



Kenya National Private Security Workers Union v G4S Kenya Limited (Employment and Labour Relations Cause 587 of 2019) [2025] KEELRC 3121 (KLR) (11 November 2025) (Judgment)

Neutral citation: [2025] KEELRC 3121 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 587 OF 2019
HS WASILWA, J
NOVEMBER 11, 2025**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
G4S KENYA LIMITED RESPONDENT**

JUDGMENT

1. The Claimant union instituted this claim vide an Amended Memorandum of Claim dated 1st September 2023 and it prays for judgment against the Respondent for:
 - i. That the summary dismissal of the grievants was un procedural, wrongful therefore unfair both in procedure and substance.
 - ii. The respondent be ordered to immediately reinstate the grievants into their employment and re-engage the grievants in work comparable to that in which the grievants were employed prior to their dismissal or suitable work without loss of benefits and privileges.
 - iii. In the alternative; -
 - a. Notice in lieu of pay
 - b. Days worked and not paid
 - c. Leave earned and not paid
 - d. Overtime worked and not paid
 - e. Gratuity for each complete year of service
 - f. 12 monthly wages as compensation for wrongful loss of
 - g. employment.



- iv. Certificate of service
- v. The Respondent do meet the Claimants cost of this case.

Claimant's Case

2. The Claimant union avers that it is duly registered under section 19 of the Labour Relation Act and it is the sole labour organization mandated to represent the industrial interest of employees engaged/employed in the private security industry. Whereas the Respondent is a limited liability company carrying out business in the private security industry in Kenya and offering private services to various sectors of the country.
3. The Claimant union avers that the parties have a recognition agreement and a Collective Bargaining Agreement that governs the terms and conditions of workers and including the 70 grievants.
4. The Claimant avers that the grievants were employed by the Respondent on diverse dates and assigned in different assignments at a various remuneration. The grievants performed their duties diligently until they were abruptly issued with dismissal letters on diverse dates and months by the Respondent, on allegation of sleeping while on duty and commenting on certain issues.
5. It is the Claimant union's case that the Respondent did not follow due process in dismissing the 77 (seventy-seven) workers for allegedly sleeping while on duty, intoxication, insubordination and desertion of duties. The Respondent issued them suspension letters and notices to appear before a disciplinary panel to the complainants and failed to notify the union on the same.
6. The Claimant union avers that the Respondent targeted workers who had worked for more than 5 years with the intention to deny them service pay contrary to clause 19.1 of the Collective Bargaining Agreement (CBA), which states that:

after five years of service with the employer, the unionisable employee shall be entitled to eighteen (18) days pay for every completed year of service by way of gratuity base on the employee's wages (protective security services order 1998).
7. The Claimant union avers that the Respondent has already advertised for the position previously held by the grievants and the intended recruitment.
8. It is the Claimant union's case that the Respondent had already pre-determined that it would terminate the services of the grievants to pave way for cheap labour.
9. The Claimant union avers that they have a recognition agreement, dated 2nd February 2015 and a CBA dated 24th September 2018, in which the terms and conditions of workers is well elaborated. However, the Respondent's actions contradicted clauses 17.0 and 18.1 of the CBA.
10. Clause 17.0 of the CBA, states that "An employee can be summarily dismissed by the employer on grounds of misconduct in accordance with the company's disciplinary policy and the [Employment Act, 2007](#). The company policies shall not be superior to the [Employment Act, 2007](#)."
11. Clause 18.1 further states that: "The employer shall enforce a disciplinary process that adheres to the law. The company disciplinary policy which shall not be superior to all employees and any updates shall be communicated by bulletin, notice board updates, intranet and parades. Employees whose work and conduct is unsatisfactory, or who is guilty of misconduct which does not warrant summary dismissal, shall be warned in writing."



