



**Were v Astrazeneca Pharmaceuticals Limited (Cause E524 of 2022)
[2025] KEELRC 3182 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3182 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E524 OF 2022
NJ ABUODHA, J
NOVEMBER 13, 2025**

BETWEEN

RACHAEL MISERE WERE CLAIMANT

AND

ASTRAZENECA PHARMACEUTICALS LIMITED RESPONDENT

JUDGMENT

1. The Claimant through an Amended Memorandum of Claim dated 16th May, 2024 pleaded inter alia as follows: -
 - a. The Claimant averred that she was appointed as the Respondent’s medical sale representative at a basic salary of Kshs. 110,000 = and the employment was to take effect on 1st July, 2014 and at the time that the Respondent was operating under the name LABOREX KENYA LIMITED. The Respondent later issued the Claimant with a new letter of appointment dated 1st September, 2016 which recognized her previous term of employment under clause 1.3.
 - b. The Claimant averred that over the years due to her abilities, reliability, efficiency in performing her duties she continued working for the Respondent and received a salary increase in 2016 to a monthly salary of Kshs.122,010.24 = and at the time of her untimely termination she was earning a gross monthly salary of Kshs.196,859.00 =
 - c. The Claimant averred that she had never been issued with any warning letters, notices to show cause or any reviews challenging her competence and manner of execution of her duties.
 - d. The Claimant averred that though she served the Respondent diligently, on the 2nd February, 2022 the Respondent proceeded to terminate the Claimant’s employment and issued her with a Notice of outcome, Summary Dismissal dated 2nd February 2022.



- e. The Claimant averred that prior to the termination the Respondent subjected her to a hearing process that was not properly constituted as provided for in the Respondent’s own disciplinary manual, the *akn ke act 2007 11 Employment Act* and Labour laws and proceeded to hear the fictitious, fabricated and unsubstantiated charge against her.
 - f. The Claimant averred that the Respondent on the basis of the false allegations proceeded to terminate her from employment and never gave the Claimant an opportunity to challenge the decision by way of an Appeal and or afford the Claimant an opportunity to present her case and avail her independent witnesses at the hearing thereby denying her a chance to present her case and face her accusers hence denying her a fair, just and proper hearing as envisaged in law.
 - g. The Claimant averred that *akn ke act 2010 constitution the constitution* of the purported disciplinary panel composed of Irene Kaimuru (Human Resource) Silvance Otieno (First Line sales Manager) and Sivashnee Naidoo (External Party Labournet) which was in blatant breach of the rules of natural justice. The process was biased hence the Claimant’s case was as good as decided to her detriment.
 - h. The Claimant averred that the allegations of misrepresentation of data captured in the Veeva tool leveled against her were misplaced and or malicious as the Claimant had duly followed all procedures laid down by the Respondent for over 7 years she was employed by the Respondent. Notably, the allegations leveled against her were fabricated to cover up decisions to terminate the Claimant’s employment prematurely albeit disguised as summary dismissal. That the dismissal was unprocedural, unfair, unlawful and in breach of the rules of natural justice and Labour Laws applicable in Kenya.
 - i. The Claimant averred that after working for the Respondent diligently for over 7 years and having no complaints or any work-related issues with the Respondent it proceeded to unfairly and illegally terminate her services without any just cause and or reason and without following the due process and affording the Claimant prior notice warning or an opportunity to be heard.
2. The Claimant in the upshot prayed for the following against the Respondent;
- i. A declaration that the termination of Claimant’s employment was unfair and or unlawful.
 - ii. Damages for unfair and or unlawful termination of the Claimant’s employment.
 - iii. Payment of Kshs 3,248,173.50 = in terms of one- month Notice pay (Kshs 196,859.00 =), Service pay (Kshs 689,0006.50 =) damages for unfair termination (Kshs 2,362,308.00 =).
 - iv. Certificate of Service.
 - v. Costs and interests at court rate until payment in full
3. The Respondent maintained its response filed in the initial claim and filed their Memorandum of Defence dated 11th October, 2022 and averred inter alia as follows: -
- a. The Respondent averred that the Claimant was summarily dismissed on grounds of gross dishonesty, fraud and or misrepresentation as follows: -
 - i. The Claimant willfully misrepresented information on the Respondent’s “Veeva” tool which is a sales reporting tool, in contravention of the Respondent’s policies and in violation of the Respondent’s standard operating procedures.



