

FINALREPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

ELDORET

CAUSE NO. E022 OF 2024

JOHN K. KOSGEI

CLAIMANT

VERSUS

SISIBO TEA FACTORY

RESPONDENT

JUDGMENT

1. Vide a Memorandum of Claim filed in court on 3rd June 2024, the Claimant sought compensation for unfair, unprocedural and unlawful termination of his employment.
2. The Claimant averred that he was employed by the Respondent in 1999 and served diligently until 6th March 2024, when he was allegedly unlawfully, unprocedurally and summarily dismissed.
3. The Claimant's case was that vide a letter dated 26th February 2024, the Respondent required him to respond to allegations of misconduct made against him, which he did vide a letter dated 27th February 2024. He averred that he was thereafter

summoned to attend a disciplinary hearing scheduled for 29th February 2024 and that upon attending the hearing, he was dissatisfied with the composition of the disciplinary committee and sought its reconstitution to ensure fairness and impartiality.

4. The Claimant further pleaded that he was subsequently served with another letter dated 2nd March 2024, prompting him, by a letter dated 4th March 2024, to raise further reservations regarding the composition and legality of the panel noting that his earlier concerns had not been addressed.
5. The Claimant further stated that notwithstanding his objections, the Respondent proceeded with the disciplinary hearing in his absence and subsequently dismissed him from employment vide a dismissal dated 6th March 2024.
6. According to the Claimant, the decision to summarily dismiss him was ill willed, unlawful, unprocedural, unfair and irregular on grounds that: -

- a. The Respondent terminated the Claimant's employment without following the laid down procedure in the Employment Act,
- b. The Respondent summarily dismissed the Claimant without proving that the reasons for termination were valid as per section 43 of the Employment Act,
- c. The Respondent did not accord the Claimant fair hearing before termination,
- d. The Respondent terminated the Claimant's employment without following the due process of the law,
- e. Failing to pay the Claimant his entitled service benefits,
- f. Failing to take into consideration the response and explanation offered by the Claimant on accusations made against him.

7. The Claimant contended that owing to the unfair and unlawful termination, he is entitled to terminal benefits which he itemized to be: -

- i. One month salary in lieu..... Kshs
153,500

- ii. Salary for Feb and March 2024..... Kshs 307,000
- iii. Unpaid leave for 3 years..... Kshs
460,000
- iv. 12 months' salary as compensation
for unfair and unlawful termination Kshs.
1,842,000
- v. 25 years' service pay Kshs
4,477,083
- Total Kshs 7,240,083

8. The Claimant prayed for orders as follows:

- i. A declaration that the Claimant's termination from employment was unlawful, unprocedural and unfair
- ii. Compensation for unlawful termination as particularized in paragraph 7 above
- iii. Costs and interests
- iv. Any other relief as the court deem fit

9. The Respondent filed a Response to the Statement of Claim dated 26th June 2024 denying the averments made by the Claimant in his claim. It is contended that all the procedures

precedent to termination were complied with and the action taken was well within the confines of the law.

10. The Respondent maintained that it afforded the Claimant a fair chance to be heard orally and in writing, which opportunity he failed to utilize and the Respondent cannot be faulted for the administrative action taken.
11. The Claimant's evidence was recorded on 29th April 2025. Relying on his witness statement dated 3rd June 2024, the Claimant testified that he had been employed by the Respondent as Manager in charge of Outgrowers at Sisibo Tea Company and at the time of his dismissal, he was earning a salary of Kshs 153,500.48.
12. The Claimant testified that he was served with a show cause letter dated 26th February 2024, in which he was required to respond to a number of allegations. He stated that he responded on 28th February 2024 and informed the Managing Director that he was in the process of availing the requested documents. He stated that he requested additional time to produce the documents but was immediately asked to attend a disciplinary hearing scheduled for 29th February 2024.

