

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS  
COURT AT NAIROBI  
CAUSE NO. E273 OF 2023  
STANLEY GITHENDE NGIGI  
CLAIMANT**

**v**

**SAMSUNG ELECTRONICS EAST  
AFRICA LTD  
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**JUDGMENT**

1. Stanley Githende Ngigi (the Claimant) was employed by Samsung Electronics East Africa Ltd (the Respondent) on or around 5 March 2018, as Retail Marketing Manager, IM Group.
2. On 28 September 2018, the Claimant's supervisor and Head of Mobile Experience sent an email to the Human Resources Manager raising several concerns with the retail function and how an ongoing promotion had been handled.
3. The Claimant, who was copied on the email, replied through an email on 29 September 2022.

4. The same day, the Human Resource Manager confirmed receipt of the emails. He indicated that the human resource function would interrogate the concerns and issue a show cause to the Claimant in due course to enable him to respond formally to the concerns.

5. On 18 October 2022, the Claimant's supervisor and Head of Mobile Experience issued a show cause to the Claimant. The ground given in the notice was negligence of duty. The Claimant was required to submit a written response by 27 October 2022.

6. The Claimant responded on 27 October 2022 and also raised grievances against the Head of Mobile Experience. He alleged harassment.

7. On 7 November 2022, the Respondent's Human Resource Manager sent an invitation to the Claimant to attend a physical disciplinary hearing set for 18 November 2022. The Manager also issued the Claimant with a grievance form

to formally raise his grievance against his supervisor.

8. The Claimant attended the hearing on 18 November 2022 and made representations, and on 8 December 2022, the Respondent wrote to inform him of the termination of his employment.

9. Before the termination, the Claimant attended a meeting on 2 December 2022 to discuss the grievances he had raised against his supervisor, the Head of Mobile Experience. The supervisor did not attend the meeting.

10. Being dissatisfied, the Claimant sued, alleging unfair termination of employment and breach of contract and employment rights.

11. The Respondent filed a Response on and the Cause was heard on 25 January 2024, 30 May 2024, 17 February 2025, 26 March 2025 and 11 June 2025. The Claimant, Respondent's Human

Resources Manager and Head of Mobile Experience testified.

12. The Claimant filed his submissions on 29 September 2025, and the Respondent on 26 September 2025.

13. The Claimant set the issues for adjudication as:

(i) Was the process leading to the termination of the Claimant's employment lawful?

(ii) Was the termination of the Claimant's employment based on valid reasons?

(iii) Was the Claimant afforded a fair grievance process?

(iv) Is the Claimant entitled to the reliefs sought in the Statement of Claim?

14. The Respondent outlined the Issues in contention as:

(i) Whether the Respondent had valid reasons to warrant the termination of the Claimant's contract?

(ii) Whether the Respondent followed due process in effecting the

(iii) Whether the Claimant is entitled to the reliefs sought?

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15. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

**Procedural fairness**

16. The Claimant attacked the procedural fairness of the termination of his employment on several fronts. He asserted that a Disciplinary Committee was not constituted as required under the Respondent's Employee Handbook Guide; the hearing was chaired by a non-

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employee, and no investigations were undertaken.

17. Clause 16.1 of the Respondent's Employee Handbook Guide envisages a Disciplinary Committee hearing and deliberating on disciplinary cases, and that its decision would be final. Clause 16.2 of the Guide requires investigations to be conducted to establish the facts.

18. The Minutes of the disciplinary hearing produced in Court show that those present were Dr Rudi, an Employment Relations and General Affairs Manager, Charles Kimari, Head of Mobile Experience, Ms Margaret Wachira, Head of Human Resources and Ms Linda Kaai, Legal Manager.

19. The Respondent's Handbook Guide does not refer to the constitution of the Disciplinary Committee or who should sit in.

20. The panel which heard the Claimant's case consisted of the Respondent's employee and was chaired by an Employee Relations and General Affairs Manager who operated from South Africa.

21. The assertions by the Claimant that a Disciplinary Committee was not constituted or did not hear his case are not supported by evidence.

22. The constitution of a Disciplinary Committee was at the Respondent's discretion, and the Court is satisfied that the Respondent validly constituted a Disciplinary Committee to hear the Claimant's case.

23. The Claimant also contended that no investigations were carried out before the disciplinary process. The Respondent's Human Resources Manager testified that she conducted investigations after receiving the email from the Claimant's supervisor.