- ii. In addition to her gross dishonesty, fraud and misrepresentation in breaching the Veeva tool, the Claimant was also willfully and deliberately in breach of the Respondent's car policy.
 - iii. The Claimant carelessly and or improperly performed work which was from its nature and pursuant to her contract of employment her work to do.
 - iv. The summary dismissal of the Claimant from her employment was lawful and justified given the circumstances.
- b. The Respondent averred that the Claimant was employed by the Respondent as a medical Sales Representative within the commercial department by a letter of appointment dated 1st September 2016. The Respondent denied that the Claimant worked diligently as alleged and averred that the Claimant willfully misrepresented information on the Respondent's Veeva Tool in contravention of the Respondent's policies and in violation of the Respondent's standard operating procedures.
- c. The Respondent averred that sometimes in July, August and September 2021 the Claimant captured full days on the Veeva tool which was found to be inconsistent with the Claimant's location as shown in the Respondent's car tracking report.
- d. The Respondent averred that it utilized Veeva as a sales tracking tool for planning of customer engagements, follow up on execution and reporting of calls made to customers and for meeting planning. That frequency of calls was measured and used to ensure efficiency was realized by the sales employee using the tool.
- e. The Respondent averred that it provided vehicles to eligible employees as a tool of trade to be used for its business. Further the Respondent issued the Claimant a car policy dated 1st March, 2019 to provide standard procedure and policy on proper usage of vehicles provided to employees as tools of trade.
- f. The Respondent averred that during routine evaluations of the Veeva platform and car tracking tool the Respondent noted that during the months of July, August and September 2021 the Claimant dishonestly captured full days on Veeva which when compared with tracking report in relation to her company car were false.
- g. The Respondent averred that the Claimant's egregious conduct of dishonesty, fraud and or misrepresentation was not only in gross violation of the Respondent's policies on the use of Veeva and the Respondent's car policy, but also, she had breached her duty of trust to the Respondent. By her conduct, the Claimant effectively lied of her whereabouts during working hours and or fraudulently misrepresented as though she was working, when she knew the said information was false.
- h. The Respondent averred that the Claimant was issued with a Notice to attend a Disciplinary Hearing dated 24th January 2022, which clearly stated the allegations against her, and invited her to a disciplinary hearing on Friday 28th January 2022.
 - i. The Respondent averred that the Claimant was informed of her rights prior to the disciplinary hearing scheduled for 28th January 2022 which included the right to be notified of the charges against her and accepted standards, her entitlement to be assisted at the hearing by a fellow employee, her entitlement to furnish evidence and to argue



in mitigation of any disciplinary action and her entitlement to call witnesses during the inquiry.

- j. The Respondent averred that on the 28th January 2022 and 31st January 2022, an independent chairman chaired the disciplinary hearing and by a recommendation dated 1st February 2022, the Chairman found that the Claimant was guilty of the charges brought against her and recommended that she ought to be summarily dismissed from her employment with the Respondent.
 - k. The Respondent averred that the Claimant was summarily dismissed from employment by a letter dated 2nd February 2022 which was justified, fair and were reasons the Respondent genuinely believed to exist at the time of summary dismissal. That she was accorded a fair opportunity to be heard in the compliance with the law and the Respondent's policies. That the Claimant failed to offer any valid reasons for consideration before she was summarily dismissed.
 - l. The Respondent averred that the Claimant's allegations of malice, discrimination and biased are denied, false and without any legal basis.
 - m. The Respondent averred that the Claimant was paid all of her terminal dues as at the date of her summary dismissal being her notice pay, sundries allowance, expense allowance and leave encashment being a gross pay of Kshs. 233,137.32 =
 - n. The Respondent averred that the Claimant's dismissal from employment was within the provisions of the law as there was a valid and genuine reason for her summary dismissal and proper procedure was followed prior to the summary dismissal.
4. The Respondent in the upshot prayed as against the Claimant that the Claimant's suit be dismissed with costs to the Respondent.
 5. The Claimant had filed a reply to the defence before amending her claim which was basically on the reliefs and she averred that the sales representatives faced issues with the Veeva tool not being up to date to reflect the occasional changes of addresses of various customers. That they would meet customers where convenient so long as targets were met. That it was not a requirement that car tracking system should be in tandem with Veeva tool when it came to customer addresses. That the car policy never provided that the employees would be monitored using the car tracking. That she would leave the car parked somewhere to meet a customer where convenient and where there were meeting restrictions.