13. The Claimant contended that the disciplinary hearing was conducted improperly, as he appeared before the Managing Director alone, who was the same person that had made the accusations, handled the case, prosecuted him, and was to ultimately render judgment. The Claimant stated that he requested that the Managing Director to constitute a proper disciplinary panel. That he was consequently served with another letter rescheduling the hearing to 4th March 2024. He testified that he responded with a letter stating why he would not attend the hearing as he believed the process was predetermined. It was his testimony that the hearing proceeded in his absence and he was dismissed on 6th March 2024.
14. The Claimant maintained that the entire process leading to his dismissal was unprocedural and contrary to the Respondent's HR manual. He stated that his managerial role was limited to overseeing raw materials, while strategic decisions were usually taken in response to operational challenges such as droughts affecting green leaf availability or delayed payments

to farmers. He testified that any actions he took were intended to protect the Respondent against loss.

15. With respect to his leave dues, the Claimant disputed the records filed by the Respondent asserting he did not take leave in 2020 and 2021. He further told the court that he had cleared with the Respondent upon his dismissal. He denied having been issued with a company laptop.

16. On cross-examination, the Claimant stated that Prime Tea Brokers was not contracted to conduct an audit of the Tea Chain and he was not aware of any such audit. He testified that the matter was only discussed as “Any Other Business” (AOB) in their meetings. He further stated that he did not receive any report from Prime Tea Brokers addressed to him. The Claimant admitted that the issues he responded to in the show cause letter were connected to the audit and that he did not meet the target on several items. He testified that he had decided to halt operations at Nandi due to reduced leaf availability and delayed payments to farmers.

17. The Claimant admitted that he took leave in April 2020 and December 2020, 30 days each, totaling to 60 days. He disputed the Respondent's tabulation, which indicated that he had taken 29 of the 35 outstanding leave days.
18. On re-examination, the Claimant stated that his targets were progressive and his role was limited to sourcing leave from the field. He stated that he did not participate in the disciplinary process as he believed that it would not be fair.
19. The Respondent called Edwin Cheruiyot Bii its Head of Sales who testified as RW1. He adopted his witness statement dated 18th February 2025 and the documents filed on behalf of the Respondent as his evidence in chief.
20. RW1 testified that the Claimant's claim for February and March 2024 salaries is not contested, noting that the amounts had already been computed.
21. He explained that after statutory deductions, the net terminal dues owed to the Claimant amounted to Kshs 220,771. RW1 stated that part of the final payment calculation included an allocated company laptop which the Claimant was required to return before receiving final dues. RW1 further explained that

the computed leave days amounted to 35, out of which the Claimant had already utilized 29 days.

22. It was RW1's testimony that during the course of his duties, the Claimant was allocated a laptop procured on 27th August 2022 which he had failed to return. RW1 emphasized that all items returned by employees must be formally acknowledged and signed for.
23. RW1 further explained that the computation of final dues is done after the completion of the relevant forms as the process informs the final payment. He stated that it is the responsibility of the employee to ensure that the forms are fully completed and signed.
24. According to RW1, on 4th March 2024 after the Claimant requested another date for the disciplinary hearing, the meeting proceeded in his absence. He explained that a disciplinary hearing cannot proceed without the Managing Director as chair and two other members as provided in the HR manual. That the manual allows the hearing to continue in the absence of the employee provided there is evidence of consultation. He testified that at the hearing, the disciplinary

committee reviewed the show cause letter, the Claimant's response and subsequent communication before reaching a decision to terminate the Claimant's employment which decision was communicated to him on 6th March 2024.

25. When referred to Item 5 of the Notice to Show Cause at page 3 of the Respondent's list of documents, RW1 explained that according to industry practice, tea quality assessment is conducted daily on every sack of leaf through a process referred to as "leaf sack." He stated that the Respondent's main business is the processing and marketing of tea, and that the quality of tea is a key determinant of its value. He testified that the Claimant, as the Manager in charge of Outgrower Services, was responsible for ensuring that the company received high-quality leaf for processing. He added that the Claimant was the custodian of the leaf standards since he oversaw the delivery of leaf to the factory. That the quality of tea is primarily determined at the farm level.

