



**Ngala v Kenya Kazi Services Ltd (Employment and Labour Relations Cause E664 of 2020) [2025] KEELRC 3161 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3161 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E664 OF 2020  
MN NDUMA, J  
NOVEMBER 13, 2025**

**BETWEEN**

**GEOFFREY OCHIENG NGALA ..... CLAIMANT**

**AND**

**KENYA KAZI SERVICES LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit against the Respondent on 21/10/2020 seeking the following reliefs: -
  - a. One months' salary in lieu of notice
  - b. Twelve months' salary being compensation for wrongful dismissal.
  - c. Costs of the suit.
2. The facts of the Claimant's case adopted from a witness statement dated 27/9/2023 are that the Claimant was employed by the Respondent on 4/10/2005 as a security guard. That the Claimant upon short training was deployed and served different clients and his station of duty was at Unilever Company at Industrial Area.
3. That on 9/8/2020 the Claimant reported on duty at 5 p.m. on the night shift. That the Liaison Officer Mr. Clayton Lubembe deployed the client as a Marshall to relieve a Marshall who was on leave. That the duties of a Marshall included supervising both the Unilever and Respondent's staff and conducting a roll call and office sweep twice to establish if there were properties of Unilever which had been left where they are not supposed to be.
4. The Claimant stated that he conducted the first roll call and sweep and then went to the washrooms where he found two (2) pieces of Geisha soap and a sachet of Royco cubes on the toilet ventilation. The Claimant said he knew his duty was to collect any misplaced items and take them to the control room. The Claimant said he picked the items and after his duties walked to the control room intending to



- report having found the products in the washroom. The Claimant said he found officers eating at the control room and they asked him to come later. The Claimant said he then went to the sentry room intending to give the items to Mr. Lubembe but he was not there.
5. That the Claimant then put the items in his shopping bag and placed them on top of the cleaner's shift.
  6. The Claimant said he then went to do the second roll call and office sweep. That upon finishing the Claimant went to the sentry so as to pick the products and take them to the control room where he found Mr. Lubembe holding the shopping bag containing the products. The Claimant was asked if that was his bag and he admitted. The Claimant told Mr. Lubembe what was in the bag and the reason he had put them there. The Claimant told Mr. Lubembe that he had come to take the items so as to take them to the control room. That Mr. Lubembe asked the Claimant to accompany him to his office and he called one guard and then poured the products from the bag. Mr. Lubembe then ordered the Claimant to continue working.
  7. At the end of the shift, Mr. Lubembe asked the Claimant to record a report and he told the Claimant that he should not have taken the products from where he had found them.
  8. On Monday 10/8/2020 at 7:00 a.m., Mr. Lubembe told the Claimant not to leave since he and the Project Manager wanted to discuss the matter with him. At 8:00 p.m. the Project Manager asked the Claimant what happened which he explained and was told to write a statement which he did.
  9. The Claimant was then served with a notice to appear before a disciplinary committee on 13/8/2020. The Claimant was then summarily dismissed on the said 13/8/2020. The Claimant appealed the decision and the appeal was dismissed on 26/8/2020.
  10. Under cross-examination the Claimant said he earned a monthly salary of Kshs. 13,573.00 and house allowance of Kshs. 2,307.00. The Claimant insisted he placed the items in his bag with the intention of handing over the items to the control room upon finishing his second roll call and office sweep.
  11. The Claimant said he had admitted in his statement that he had gone against company rules in respect of handling recovered goods. Claimant said he attended the disciplinary hearing on 12/8/2020. Claimant said he was accompanied by a shop steward at the hearing. The Claimant insisted that he had first gone to the control room to hand over the items but he found officers there eating who told him to come later hence he placed the items in his bag so as to hand them over later.
  12. The Claimant said he did not at that point declare the items at the control room and that the items were in his pockets at that time. Claimant said he was summarily dismissed and appealed the decision. The appeal was dismissed. Claimant said he was paid his final dues but not all of them. Claimant admitted that he had a tablet to record collected items and that he put them in his pocket because they were many and he could not carry them in his hands. Claimant said he knew that there was a check at the gate while leaving and so could not pass with stolen items. Claimant denied any intention to steal the items therefore.

## **Defence**

13. RW1 Clayton Lubembe testified for the Respondent and adopted a witness statement dated 2/2/2021 as his evidence in chief.
14. RW1 stated that he was a Liaison Officer for the Respondent. That on the night of 9/8/2020 he was on duty. That the Claimant was also on duty. That while on patrol around the administration block of Unilever at around 9 p.m. he noticed the Claimant walking suspiciously.



