



**Kenya National Private Security Workers Union v Kantaria Commercial Stores Limited
(Cause 1306 of 2016) [2025] KEELRC 3196 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3196 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1306 OF 2016
NJ ABUODHA, J
NOVEMBER 13, 2025**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
KANTARIA COMMERCIAL STORES LIMITED RESPONDENT**

JUDGMENT

1. The Claimant through a Memorandum of Claim dated 1st July, 2016, the claimant union pleaded inter alia: -
 - a. On 25th July 2010, the Grievant was employed by the Respondent as a Security Guard at an initial salary of Ksh7,000/-per month which not Equivalent to the wages order. (Annexed and marked 1).
 - b. The Respondent not only underpaid the Grievant, but also did not consider paying overtime, house allowance, rest/off days, public holidays, leave earned and not taken and service.
 - c. The Grievant performed his duties honestly and diligently until 1st September ,2015 when the Grievant was unlawfully terminated verbally by the Respondent.
 - d. On 14th October 2015 the Union wrote to the Respondent requesting for a meeting and to be issued with all necessary documentation in regard to leaves, salaries, offs and other payments attaching the Grievant’s computation (Annexed and marked 2 and 3 respectively).
 - e. On 8th December 2015, the Claimant reported the existence of a trade dispute under Section 62(1) of the *Labour Relations Act* 2007 the issue being; - Unfair termination of James Ogach Bange and failure to pay under payment of wages, unpaid house allowance, rest/off days worked and not paid, public holidays, leave earned and not taken, overtime and service.



- f. On 22nd December 2015, in accordance to Section 65(1) of the *Labour Relations Act* Mrs. C. Obara was appointed to act as Conciliator. The parties were requested to submit in writing to the conciliator.
 - g. On 7th January 2016, the Claimant submitted its memoranda to the Conciliator but the Respondent did not.
 - h. On 29th February 2016 and 28th April 2016 respectively, the conciliator asked both parties to attend joint conciliatory meeting, but the Respondent refused to surrender the reports asked for by the conciliator, did not attend the meeting.
 - i. On 25th May, 2016 the conciliator gave her recommendation that “she was unable to verify the employment details of the former employee because the management failed to produce the crucial employment documents. The Director never attended any meetings but kept sending a representative with very flimsy excuses to delay the conciliation process. The Union was not ready to extend the period of conciliation which has already expired.
2. The Claimant in the upshot prayed for the following against the Respondent: -
- i. A declaration that the grievant’s termination was wrongful and unfair.
 - ii. The grievant’s be paid his terminal benefits and dues as set out in paragraph 4.
 - iii. The respondent be ordered to pay the grievant an equivalent of 12 months’ gross salary as compensation
 - iv. Respondent pays costs and interested thereon
3. The Respondent in response filed its Response to the Memorandum of Claim dated 11th October, 2016 and averred inter alia: -
- i) The contents of paragraph 3 of the statement of claim are denied in toto and the claimant is put to strict proof thereof.
 - ii) The Respondent denies the contents of paragraph 3 of the Statement of claim and states that the Claimant was paid all overtime worked and all other allowances and dues.
 - iii) The contents of paragraph 4 of the Statement of Claim are denied. The Claimant was summarily dismissed on grounds of gross misconduct on the account of theft of Kshs 20,000.
 - iv) The Respondent denies the contents of paragraph 8 of the Claimant’s Claim and states that the Respondent submitted its claim which is even admitted to by the conciliator in her report dated 25th May, 2016.
 - v) The Respondent partly admits the contents of paragraph 9 of the statement of claim. The Respondent did not attend the meeting because of the criminal charges that had been preferred against the claimant.
 - vi) In response to paragraph 10 of the Claimant’s claim the Respondent admits that on 25th May, 2016 the conciliator gave her recommendation but does not fully agree with the quoted recommendation.
4. The Respondent in the upshot prayed as against the Claimant that the Claimant’s suit be dismissed with costs to the Respondent.