26. RW1 further testified that the Claimant was responsible for setting his targets and reporting on achievements. He stated that a trend analysis revealed that most performance

parameters were not achieved. According to RW1, the Claimant unilaterally closed down the Nandi catchment area which used to produce between 50 and 75 units during the dry months, an action that effectively shut down part of the Respondent's operations. He stated that such a decision required approval from the line manager which the Claimant did not seek.

27. RW1 testified that Prime Tea Brokers had been contracted by the Respondent to conduct a comprehensive audit of the company's processes and to make recommendations for improvement. The audit report, he said, was shared with all employees and the Managing Director sent an email instructing staff to address the issues raised in the report. He asserted that the Claimant's response to the audit queries lacked a concrete corrective plan.
28. On this basis, the Respondent's witness asserted that the decision to terminate the Claimant's employment was valid, as it was based on the loss of business caused by the Claimant's actions.
29. Upon cross examination, RW1 stated that the Claimant's clearance form (Exhibit 1) was duly signed by the heads of

department and the Claimant himself. He further testified the Finance Department through Mr. Barasa who was in charge of finance, had cleared the Claimant. RW1 stated that if there had been an issue with the clearance, the Finance Department would not have signed the form. RW1 agreed that there was no document before the Court showing that the Claimant had been issued with a laptop.

30. He stated that in reaching the decision to terminate the Claimant's employment, the Respondent relied on the audit report and an email communication, both of which were not produced in Court.
31. RW1 also stated that the reports relied upon in terminating the Claimant's employment regarding tea quality were not filed. That the Prime Tea Brokers audit report was not produced in Court, although it contained detailed findings and corrective recommendations.
32. On re-examination, RW1 stated that the document used to confirm the handing over of company property is the asset allocation form. He explained that it was the Claimant's responsibility to ensure that the handing over form was duly

completed. He further clarified that the tabulation of final dues is included in the clearance form and that the computation is done by the officer overseeing the clearance process whose duty is to ensure that all departments sign off before payment is made. He concluded that the Claimant's terminal dues had been withheld pending full clearance and return of the company laptop.

33. At the close of the Respondent's case, parties were directed to file written submissions. The Claimant's submissions are dated 20th May 2025 while the Respondent's submissions are dated 30th May 2025.
34. By and large, the submissions reiterated the positions taken by the respective parties.

Determination

35. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are: -

- i. Whether the termination of the Claimant's employment was justified.
- ii. Whether the procedure followed was in accordance with the Employment Act.
- iii. Whether the reliefs sought are merited

Whether the termination of the Claimant's employment was justified

36. Section 45(2) of the Employment Act prohibits an employer from termination the contract of an employee except for valid reason and upon compliance with fair procedure.
37. Section 43(1) of the Employment Act places the burden to prove the reasons for termination on the employer and where the employer fails to do so, such termination is deemed unfair within the meaning of Section 45. The section provides:

"In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the

termination shall be deemed to have been unfair within the meaning of Section 45.”

38. The Respondent contended that the termination of the Claimant’s employment was informed by his failure to meet performance targets and his unilateral decision to shut down the Nandi catchment area without authority, which allegedly resulted in business losses. RW1 testified that these issues arose from an audit conducted by Prime Tea Brokers whose report was said to have revealed performance and management gaps attributed to the Claimant.
39. On his part, the Claimant insisted that the allegations against him were unfounded. He maintained that he diligently met his performance targets and executed his duties in accordance with the Respondent’s operational procedures. He further denied having unilaterally shut down the Nandi catchment area and asserted that his actions were aimed at addressing challenges relating to the payment of farmers and ensuring the continuity and efficiency of operations.