12. The Claimant union avers that the grievants were dismissed on grounds of misconduct without being accorded an opportunity to be heard and or to challenge the allegation raised against them contrary to the rules of natural justice set in the *Employment Act*.
13. The Claimant union avers that the Respondent did not give notices of the dismissal to all the grievants; some grievants were only given suspension letters pending investigations.
14. The Claimant union avers that prior to the dismissal no explanation was offered neither were the grievants accorded an opportunity to have another employee or shop floor union representative of their choice present during the explanation which is mandatory.
15. It is the Claimant union's case that the facts giving rise to the dismissal is disputed and in contravention of section 44(4), (a), (c) and (e) of the *Employment Act* and clauses 17.0 and 18.0 of the CBA are unjustified. The grievants were issued with dismissal letters, despite the fact that they had not exhausted the dispute resolution mechanism under the CBA.
16. The Claimant union avers that the Respondent's disciplinary policy Clause 8.3 the grievants ought to have been given a first warning that is reprimand or cautionary. The line manager or supervisor should complete the warning order disciplinary form in triplicate to the grievants.
17. However, the grievants were never informed to the exact nature of the alleged misconducts. An employee allegedly found to be asleep whilst on duty ought to have been given a second warning and eventually a final warning.
18. The Respondent failed to consider the length of service and the grievants' reasons for sleeping at work. Therefore, it is the Claimant union's case that process of the termination was arbitrary, hasty, unlawful and without justification.
19. The Claimant union avers that the criteria used to select the workers terminated was unfair and unlawful as: the Respondent did not take into consideration the number of years they had served; they were never issued with a show cause letter for the alleged misconduct; no investigations were carried out; and they were denied an opportunity to be heard though some had genuine reasons to explain.
20. The Claimant union avers that the grievants records of unparalleled good and exemplary performance of work questions on what basis the respondent could have unfairly terminated them.

Respondent's Case

21. In opposition to the Claim, the Respondent filed an Amended Statement of Response dated 30th October 2023.
22. The Respondent admitted that the parties have a recognition agreement dated 2nd February 2015 and a CBA dated 24th September 2018. It further admitted that it employed the grievants on diverse dates.
23. The Respondent denied that the grievants performed their duties, diligently and with dedication.
24. The Respondent avers that it has a disciplinary code of conduct which governs the guards' employment and the guards were at all material times aware of the provisions of the Disciplinary Code of Conduct. Thus, the grievants were bound by the respondent's disciplinary code.
25. The Respondent avers that under its Disciplinary Code of Conduct, it is an express provision that the following offences amount to gross misconduct which warrants summary dismissal: sleeping while on duty, intoxication, insubordination, and abusive language.



26. The Respondent avers that a memo had been circulated to all staff and placed in their changing rooms, reminding them of the consequences of sleeping while on duty. It further holds morning parades thrice a week for all the guards where they are reminded of the consequences of sleeping while on duty
27. It is the Respondent's case that the private security industry is a sensitive industry and abdication of roles by the guards leads to compromise of the security operations of the client and puts the company to disrepute and sleeping while on duty also endangers the safety of the guards.
28. The Respondent avers that it is likely to lose out on assignments where the clients are not satisfied with the quality of services provided by the guards who are found sleeping in the course of duty.
29. The Respondent avers that Respondent's employees who are charged with gross misconduct are issued with notices to show cause and a notice of disciplinary hearing in accordance with the disciplinary code of conduct. The notices informed the grievants: charges against them; date, time and place of the disciplinary hearings; that they would be expected to answer to the charges levelled against them during the disciplinary hearing; and their right to be accompanied to the disciplinary hearing by a representative from the company.
30. The Respondent avers that the grievants were granted a fair hearing and a right of appeal. All the letters of summary dismissal produced in the Claimant's pleadings refer to a disciplinary hearing or an appeal process.
31. It is the Respondent's case that on various dates, it conducted disciplinary hearings of guards who breached their contractual obligations and contravened its disciplinary code while in the course of duty. Some of the hearings culminated to summary dismissals. It reiterates that there was procedural fairness in the grievants' termination.
32. The Respondent avers that it has the right to recruit, train, conduct disciplinary processes and terminate in accordance with the law.
33. The Respondent avers that it conducted investigations before the dismissal of the grievants. As a result of these investigations, it identified valid reasons that it genuinely believed warranted the termination of the grievants' services.
34. The Respondent avers that it had just cause to institute disciplinary action against the grievants and complied with all the relevant laws and internal disciplinary procedures as set out in its disciplinary code. The grievants are not entitled to terminal benefits and compensatory damages as they were summarily dismissed.
35. The Respondent asserts that it followed due process and procedure in dismissing the grievants. It acted well within its rights and in compliance with the disciplinary code which covers the guiding principles on disciplinary hearings, by taking the appropriate disciplinary measures to terminate the grievants from employment.