Evidence

5. At the hearing the grievant adopted his statement filed on 17th June, 2016 as his evidence in chief. He also relied on the documents filed with the claim as his evidence. He stated that he was employed by the respondent as a security guard on 25th July, 2010 and his starting salary was Kshs. 7,000/- which was increased to Kshs. 10,000/-. The grievant further stated that he used to double as a cashier and driver. He further stated that he never went on leave during the period he worked and that he used to work for 12 hours a day. According to the grievant, he was terminated on 13th October, 2015 when the daughter to his boss told him that he was not needed in the shop. He was not given any notice prior to the termination and was never taken through any disciplinary process.
6. The grievant further stated on 15th July, 2015 he asked for a loan of Kshs. 27,000/- and his boss told him to withdraw Kshs. 20,000/- and that he would add him Kshs. 7,000/-. He was given the ATM Card to withdraw the money and when he returned he was added Kshs. 7,000/- and signed against it in a book. It was the claimant's evidence that he continued working until 13th October, 2015 when he was dismissed and later on arrested on 3rd November, 2015 and charged with the offence of stealing by servant. According to him, he was later acquitted of the charges. He reported his dismissal to the union who pursued the dispute on his behalf. He denied writing the apology letter. He complained to DCI who conducted a forensic examination and compiled a report. The report was before the court. The DCI report stated that he did not write the letter.
7. In cross-examination he stated that his monthly salary was Kshs. 7,000/- and that he used to perform other duties such as driver and cashier. He stated that he was not trained in cash handling and that the money he was accused of stealing was a loan. He however admitted that he had not produced any evidence of loan request. The request was verbal and that when he signed was kept by the employer. It was further his evidence that the termination of his service was verbal and further he had never repaid the loan. Regarding the letter of apology, he was not given any notice Both the Claimant's and Respondent's reiterated that he never wrote the same and that it was written by one Joyce Sanyora, the secretary to his boss and that he complained to the police about Joyce and the case was on going.
8. The Respondent on the other hand called one witness Ms. Kantaria Misha who stated that she recorded a witness statement on 30th July, 2021 which she relied on as her evidence in chief. She also relied on the bundle of documents filed in opposition to the claim. It was her evidence that she knew the grievant and that he was her colleague and they worked together for two years. She could not remember the grievant's exact salary and that the grievant was never issued with a written contract but was provided with a payslip. It was her evidence that she was aware of the criminal case against the claimant and that he accessed Kantaria's ATM card and withdrew Kshs. 20,000/-. She stated that she knew Joyce Sanyora and that she was a secretary and helping with accounts. Shown the forensic report she maintained that it was the grievant who signed it. She further stated the grievant was found with the card and that they received a prompt that money had been withdrawn. She denied that her father (Mr. Kantaria) would never give out his ATM card to the grievant. She stated that the grievant promised to return the money and that Joyce wrote the statement on his behalf and that the grievant was terminated from service when he did not return the money. The claimant was explained to, the reason for termination and that he was only paid his salary for the month worked. It was further her evidence that the respondent closes once a month and all employees go on leave and that the respondent used to remit NSSF dues.

Claimants' Submissions

9. The Claimant's Advocates Ms. Wanyama submitted that there was no evidence produced before the court to show that indeed the grievant had stolen the respondent's money. Counsel further submitted



that the grievant continued working for the respondent even after the allegation of theft. Counsel submitted that the grievant clearly stated that on the material day, he asked his boss Mr. Kantaria for a loan of Kshs. 27,000/- and he handed him his ATM card to go and withdraw Kshs. 20,000/- and that Kshs. 7000/- was handed to the grievant against his signature in a note book where other employees used to sign for salaries and loans. The respondent failed to produce the note book in court. According to counsel, the grievant was arrested on 3rd November, 2015 while the money was allegedly stolen on 15th July, 2015. This according to counsel was an afterthought and now that the grievant accesses the ATM card, he wondered why he only stole 20,000/- and not more. Counsel wondered why the grievant continued to work for the respondent after the allegation of theft and why the grievant was arrested three months later further how the grievant accessed Mr. Kantaria's password. The reasonable conclusion was that Mr. Kantaria used to send the grievant to withdraw cash on his behalf that is why he had access to his password. According to Counsel, the grievant was arrested after the union issued the respondent with a letter dated 14th October, 2015 from the labour office requiring them to attend and explain the circumstances of the grievant's dismissal from service and requesting for payment of grievant's final dues.

10. The grievant was not taken through any disciplinary process before termination of his service and was not issued with termination notice. Further the respondent never paid the grievant his terminal dues.
11. According to counsel, subjecting the grievant to criminal proceedings were uncalled for and unfair considering the grievant had worked for the respondent for five years without any warning
12. On the issue whether the grievant was entitled to the reliefs sought, Counsel submitted that the grievant was accused of stealing and had to undergo through the process of proving his innocence. The respondent never issued the grievant with any termination letter or subject him to any disciplinary process. According to Counsel, the grievant therefore deserved all the reliefs sought in the claim. The grievant was further entitled to the costs of the suit.