EVIDENCE

6. The matter was disposed of without oral earing after the witnesses having adopted their witness statements and documents filed in support of their respective positions in the matter.

CLAIMANTS' SUBMISSIONS

7. The Claimants' Advocates Christine Oraro & Company Advocates filed written submissions dated 8th August 2025 and Counsel relied on Section 41 of the *akn ke act 2007 11 Employment Act* and the case of *Walter Ogal Anuro v Teachers Service Commission (2013) eKLR* to submit that for a termination of employment to pass the fairness test, the employer must have a substantive justification to do so and must have conducted it in accordance with a fair procedure.
8. Counsel submitted that the Human Resource Disciplinary Policy and procedure by the Respondent dated September, 2020 outlined the procedure they were to follow in the event of misconduct or



- disciplinary process of an employee; which included but not limited to verbal warning, written warning, final written warning and a formal disciplinary inquiry. The sanctions thereon are suspension, dismissals and demotions.
9. Counsel relied on Section 45(2) of the *Kenya Employment Act 2007* on proof of the reasons for termination which should be valid and fair and a fair procedure to be followed. Counsel further submitted that the Respondent flouted its own laid down policy and procedure prior to the summary dismissal. No warning either verbal or written, no inquiry or investigations were conducted by the Respondent especially contacting the Doctors and or medical personnel's the claimant had entered on the Veeva Tools on the alleged dates of mis-presentation to ascertain if the Claimant had interacted with them or had a conversation with them as entered.
 10. Counsel submitted that the Claimant was issued with a Notice to attend a disciplinary inquiry but was subjected to a disciplinary hearing during the said inquiry that was flawed and a verdict of summary dismissal given.
 11. Counsel contended that the Claimant was not informed of any investigations of her misconduct and misrepresentation of data into the Veeva tools. No notice or any information was relayed to the Claimant by the Respondent that her job performance will be determined or evaluated using the car trackers installed in their motor vehicles. She was informed that the trackers were installed for security reasons.
 12. Counsel submitted that there were no warnings, relating to the reasons given on termination, no evidence that the Claimant was placed on any performance improvement plan and there was no performance appraisal, just empty accusations about poor performance and misrepresentation of data.
 13. Counsel relied on Section 43 of the *Kenya Employment Act 2007* to submit on proof of reasons for termination and that the burden is placed on the employer to show a reason that would cause a reasonable employer to terminate employment.
 14. Counsel further submitted that the reasons advanced by the Respondent were not valid to warrant a summary dismissal as the Claimant during the disciplinary inquiry demonstrated to the Respondent why her vehicle was at the said destinations. Counsel relied on the case of *Telkom Kenya Limited v Ngokonyo & 2 others* KECA [2024] 880 [KLR] to submit that compensation for unfair and unlawful termination can only be for lack of fair procedure and substantive reasons.
 15. Counsel contended that the Claimant was not given the right of Appeal as she was dissatisfied with the outcome of the disciplinary Policy. That she was not provided with the appeal form as indicated in the HR disciplinary policy and procedure despite her various follow ups. That the Respondent further failed to avail to the Claimant the proceedings of the disciplinary hearing for the purposes of the appeal which were later supplied to court when the claim had already been filed and ready for hearing.
 16. Counsel submitted that the Disciplinary hearing conducted by the Respondent was a sham as the Respondent already had a preempt decision of terminating the Claimant and that justified why they flouted the procedure of issuing warnings and notice to show cause to the Claimant.
 17. Counsel relied on the case of *Ayioka v Accord Healthcare [Kenya] Limited (Employment and Labour Relations Cause E194 of 2021)* [2022] KEELRC among others, and Section 49 (1) (c) of the *Kenya Employment Act 2007* to submit that the court can grant the remedy of compensation to a maximum of 12 months' salary for unfair termination.
 18. Counsel relied further on section 49(4) of the *Kenya Employment Act 2007* to submit that in assessing what is an appropriate remedy, the court should make considerations such as the employee's



length of service with the employer and reasonable expectation of the employee as to the length of time for which her employment might have continued.