Evidence in Court

36. The Claimant union's witness, Sospether Marube (CW1) adopted his witness statement dated 1st September 2023 as his evidence in chief and produced his list of documents dated 5th September 2019 exhibits 1-6.
37. He states that he has authority to testify on behalf of all the other grievants.
38. Upon cross-examination, CW1 testified that they had worked for the Respondent for 5 years but he was not given a termination letter, he was informed of his summary dismissal orally.



39. CW1 testified that he is testifying for 68 grievants and all of them were not taken through any disciplinary process
40. CW1 testified that none of the grievants were terminated on account of redundancy.
41. The Respondent's witness, Agnetta Wakio (RW1) stated that she is the Respondent's HR Business Partner. She produced her witness statement dated 8th July 2023 and produced her lists of documents dated 1st July 2023 and 12th February 2025 as amended by the court order of 20th May 2025 her exhibits.
42. RW1 testified that the grievants were found sleeping but no one testified against them during the disciplinary hearing.
43. RW1 testified that the Respondent did not attach any termination letter before this court. There is also no evidence that disciplinary hearing were conducted against the grievants.
44. RW1 testified that the memo on the disciplinary processes was placed in the changing room but she cannot prove the same.
45. RW1 testified that the grievants were paid their terminal dues but she has not attached proof of payment.

Claimant's Submissions

46. The Claimant submitted on three issues: whether there was a justifiable cause to terminate the 68(Sixty-eight)Grievants employment; whether the 68(Sixty-eight) Grievants were subjected to fair procedure prior to being dismissed from employment; and whether the 68(Sixty-eight) Grievants are each entitled to reliefs as prayed.
47. The Claimant submitted that the 1st- 3rd, 6th-44th, 46th – 53th, 55th -62nd, 64th, 70th, 72nd -74th grievants were dismissed on allegations that they slept while on duty. The grievants was never given a chance to defend themselves and accorded a fair hearing thus the legal procedures under Section 41 of the Employment Act were never adhered to by the Respondent.
48. The Claimant submitted that Section 43(1) of the Employment Act places the burden of proving the reasons for termination on an employer and failure to do so, such termination is rendered unfair.
49. The Claimant further submitted that Section 44 of the Employment Act puts the burden upon an employer intending to summarily dismiss an employee and that the Respondent had not justified any of the grounds under the law. The photographs produced by the Respondent were not admissible because the Respondent never produced a certificate by the person who operated the machine as required by Section 106B (4) of the Evidence Act. Further the persons who allegedly found them sleeping were not present in court to testify.
50. The Claimant submitted that the Respondent did not provide any evidence that the Client where the grievants were assigned had complained that the grievants was found sleeping at the place of assignment.
51. It is the Claimant's submission that the disciplinary process conducted was a mere sham as the Respondent was both the complainant and the prosecutor.
52. The Claimant submitted that the 5th grievant was dismissed vide a summary dismissal letter dated 6th May 2019 for the reasons that he allegedly drove the company vehicle without a driving license, that he got involved in a traffic accident and that he failed to adhere to the safety and health policy thereby putting his life and others at risk.



53. It is the Claimant's submission that the Respondent did not adduce any evidence to show whether anyone was injured or rather complained that their lives were on risk. There was equally no evidence before court to show that the 5th Grievant was under any risk. From the minutes produced in court, there is no complainant, there is no evidence to show that indeed there was an accident as alleged by the Respondent. The investigation report is authored by the operations manager Kisumu who also happens to be an employee of the Respondent, hence there was likelihood of biasness.
54. The Claimant submitted that the 65th and 66th grievants were dismissed on allegations of intoxication, however, they were never given a chance to defend himself and accorded a fair hearing.
55. It is the Claimant's submission that the Respondent did not produce before court any document to proof that the grievants were issued with suspension letters, notice of disciplinary hearing, summary dismissal letters or any statement of discharge in contravention with provisions of Section 41 of the *Employment Act*.
56. The Claimant submitted that the Respondent failed to justify the 65th and 66th grievants termination as it did not produce any medical report to establish that and show the level of intoxication. Further the person who allegedly found him drunk was not present in court to testify. Further the person who allegedly found him drunk was not present in court to testify.
57. The Claimant submitted that the 67th and 76th grievants were dismissed on allegations that he deserted duties but was denied the chance to defend himself and accorded a fair hearing.
58. The Claimant submitted that the Respondent did not produce any records as proof of desertion of duties. The Respondent did not show any efforts to trace the 67th and 76th Grievant, if indeed they deserted duties. There was equally no check in out forms produced to clearly show that the grievants failed to report on duty. Further, their supervisors were not present to testify on the said desertion of duties
59. The Claimant submitted that the 71st was dismissed on allegations of insubordination and the 75th grievant was dismissed on allegations that he used abusive language. Both were denied the chance to defend himself and accorded a fair hearing. Further, the Respondent had not justified any of the grounds under the law as the person who allegedly abused was not present in court to testify.
60. The Claimant submitted that for the grievants who were dismissed on allegations of sleeping on duty; the persons who found them sleeping did not testify.
61. The Claimant submitted that RW1 produced photographs allegedly taken of the grievants while sleeping. However, the persons who took the photos never testified nor was any certificate produced by the persons who processed it.
62. The Claimant submitted that it objected to the production of the photographic evidence relied on, therefore, the evidence by RW1 on the alleged sleeping on the job by the grievants and the taking of photos should be termed to be hearsay. RW1 only stated that the photos were taken by the supervisors and the in-charge personnel who did not testify. The said hearsay evidence is not sufficient to prove that the grievants were found sleeping on job. The persons in the photos, the place and time of the photo are unknown.
63. The Claimant submitted that there was no evidence to prove that the grievants were served with invitation to attend hearing and declined. Therefore, the grievants were terminated without being accorded a fair hearing as required by Section 41 of the *Employment Act*.