40. As can be deduced from the pleadings and the evidence of the parties, the Claimant was dismissed from employment based on an audit report prepared by Prime Tea Brokers which allegedly highlighted performance and management gaps attributed to him.
41. However, the Respondent did not produce before this Court the said audit report or any document showing the Claimant's performance evaluation, trend analysis, or evidence of losses allegedly caused by his decisions. RW1 admitted during cross-examination that the audit report as well as the referenced email communication relied upon by the Respondent in reaching the decision to terminate were not filed in court.
42. In the absence of the audit report or any credible documentary evidence to substantiate the allegations, the Court is left with mere assertions unsupported by proof. Allegations, however grave, do not constitute valid reasons for termination within the meaning of Section 43(2) of the Employment Act.
43. In ***Kenfreight (E.A.) Limited v Benson K.Nguti[2016] KECA 688 (KLR)***, the Court of Appeal emphasized that it is not enough for an employer to cite poor performance and that

there must be proof that the employee was made aware of the shortcomings and given an opportunity to improve.

44. From the foregoing, the Court finds that the Respondent failed to discharge its burden under Section 43 of the Employment Act to establish valid and fair reasons for terminating the Claimant's employment.
45. Consequently, the Court finds and holds that the termination of the Claimant's employment was without valid reason and therefore substantively unfair.

Whether the procedure followed was in accordance with the Employment Act.

46. Section 41 of the Employment Act provides: -

"Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a

shop floor union representative of his choice present during this explanation.”

47. The Claimant’s evidence was that he was served with a show cause letter dated 26th February 2024 to which he responded on 28th February 2024. He was thereafter invited to attend a disciplinary hearing scheduled for 29th February 2024 but upon raising concerns that the Managing Director who had authored the accusations was the same person chairing the hearing he requested for the constitution of an impartial panel. In response, the Respondent rescheduled the hearing to 4th March 2024. The Claimant nonetheless declined to attend citing lack of impartiality. The hearing proceeded in his absence, culminating in his dismissal on 6th March 2024.
48. The Respondent through RW1, maintained that the disciplinary hearing was conducted in accordance with the HR manual. The Respondent produced minutes of the disciplinary hearing held on 4th March 2024 which indicate that the meeting was attended by the Managing Director, Edwin Cheruiyot Bii and Bethwel Chelashaw. RW1 in his testimony told the court that

the Respondent's Manual permitted the hearing to proceed in the absence of the employee provided there was evidence of consultation and that the employee had been accorded an opportunity to respond in writing.

49. The court has considered the Respondent's evidence and notes that while the minutes demonstrate that a disciplinary meeting was held, the Claimant was not present. The Claimant's request for a different panel was not addressed and there is no indication that he was accorded an alternative opportunity to make oral representations before the committee.
50. The Court of Appeal in the case of ***Janet Nyandiko v Kenya Commercial Bank Limited [2014] KECA 293 (KLR)*** held that an employer is enjoined to comply with the mandatory provisions of Section 41 and 45 of the Employment Act in terminating an employee's employment, and that failure to do so renders the termination unfair.
51. In ***Postal Corporation of Kenya v Andrew K. Tanui [2019] KECA 489 (KLR)***, the Court of Appeal held that for a disciplinary process to meet the requirements of Section 41,

the employee must be informed of the charges, allowed to respond, and the hearing must be conducted by an impartial body. The court emphasized that the right to be heard cannot be substituted with a purely internal administrative convenience.

52. Although the Respondent's manual allowed a hearing to proceed in an employee's absence, statutory safeguards under Section 41 of the Act prevail over internal procedures. The Court therefore finds that conducting the hearing in the Claimant's absence, despite his request for a fair panel, did not meet the threshold of procedural fairness contemplated in the Employment Act.

53. Based on the foregoing, I find and hold that the Claimant's dismissal was not in accordance with fair procedure.

Whether the reliefs sought are merited?

54. Having found that the termination of the Claimant's employment was both substantively and procedurally unfair, the Court now turns to consider whether the Claimant is entitled to the reliefs he is seeking.