24. The Respondent's Handbook Guide expects investigations to be conducted ahead of disciplinary proceedings. The Guide is silent on who should conduct the investigations or fact-finding or what format the investigations should take.

25. Within the context of employment disciplinary processes, investigations need not take the formalities expected when pursuing criminal or similar type of complaints, unless otherwise provided for in the applicable human resource instrument.

26. The Claimant's supervisor raised allegations against him with the Human Resources Manager. The Manager called for responses in the show cause before inviting the Claimant for an oral disciplinary hearing.

27. In the circumstances of the case at hand, the Court finds that the Respondent conducted a

fact-finding exercise before inviting the Claimant to the disciplinary hearing.

28. The Claimant further assaulted the process in that the Disciplinary Committee did not make a decision. The minutes of the hearing record:

The Chair advised that the hearing would now stand closed. He clarified that his role as Chair was independent of his role as employee in Samsung, and that his findings would be based on the evidence led and adduced.

The Chair advised that his findings and recommendations would be shared with the parties by close of business, Wednesday, 23 November 2022.

29. The substance of the minutes was that the Chair and Disciplinary Committee were going to share the findings and recommendations with the Respondent and the Claimant.

30. The Claimant denied receiving the findings and recommendations.

31. The Court would have expected the findings and recommendations to be presented formally. No such presentation, either to the Claimant or Respondent, was placed before the Court.

32. The decision to terminate is the preserve of an employer after an employee has been taken through a disciplinary process. The Disciplinary Committee informed the Claimant that it would notify him of its findings, but it did not.

33. To the Court, that failure cannot, in the circumstances of this case, impeach the procedural fairness of the process leading to the termination of the Claimant's employment.

34. The Court has perused the termination letter. It does not mention any findings or recommendations by the Disciplinary Committee. It refers to the considerations by the

Respondent company and its decision to terminate.

35. The Court finds that the Respondent was in substantial compliance with the requirements of statutory procedural fairness and its own human resource policies.

**Substantive fairness**

36. Sections 43 and 45 of the Employment Act demand that an employer prove as valid and fair the reasons leading to the termination of an employment contract.

37. The reasons the Respondent gave for terminating the Claimant's contract were, in brief, *failure to ensure enough BTS bundles were in the stores; failure to provide regular feedback on restocking of retail stores; failure to guide on variation of credit notes to dealers; and failure to provide strategic guidance on retail information on new products.*

38. These, and not any other, were the reasons the Respondent was expected to prove as valid and fair.

39. The Court will address them one by one.

40. But the Court must note from the outset that the relationship between the Claimant and the Respondent before the disciplinary hearing did not appear calm at all, as demonstrated by the email exchanges between the Claimant and his Line Manager.

41. The Respondent called the Claimant's Line Manager in an endeavour to discharge the burden of proving the validity and fairness of the reasons for the termination.

**BTS Bundles NAIROBI**

42. The Respondent asserted that the Claimant failed to ensure that actual BTS bundles were physically in the stores as part of a promotion it was running from 21 September 2022.

43. The Claimant's response to the show cause was that the items had not been delivered by 19 September 2022, when the promotion commenced, and that the bundles should have been provided before the start of the promotion.

The Claimant also noted that the Respondent's President, Africa, was visiting that week.

44. According to the Claimant, the sourcing for the bundles only started on 15 September 2022, 4 days before the promotion, and that shipping took from 7 to 14 days.

45. The Claimant maintained that he had no control over the sourcing of bundles and that his role was distribution and placement.

46. The Respondent's witness statements, which were adopted as part of the evidence, did not address the testimony by the Claimant as to the promotion and whose function it was to order the bundles or whether the bundles had been

ordered before the commencement of the promotion.

47. The Court can conclude that the Respondent did not prove on a balance of probabilities that this was a valid and fair reason to terminate the Claimant's contract.

***Feedback on restocking***

48. With respect to this allegation, the Respondent contended that a Business Manager shared information on a stock out of foldable and flip devices on 27 September 2022 and that the Claimant committed to give feedback on the same. At a meeting called after the information, the Claimant apparently stated that he was not aware of the stockout.

49. The Respondent took the failure to give feedback after the email as negligence on the Claimant's part.

50. The Claimant responded that he had made an inquiry through email on stock status on the

morning of 27 September 2022. The Claimant admitted receiving the email from the Business Manager on the stock update and that he promised to respond before the close of business, but the Line Manager instructed another employee to take up the task during a meeting later in the day.