64. The Claimant submitted that Respondent did not give notices of the dismissal and if at all there was genuine dismissals. The union was never informed of the decision the Respondent reached in terminating the services and yet there was a Collective Bargaining Agreement and a Recognition Agreement in force.
65. It is the Claimant's submission that the dismissal is disputed and in contravention of section 44(4), (a), (c) and (e) of the Employment Act 2007 and clauses 17.0 and 18.0 of the CBA are unjustified. The grievants were issued with dismissal letters, despite the fact that they had not exhausted the dispute resolution mechanism under the CBA.
66. The Claimant submitted that the 68 grievants are seeking for 12 months compensation by the fact that their services were unfairly terminated by the respondent, their fundamental rights were violated; the respondent breached fair labour practice.
67. The Claimant submitted that the grievants are also entitled to gratuity pay as per the provisions of the Collective Bargaining Agreement Clause 19.1 that states that after five years of service with the employer, the unionisable employee shall be entitled to eighteen(18) days pay for every completed year of service by way of gratuity based on employees (Protective Security Services Order 1998.

Respondent's Submissions

68. The Respondent submitted on six issues: whether the claims made by grievants 2, 3, 5, 21, 65, 66, 67, 70, 71, 75 and 76 should be struck out; whether the claimant obtained a letter of authority for grievants 47 and 63; whether all the grievants have discharged the burden of proof under section 47 (5) of the Employment Act; whether there were valid grounds for termination; whether proper procedure was followed; and whether the grievants are entitled to any of the reliefs sought.
69. On the first issue, the Respondent submitted that Rule 23 (1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides as follows: "A suit may be instituted by one party on behalf of other parties with a similar cause of action." The rule is identical to the provisions of rule 9 (1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 which was operational at the time the claimant filed this suit. The guiding principle under this rule is similarity of cause of action.
70. The Respondent submitted that it is not correct that the 2nd and 3rd grievants were dismissed for sleeping while on duty. The 2nd grievant was dismissed for breach of clause 19 (c) and (d) of his employment contract by uploading, without authorisation, privileged information concerning the respondent on social media. This is substantiated by the 2nd grievant's summary dismissal letter dated 25th July 2019. As for the 3rd grievant, he was dismissed for authorising the use of the respondent's motor vehicle to attend to a non-work-related distress call without prior approval, and for harassing and causing harm to a fellow employee. This is substantiated by the 3rd grievant's summary dismissal letter dated 23rd May 2019.
71. It is the Respondent's case that the only facts that are similar in this claim are that the grievants are all former employees of the respondent. This does not amount to a similar cause of action. The 2nd, 3rd, 5th, 21st, 65th, 66th, 67th, 70th, 71st, 75th and 76th grievants were dismissed for wholly unrelated reasons have distinct causes of action from the rest of the grievants who claim that they were unlawfully dismissed for sleeping on duty. Their inclusion in this suit thus offends rule 23 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and is an abuse of the court process.