15. That he followed the Claimant and noted that he went to the reception area and picked his bag at the main reception area and walked with it into the corridor and entered the changing room.
16. That the Claimant left the changing room shortly without the bag and left the reception area.
17. That RW1 walked into the changing room immediately and inspected the bag left behind by the Claimant. RW1 said he found two bars of Geisha soap (shea butter and honey) weighing 225g each and 1 Royco beef sachet containing 40 x 4g sachets. That both products are manufactured by Unilever Kenya Ltd, the Respondent, the claimant was providing security services to.
18. That RW1 left the bag in the changing room and asked two officers on duty David Ogutu and Francisca Opili to stand guard and ensure that the Claimant did not interfere with the bag once he returned from his duties.
19. That the Claimant returned after 20 minutes and RW1 asked him to accompany RW1 to the changing room where his bag was. RW1 took the bag and went with the Claimant to the Security Manager's office to check the contents of the bag. The Claimant was asked to open the bag in the presence of other two officers. The Claimant opened the bag and removed the said items. RW1 asked the Claimant to explain why he had those products in his bag. The Claimant confirmed, that he picked the items from one of the rooms in the administration block while on duty. RW1 took pictures of the items. RW1 reported the matter to the Supervisor on duty and the next day an investigation was launched into the matter. RW1 recorded a statement. RW1 said he was also aware that CCTV footage placed the Claimant picking the items from the Nyati board room in the administration block at around 9 p.m. that night. RW1 said the Claimant was summarily dismissed for gross misconduct.

### **Determination**

20. The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1 set out in this judgment. The court evaluated the credibility and veracity of the testimony by the Claimant vis a vis that by RW1.
21. The explanation given by the Claimant that he had taken the items from the washrooms and that he had initially kept the items in his pockets while on duty and then put the items in his bag, left them in the cleaners' shelf with the aim of presenting the items upon completion of duty to Mr. Lubembe at the control room did not make sense at all.
22. The Claimant indeed admitted in his written statement and in the explanation, he gave during the disciplinary hearing that he did not follow the practice rules of handling recovered items during a sweep as was done that night.
23. The court believes RW1 that the items were collected from a board room and not from a toilet as the Claimant had falsely explained.
24. The testimony by RW1 that he saw the Claimant walking suspiciously because he had those items in his pockets and he followed the Claimant until he placed the items in his bag and left the bag in the changing room with a view to take them away when he checked out of duty in the morning is credible and believable.
25. The Respondent followed a fair procedure in disciplining the Claimant by requesting him to record a statement followed by a disciplinary hearing before a committee where the Claimant was accompanied by a shop steward.



26. It is the conclusion and finding by the court that the Respondent has established that it had a valid reason to summarily dismiss the Claimant as provided under section 43(1) and (2) of the *Employment Act*, 2007. The Respondent has also proved on a balance of probability that it followed a fair procedure in disciplining the Claimant in terms of section 41 of the *Employment Act*, 2007.
27. The court is persuaded by the decision of Radido J. in the case of Anthony Mkale Chitavi versus Malindi Water and Sewerage Company Ltd [2013] eKLR where the court held:
- “The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee. Secondly, it would follow naturally that if an employee has a right to be informed of the charges, he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly, if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”
28. The Respondent having followed a fair procedure in establishing that it had a valid reason to summarily dismiss the claimant leads the court to the inevitable finding that the dismissal was in line with section 44(4) (c) read with 45(2) (a) and (b).
29. The Claimant willfully neglected to perform his work in a careful and proper manner considering all the circumstances of the case.
30. The summary dismissal was accordingly for a valid reason related to the Claimant’s conduct based on the operational requirements of the Respondents. See the Court of Appeal decision in the case of Pius Machafu Isundu versus Lavington Security Guards Ltd [2017] eKLR where the court said,
- “There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/ dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47(5)), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.”
31. The summary dismissal was therefore lawful and fair and the suit is dismissed in its entirety.
32. The Claimant had served the Respondent for a reasonable period from 4<sup>th</sup> October 2005 up to 13<sup>th</sup> August 2020, when he was summarily dismissed. This is a period of over 15 years. The Respondent paid the Claimant terminal benefits upon summary dismissal.
33. This court finds it a proper case for each party to bear their own costs of the suit.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Ombete for Claimant



Ms. Muthoni for Respondent

Mr. Kemboi – Court Assistant