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51. The Claimant placed before the Disciplinary Committee emails indicating that he had requested for restocking of flip and fold phones and dealer demands to be updated.

52. He also told the Committee that he had a daily tracker.

53. With the evidence on record, the Court concludes that the Respondent did not prove this as a valid and fair reason to terminate the Claimant's employment.

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### ***Variation of credit notes***

54. The third reason given by the Respondent for terminating the Claimant's contract was that he

had given dealers discounts without following the protocols in place. The particulars were that he did not seek approval of his Head of Department to allow for the variation of credit terms requested by Reddington.

55. The Claimant's testimony was that it was up to the Distributors to agree on credits with the dealers and that, apart from an informal communication with a dealer called Mersons and the Key Account Manager, he was not aware of any credit note variations.

56. The Claimant also stated that he was away on sick leave at the material time and the particular dealer was not under his control, and that the matter was resolved on 13 October 2022.

57. The Respondent did not place before the Court any policy on credit notes or documentary trail showing that the Claimant approved the variation of terms for credit notes.

58. The Court finds that this was not a valid or fair reason to terminate the Claimant's contract.

***Strategic guidance***

59. The last reason for terminating the Claimant's contract was the failure to give guidance to his team and dealers on new products (roadmap), and specifically A04S.

60. When confronted with this allegation, the Claimant passed the bucket to (Product Managers) and a named colleague, whom he contended were tasked with communicating with dealers on the specific phone model.

61. The Claimant further stated that the particular dealer had confirmed getting updates on the new product but was awaiting ready-to-display units, which were not available.

62. The Respondent did not produce in Court any formal complaints from dealers or distributors on failure by the Claimant to update them, or any formal concerns addressed to the Claimant

asserting the failure to update dealers or the particular dealer on the new product A04S.

63. As the Court already noted, the Respondent was not satisfied with the Claimant on several performance fronts and email exchanges were placed before the Court.

64. Regrettably, these performance concerns were not the immediate or principal reason(s) for the termination of the Claimant's employment as set out in the letter of termination and by dint of section 43(2) of the Employment Act, 2007, the Court is constrained to find that the Respondent did not prove valid and fair reasons to terminate the Claimant's employment.

### **GRIEVANCE HANDLING**

65. When served with the notice to show cause, the Claimant raised grievances against his Line Manager.

66. The Respondent notified the Claimant that the grievances would be handled in terms of the

policies in place, and the Claimant submitted his grievances as contemplated under the policies.

67. The Respondent informed the Claimant through an email on 1 December 2022 that a meeting would be held on 2 December 2022, and after the meeting, the Respondent informed the Claimant that the matter was closed without making any decision.

68. The Claimant asserted that the failure violated his right to fair labour practices and did not comply with the Respondent's policies on grievance handling.

69. The Respondent did not traverse in any substantive way the Claimant's assertions on grievance handling.

70. The Claimant separated from the Respondent on 8 December 2022. By then, the grievances he had lodged had not been conclusively addressed.

71. Because of the circumstances surrounding the end of the employment relationship, the Court is unable to find that the inconclusive grievance handling process violated the Claimant's right to fair labour practices.

**Remedies**

**Reinstatement/re-engagement**

72. The Claimant made a case for reinstatement or re-engagement. Statutory law abhors an order of specific performance unless exceptional circumstances have been shown. The Claimant was a senior manager with the Respondent. The Respondent contended that mutual trust and confidence had been lost.

73. The Court cannot force the Claimant upon the Respondent, considering the position he held and therefore the Court declines to grant reinstatement or re-engagement.

**Compensation**

74. The Claimant served the Respondent for about 4 years, and he was on permanent and pensionable terms.

75. Considering these factors, the Court is of the view that the equivalent of 5 months' gross salary as compensation would be appropriate (gross salary was Kshs 755,561/- in December 2022).

### Conclusion and Orders

76. The Court finds and declares that the Respondent did not prove valid and fair reasons to terminate the Claimant's employment.

77. The Claimant is awarded:

(i) Compensation Kshs

**3,777,865/-**

78. The award to attract interest at court rates from the date of judgment. The Claimant to have costs.

**Delivered virtually, dated and signed in Nairobi on this 20<sup>th</sup> day of November 2025.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Claimant

ADRA Advocates LLP

For Respondent

Kaplan & Stratton

Court Assistants

Advocates

Wangu/Judy Maina

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