72. The Respondent submitted that the misjoinder of 11 grievants with unrelated causes of action is compounded by the fact that the CW1 did not and could not offer any first-hand knowledge or admissible evidence regarding the circumstances of their termination for the 11 grievants. He admitted in cross examination that he did not know any of the 11 grievants.
73. It is the Respondent's submission that the Claimant's evidence does not support or prove the claims of grievants whose alleged terminations arose from different reasons/grounds for termination. Therefore, allowing the Claimant to rely on a single witness to advance multiple, unrelated causes of action would not only offend the principle of fair hearing but also contravene rule 23 of the Employment and Labour Relations Court (Procedure) Rules, 2024, which requires commonality of cause of action in representative suits.
74. It submitted that the 11 grievants who were allegedly dismissed for reasons other than sleeping on duty should therefore be struck out from this representative suit and their claims should not be considered by the court.
75. On the second issue, the Respondent submitted that the Claimant was required to file a letter of authority signed by all the other grievants pursuant to Rule 23 (2) of ELRC (Procedure) Rules, 2024 which provides as follows: "Where a suit is instituted by one person on behalf of other parties, that person shall, in addition to the statement of claim, file a letter of authority signed by all the other parties."
76. The Respondent submitted that in the letter of authority dated 22nd January 2025, the 47th grievant, Samwel Anangwe Apili did not sign the letter of authority and in the absence of his authority to act the Claimant cannot act or plead on behalf of him. Additionally, the Claimant did not obtain the authority of the 53rd grievant, Joel Ralph Onsongo and cannot act or plead on behalf of him. Therefore, their should be struck out.
77. The Respondent cited Ndungu Mugoya & 473 others v Stephen Wangombe & 9 others [2005] KEHC 2260 (KLR) where Kimaru J cited with approval the case in John Kariuki & 347 Others –versus. John Mungai Njoroge & 8 others Nakuru HCCC No. 152 of 2003 (unreported) where it was held:
- "The plain reading of the above rule (Order 1 rule 12 Civil Procedure rules) is that where a party requires another party to appear, plead, or act on his behalf he has to give the authority in writing before such a person filing suit can claim to be representing such person. The said written authority has to be signed by the person giving the authority and must be filed in court where the suit is to be filed. The mischief that the said rule was meant to address, in my humble view, is to prevent a situation where a party may become bound by a court decision without his having any knowledge of the suit that led to the said decision. The court can envisage a scenario, where, lets say, after the dismissal of a suit, such a plaintiff whose name has been included declines to settle the costs on the pretext that he did not authorise the suit to be filed in his name. In my considered view, this requirement is mandatory. A party cannot be condemned or enjoy a benefit from a court process without his say so." (Emphasis added)
78. On the thord issue, the Respondent cited section 47 of the *Employment Act* and Galgalo Jarso Jillo v Agricultural Finance Corporation [2021] KEELRC 323 (KLR) wherein Manani J interpreted section 47(5) of the *Employment Act* as follows: "The interpretation given to the section by courts is that all the employee needs to do in order to discharge the burden of proof on him/her is to place before the court prima facie evidence suggesting that a termination has occurred and that the said termination lacks a substantive justification and or is procedurally flawed. Once the employee makes a prima facie case, the burden of proof shifts onto the employer to justify the termination."