55. In his Statement of Claim, the Claimant prayed for various reliefs, which I address as hereunder in separate heads.

i. A declaration that the Claimant's termination from employment was unlawful, unprocedural and unfair

In view of the finding above that the dismissal of the Claimant was not based on valid reason and that fair procedure was not followed, I make declaration that the dismissal was unfair and therefore unlawful.

ii. Compensation for unlawful termination

As stated at paragraph 7 of this judgment, the Claimant prayed for one month's pay in lieu of notice, Salary for February and March 2024, Unpaid leave for 3 years, 12 months' salary as compensation for unfair termination and 25 years' service pay.

a. *One month's pay in lieu of notice*

Having found that the termination of the Claimant's employment was unfair, he is entitled to pay in lieu of notice. From his January 2024 pay slip attached to his list of documents, the Claimant was earning a

gross salary of Kshs 153,500. I therefore award the Claimant Kshs 153,500 under this head.

b. Salary for February 2024 and March 2024

It is not disputed that the Claimant worked for the full month of February and up to 6th March 2024. Based on his monthly salary of Kshs 153,500, he is entitled to salary for February in full and six (6) days worked in March, which RW1 admitted was not paid, amounting to Kshs 184,200.58.

c. Unpaid leave dues for 3 years

On the claim for unpaid leave for three years, the Respondent asserted that the Claimant had taken leave in 2020 and that the remaining days were 35, out of which 29 had been utilized. The Respondent attached leave forms for the period between 2020 and 2023 indicating that the Claimant had utilized his leave days. RW1 in his testimony stated that the Claimant had six (6) days of unutilized leave. The Court finds that the Claimant is entitled to payment for these six unutilized leave days. Based on his

monthly salary of Kshs 153,500 and assuming a 30 day month, the total unpaid leave dues amount to Kshs 30,700 which I award.

d. 12 months' salary as compensation for unfair termination

Section 49(1)(c) of the Employment Act provides that an employee whose employment has been unfairly terminated may be awarded compensation not exceeding twelve months' gross salary. Having found that the Claimant was unfairly and unlawfully terminated from employment, and taking into account his long service with the Respondent and its associates spanning about 25 years, the circumstances under which his employment was terminated and all the relevant factors under section 49(4) of the Employment Act, I award the Claimant 10 months' salary as compensation having taken into consideration the length of his service. This amounts to Kshs. 1,535,000 which is awarded.

e. 25 years' service pay.

Section 35(6) of the Employment Act excludes employees who are members of a registered pension or provident fund or who are otherwise covered under the NSSF from claiming service pay. From the Claimant's salary slip for January 2024 annexed to his list of documents, the Claimant was a member of NSSF. He is therefore not entitled to this relief and the prayer is declined.

56. I will now address the issue raised by the Respondent regarding the company laptop. The Respondent claimed that the Claimant's final payment was dependent on the return of a company laptop allegedly issued to him. RW1 testified that the laptop had been procured on 27th August 2022 and was not returned. However, there is no documentary evidence showing that the Claimant was issued with the laptop. The Claimant denied having been issued with the said laptop. In the absence of proof, the Claimant cannot be held liable to return the same as a condition for release of his terminal dues.

57. Consequently, judgment is entered for the Claimant in the following terms:

i. A declaration that the Claimant's termination from employment was unfair and therefore unlawful

ii. The Claimant is awarded the following: -

a. One-month's salary in lieu Kshs.
153,500

b. Salary for February 2024

and 6 days in March 2024 Kshs.
184,200

c. Unpaid leave dues Kshs. 30,700

d. 10 months' salary as compensation for unfair
terminationKshs
1,535,000

- iii. The Respondent is directed to issue a certificate of service to the Claimant in strict compliance with section 51 of the Employment Act.
- iv. The Respondent shall meet the Claimant's costs of this suit.
- v. Interest shall accrue from date of judgment.

58. Orders accordingly.

**DATED, DELIVERED AND SIGNED
THIS 13TH DAY OF NOVEMBER, 2025.**

**M. ONYANGO
JUDGE**