, issue a notice to show cause, and provide an opportunity for defence before termination.
52. Further, the Respondent's assertion that the Claimant absconded duty cannot stand in the absence of proof that it made reasonable attempts to contact him, or that it issued a formal warning or show-cause letter before terminating his employment. Mere silence or administrative correspondence cannot substitute for due process under Section 41.
53. On the whole, the Respondent failed to establish that it complied with both substantive and procedural fairness requirements under the *Employment Act*.
54. In the circumstances, the Court finds and holds that the termination of the Claimant's employment was both procedurally and substantively unlawful and unfair.
55. The question of constructive dismissal does not arise for the simple reason that the Claimant did not resign, even with the Respondent's sustained silence on his employment status, coupled with the non-payment of salary in the four months he hanged around awaiting the Respondent's communication.

Whether the Claimant is entitled to the reliefs sought

56. Having found the termination of the Claimant's employment unfair, the Court turns to the remedies sought by the Claimant. He sought an order for payment of salary arrears, notice pay, leave days and damages for the unfair termination.

Salary arrears

57. The Claimant was arrested and charged with the offence of stealing by servant on 9th February, 2018. The evidence on record show that he did not work for the four months before termination, the same period for which he claims payment of salary arrears.
58. Under the *Employment Act*, 2007, an employee is entitled to wages for work actually done, unless the failure to work is caused by the employer or circumstances under the employer's control.
59. Although the Respondent's contention is that the Claimant absconded duty, it did not issue a show cause notice or in any way discipline the Claimant for abscondment so as to show that the Claimant was away from duty on his own volition. This further gives credence to the Claimant's assertion that he was denied access to his work tools, and was subjected to a hostile working environment following his arrest.
60. It is also evident that part of the period the Claimant was not on duty, coincided with his arrest and subsequent exclusion from work, which the Court attributes to the Respondent's failure to clarify his employment status.
61. In the circumstances, I hold that the Claimant is entitled to the four months' salary arrears.



Notice pay

62. On the claim for notice pay, it is evident that the purported notice issued to the Claimant dated 16th May, 2018, was in fact a termination letter which was to take effect immediately going by the wording of the said letter. For a termination notice to be valid, the employee is required to serve for the entire notice period and earn his salary for the notice period.
63. The Claimant is therefore entitled to one month's salary in lieu of notice, in accordance with Section 35 of the [Employment Act](#) and the terms of his contract.

Compensation/Damages for unfair termination

64. On compensation for unfair termination, the Court has discretion under Section 49 of the [Employment Act](#) to award up to twelve months' salary.
65. There is no doubt that the Claimant largely contributed to his own termination in failing to report the theft of the Respondent's coffee to the police or to conduct internal investigations as required.
66. The Supreme Court in *Kenfreight (E.A) Limited v Benson K. Nguti (Supra)* noted as follows in respect to an award of compensation:-

“When giving an award under Section 49 of the [Employment Act](#), a court of law is expected to exercise judicial discretion on what is fair in the circumstances.”
67. Considering the Claimant's position, length of service and the circumstances of separation, the Court deems an award of three (3) months' salary sufficient compensation for the unfair termination.

Leave Pay

68. The Claimant did not produce evidence to substantiate the claim for 70 leave days. In the absence of proof, this claim is declined.
69. In the final analysis, the Claimant's Claim succeeds in terms of the following orders:-
 - a. A declaration that the Claimant's contract was unlawfully and unfairly terminated
 - b. That the Respondent will pay the Claimant 4 months' salary arrears at Kshs.1,422,014.80/-
 - c. That the Respondent will pay the Claimant 3 months' salary as compensation for the unfair termination at Kshs.1,066,511/-
 - d. That the Respondent pays the Claimant 1 month salary in lieu of notice at Kshs.355,503.70/-
 - e. That the Respondent to issue the Claimant with a certificate of service within 14 days of this judgment.
 - f. Costs shall be borne by the Respondent.
70. It is ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 6TH DAY OF NOVEMBER, 2025.

C. N. BAARI

JUDGE



Appearance:

Ms. Gitari h/b for Mr. Gitonga for the Claimant

Mr. Thuo present for the Respondent

Ms. Esther S- C/A

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