79. The Respondent submitted that the 9th, 11th, 15th, 20th, 39th, 46th, 52nd, 58th, 60th-62nd, 64th, 73rd and 74th grievants have failed to establish a prima facie case under Section 47(5) of the *Employment Act*. They have not produced any evidence demonstrating that their employment was terminated by the Respondent, nor that such termination lacked just cause or due process. In particular, they have not filed any termination notices, letters of dismissal, or evidence of communication from the Respondent terminating their employment. Consequently, the claims of these grievants must fail and be dismissed with costs.
80. On the fourth issue, the Respondent submitted that sections 43 and 45 of the *Employment Act* requires the employer to establish valid and fair reason or reasons for termination. It cited the Court of Appeal in *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR* : “The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist,” causing it to terminate the employee’s services. That is a partly subjective test. In the case of *Bamburi Cement Limited vs. William Kilonzi [2016] eKLR* this Court expressed itself on the nature of proof required as follows:
- “The question that must be answered is whether the appellant’s suspicion was based on reasonable and sufficient grounds. According to section 47(5) the burden of proving that the dismissal was wrongful rests on the employee, while the burden of justifying the grounds of wrongful dismissal rests on the employer. It is a shared burden, which strictly speaking amounts to the same thing.....” (Emphasis added)
81. It was submitted that the Respondent genuinely believed it had valid and justifiable reasons to summarily dismiss the grievants who were found sleeping while on duty. The nature of its business being the provision of private security services demands uninterrupted vigilance, alertness, and reliability, therefore, sleeping while on duty is not a trivial or technical breach.
82. The Respondent submitted that the nature of a security guard’s work demands constant alertness. And a guard who sleeps on duty exposes the employer and the client to risk and cannot expect to be retained in such a position of trust.
83. The Respondent submitted that section 44(4)(c) of the *Employment Act*, entitles an employer to summarily dismiss an employee who “wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly.” Additionally, Clause 8.7 of its disciplinary code of conduct, which all the grievants were fully aware of expressly classifies sleeping on duty as gross misconduct warranting summary dismissal.
84. It is the Respondent’s submission that the grievants were not only aware of this rule but had previously been reminded through internal memorandum dated 24th April 2018 displayed in their changing rooms, emphasizing that any guard found asleep on duty would face disciplinary action. This demonstrates that the respondent had established clear standards of conduct and communicated them to its employees including the grievants.
85. The Respondent submitted that the Claimant’s main contention is that it ought to have issued warning letters instead of proceeding with summary dismissal and relies on clause 8.3 of the Respondent’s Disciplinary Policy which does not make such a provision.
86. The Respondent submitted that the 1st, 6th -7th, 10th, 12th-14th, 16th, 18th-19th, 22nd-35th, 37th, 38th, 40th-44th, 48th-51st, 53rd, 55th-57th and 59th admitted in their statement with the Respondent and during their disciplinary hearings that they were found sleeping when on duty.



87. Reliance was placed in *Joseph Ndombi v Kenya Kazi Services Ltd* [2020] KEELRC 1914 (KLR), Abuodha J held: “Under section 43(2) of *Employment Act*, the reason or reasons for termination of a contract are matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee. As observed the work of a security guard requires high level of alertness. Accusation of being asleep while on duty is strong sign of lack of alertness and negligent.”
88. On the fifth issue, the Respondent submitted the grievants who are charged with gross misconduct of sleeping while on duty were issued with notices inviting them to disciplinary hearings. The notices informed the grievants the: charges against them; date, time and place of the disciplinary hearings; that they would be expected to answer to the charges levelled against them during the disciplinary hearing; and their right to be accompanied to the disciplinary hearing by a representative from the company.
89. The Respondent submitted that various dates, within its right as an employer, it conducted disciplinary hearings of guards found sleeping while in the course of duty. The grievants attended the hearing and were accompanied by a shop steward and were given an opportunity to make their representations as evidenced by the minutes of the disciplinary hearings produced in court.
90. On reliefs, the Respondent submitted that the 2nd, 3rd, 5th, 21st, 65th, 66th, 67th, 70th, 71st, 75th and 76th grievants are not entitled to any reliefs as they are not proper parties in this representative suit as required under rule 23 of the Employment and Labour Relations Court (Procedure) Rules, 2024. Their claims, having no legal basis for want of proper joinder in the representative suit, ought not to be considered and should be struck out.
91. The Respondent submitted that the 9th, 11th, 15th, 20th, 39th, 46th, 52nd, 58th, 60th-62nd, 64th, 73rd and 74th grievants are not entitled to any reliefs as they have failed to discharge the burden of proof that they were unlawfully dismissed under section 47(5) of the *Employment Act* and their claims should be dismissed. It cited the case of *Michael Aloo Achieng v Anvi Emporium Limited* [2021] eKLR where it was held: “On the state of the record, the Court finds that the Claimant did not discharge the low threshold burden expected of him under section 47(5) of the *Employment Act*, 2007. Salary in lieu of notice, and compensation are therefore not available as remedies.”
92. In respect to grievants 1, 6, 7, 8, 9, 10, 12, 13, 14, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 48, 49, 50, 51, 54, 55, 56, 57 and 59, the Respondent submitted that they were summarily dismissed for an act of gross misconduct. Further, summary dismissal under Section 44 [1] of the *Employment Act* means termination without notice, or with less notice than that to which the employee is entitled by any statutory provision or contractual term.
93. The Respondent submitted that the grievants’ conduct constituted gross misconduct, and their dismissal was lawful and fair. The grievants has not discharged his burden of proof and has not adduced any evidence that shows that he was unlawfully dismissed. The remedies under section 49(1) of the *Employment Act* would therefore not apply as held in *Michael Aloo Achieng v Anvi Emporium Limited* (supra).
94. The Respondent submitted that an award of compensation for unfair dismissal is not automatic and should only be awarded in deserving cases as held *Kiambaa Dairy Farmers Co-Operative Society Limited versus Rhoda Njeri & 3 others* [2018] eKLR. Therefore, no award is payable, and if any award is to be made at all, then a month’s salary would be sufficient compensation for each grievant.