Respondent's Submissions

13. The Respondent's Advocates Ms. Koki submitted that the respondent filed before the Court an apology letter written by the grievant where he apologised over the incident and promised that the same will not be repeated. Counsel submitted that although the grievant denied writing the apology letter and that it was Joyce that wrote the same, he did not deny the contents of the same and that he confirmed in cross-examination that he had not brought any charges against Joyce. Further despite the fact that the claimant was found with the money, he claimed the same had been offered to him by Mr. Kantaria as a loan. This was denied by Mr. Kantaria. According to counsel, the respondent had proved that it had valid reasons for terminating the grievant's service and further that the grievant was employed as a security guard to guard the respondent's property therefore by engaging in acts contrary to the work for which he was hired, the grievant breached the trust and confidence bestowed upon him by the respondent. To award him the reliefs sought would be tantamount to rewarding theft.

Determination

14. The court has reviewed and considered the pleadings, testimonies and submissions by both counsel in support and opposition to the case. It was common ground that the grievant was terminated from service on accusation of theft. He was even prosecuted albeit unsuccessfully. The grievant case was that the money he was accused of stealing was given to him as a loan. The claimant union has contended that the grievant was terminated and arrested three months after termination of his service and when the Labour office summoned the respondent to their office to discuss the matter and pay the grievant his terminal dues. According to the evidence on record, the grievant was terminated on 1st September,



2015. The Letter from Ministry of Labour is dated 29th February, 2016. The letter is addressed to the union and the respondent and makes reference to a dispute reported by the Union through a letter dated 22nd December, 2015. The charge sheet produced in court is not clear when the grievant was arrested but from the proceedings, the grievant was arraigned in court for the first time on 15th January, 2016.
15. It is therefore clear that the arrest and eventual arraignment in Court of the grievant was after the claimant union reported the dispute to the Ministry. The money allegedly stolen was withdrawn from Mr. Kantaria's account on 25th July, 2015. If indeed it was a case of theft, one wonders why the respondent waited until 1st September, 2015 to terminate the claimant's service and why the respondent waited until around January, 2016 to have the grievant arrested. The Court therefore agrees with the claimant union and the trial court in the criminal matter that the arrest and eventual prosecution of the grievant must have been triggered by the demand by the union that the grievant be compensated for unfair termination and further paid his terminal dues. The issue of how the grievant came across Mr. Kantaria's ATM card and PIN did not emerge clearly from the evidence of the respondent. It therefore left a high probability that Mr. Kantaria might have been in the habit of sending the grievant to withdraw money from the ATM on his behalf.
 16. The Court therefore finds and holds that the respondent unfairly terminated the grievant's service due to lack of valid reasons as contemplated under section 45 read together with section 47(5) of the *Employment Act*. Further the respondent did not carry out the termination in accordance with procedure stipulated under section 43 of the Act.
 17. The claimant Union pleaded that the court orders the respondent to pay the claimant his dues as set out at paragraph 4 of the statement of claim however paragraph 4 did not outline the details of the compensation sought. The claimant union further stated that the grievant was underpaid, worked overtime without pay and never went on leave but did not itemize the period worked overtime, leave not taken and public holidays worked. The Court however notes that the grievant was employed as a security guard in Nairobi from 25th July, 2010 and worked until 1st September, 2015 when his service was terminated. The operative Wage Orders governing security industry were produced as part of the claimant's documents. The claimant's exit salary was Kshs. 10,000/- against Operative Wage Order which was stated at Kshs. 10,914. The Court will therefore allow the claim for underpayment as against the gazette wage order.
 18. Regarding compensation for unfair termination, the grievant had worked for the respondent for about five years. No evidence was led over his misconduct except for the allegation that he unlawfully withdrew money from Kantaria's account. Further, the prosecution of the grievant without any reasonable evidence must have been traumatizing. As observed by the Court trying the criminal case as well as this court, the prosecution must have been triggered by the complaint by the union to the labour office and the demand that the grievant be paid his terminal dues. In the circumstances an award of 12 month's salary as compensation for unfair termination would be justified.
 19. In Conclusion the Court awards the grievant as follows:
 - b. One month's salary in lieu of notice..... Kshs. 12,221
 - c. Underpayment as computed by the claimant union in their letter dated 14th October, 2015..... Kshs. 82,993
 - d. Standard Overtime for security industry.... 187,312
 - e. 12 months' salary as compensation for unfair termination. 146,652



f. Total 429,178

20. 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