95. The Respondent submitted that the grievants' were summarily dismissed for valid reasons and is therefore not entitled to gratuity pursuant to rule 17 (2) of the Regulation of Wages (Protective Security Services) Order, 1988.
96. It is the Respondent's submission it has demonstrated that the acted lawful and in compliance with the Employment Act while dealing with the grievants. It has further demonstrated that the grievants are not entitled to the prayers sought.
97. I have examined all the evidence and submission s of the parties herein. From the evidence submitted herein, the grievants the issues for courts determination are as follows:
1. Whether there were valued reasons to warrant termination of the greviant's.
 2. Whether the greviant's were subjected to any fair disciplinary process.
 3. Whether the greviant's are entitled to the remedies sought.

Issue No. 1 Reasons For Termination

98. From the documents submitted in court and the evidence of the greviant's and the respondents not all the grievants were issued with dismissal letters.
99. The claimants produced dismissal letters of Maurice Albert, Charles Nyabote, Charles Ogoti, Alex Liposa, Hebert otieno, Kevin Sonomo, Evans Omeka, Gordeen Adot, Jacob Hassan, Nyabuto Muma, Arthur Ojijo, Eric Mwalimu, Geoffrey Simiyu, Simon Ngoya, Bernard Oloo; Indeed some submitted that they were dismissed verbally hence no dismissal letters were issued.
100. From the said letters exhibited herein, the dismissal was due to gross misconduct where it was averred the greviant's were found sleeping on duty. There were some greviant's who were sent on suspension before the dismissal such as Eric Mwalimu, Hebert Otieno and Chripunus Wandera. The reason advanced for the suspension is also sleeping on duty.
101. There is however no evidence that he said greviant's were thereafter subjected to a disciplinary hearing. The RW1 testified in court that the greviant's were found sleeping on duty. The witness however testified that noone testified against them during the disciplinary hearing. She also stated that the respondents did not attach any termination letter before court and there was no evidence that disciplinary hearings were conducted against the greviant's. She also indicated that no memo on disciplinary process was placed in the changing rooms as per their pleadings. She also stated that the greviant's were paid their terminal dues but she had no proof of the said payment.
102. From the evidence herein then the respondents did not give a chance to the greviant's to answer to charges against them. No one testified against them either and in the circumstances, the burden of establishing the existence of valid reasons to warrant dismissal was not discharged.
103. Section 43 of the employment act 2007 states as follows:
- (1) 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.
 - (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
104. It is therefore my finding that there were no valid reasons to warrant dismissal of the grievants.



Issue No 2 Disciplinary Action

105. The RW1 also testified that there is no evidence that the grievants were subjected to any disciplinary action. Indeed the grievants also denied being subjected to any disciplinary hearing. There is no notice of even a disciplinary hearing as envisaged under section 41 of the *Employment Act* which states as follows:

1. (1). 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.

106. In view of the fact that there was no evidence of the existence of valid reasons to warrant dismissal of the grievants and given the fact that they were not subjected to any fair disciplinary hearing, it is my finding that the dismissal was unfair and unjustified as per section 45(2) of the employment at 2007 which states as follows:

(2) A termination of employment by an employer is unfair if the employer fails to prove——

- a. that the reason for the termination is valid;
- b. that the reason for the termination is a fair reason——
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
- (c) that the employment was terminated in accordance with fair procedure

Issue No 3 Remedies

107. Given the findings above and considering the remedies sought by the claimants, I award them as follows:

1. 1 months' salary in lieu of notice.
2. Leave days for the last year of service equivalent to 1 months' salary.
3. Gratuity for each completed year of service as per the CBA.
4. 7 months salary as compensation for the unfair and unjustified termination given the failure to subject the grievants to any fair disciplinary process.
5. Issuance of certificate of service.
6. Given the large number of grievants involved, the amounts awarded be calculated by the parties and be submitted in court for adoption by the court.
7. The respondents to pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF NOVEMBER 2025.

HELLEN WASILWA



JUDGE