19. Counsel submitted that the termination of the Claimant's service was unfair on account of flawed procedures, lack of valid reasons and that it did not meet the statutory standards of fairness under the *akn ke act 2007 11 Employment Act* sections 41,43 and 45.

RESPONDENT'S SUBMISSIONS

20. The Respondent's Advocates Kaplan & Stratton Advocates filed its submissions dated 1st September, 2025 and on the issue of whether the summary dismissal was grounded on fair and valid reasons, counsel submitted that the Claimant was summarily dismissed from employment on valid grounds of gross violation of the Respondent's policies and standard operating procedures while relying on section 44(e) of the *akn ke act 2007 11 Employment Act* which governs this ground of misconduct warranting summary dismissal.
21. Counsel submitted that the Claimant was subject to the employment contract, the Respondent's standard operating procedures and car policy but knowingly refused to obey the employer's directives on the car policy and falsified data on the Veeva tool. The Claimant's actions amounted to willful disobedience of the employer's directives, thus warranting summary dismissal.
22. Counsel submitted that the Claimant input data into the Veeva tool purporting to have visited specific hospitals on various dates but during routine evaluations, it emerged that the Claimant falsified data in the Veeva tool.
23. Counsel submitted that the misrepresentations were confirmed by the data from the car tracker which when compared to the Veeva tool records, showed discrepancies. The discrepancies show that the Claimant intentionally falsified and misrepresented data which amounted to breach of the Respondent's Veeva Standard Operating Procedure most specifically clause 4. That the data captured on the Veeva tool pertaining to the location of the meetings should reflect the details of the car tracking report as per car tracking policy clause 4.2.5 which provided that the employees should use the issued car for company business including calls and meetings with doctors. That the Claimant had a responsibility to update the customer database on any changes.
24. Counsel submitted that the Claimant further violated the Car policy by admittedly allowing her husband to drive the car without the Respondent's authorization. The Claimant's actions were therefore a blatant breach of company policy and as such, the Respondent had valid reasons for summarily dismissing the Claimant from employment.
25. Counsel relied on the case of *CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona* [2015] eKLR to submit that in adjudicating on the reasonableness of the employer's conduct, an employment tribunal must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts.
26. Counsel submitted that there were reasonable and justifiable grounds to dismiss the Claimant from employment. The decision to summarily dismiss the Claimant was informed by valid reasons which fall within the band of reasonable actions an employer might take.
27. Counsel relied on Sections 43 and 45 of the *akn ke act 2007 11 Employment Act* to submit that the burden to prove that the reason for termination is valid is placed on the employer and cited the case of *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR) to submit that all the employer is required to prove are the reasons that it "genuinely believed to exist" causing it to terminate the employee's services. The standard of proof is on a balance of probability not beyond



- reasonable doubt and further the case of *Bamburi Cement Limited v William Kilonzi eKLR* to submit that once an employer proves the existence of valid reasons for termination, the burden of proving the termination was unfair shifts to the employee.
28. Counsel contended that the Claimant was charged with gross dishonesty, fraud, and or misrepresentation. The disciplinary hearing conducted in respect of the charge found the Claimant unable to explain the falsified data on the Veeva tool.
 29. Counsel submitted that the decision to subject the Claimant to a disciplinary hearing was in line with the Respondent's Disciplinary Policy which provided that action to be taken on breach of company policies is the dismissal of the employee.
 30. Counsel submitted that the Claimant's allegations that the Respondent flouted its disciplinary policy and ought to have issued warnings instead of pursuing summary dismissal was therefore baseless, considering the Respondent's disciplinary policy, which the Claimant was aware of.
 31. Counsel further submitted the termination of Claimant's employment was for valid and fair reasons that the Respondent genuinely believed to exist at the time of termination. The Claimant's claim for unfair termination on the basis that no valid reasons were provided should therefore fail.
 32. On the issue of whether the procedure for summary dismissal was fair, counsel relied on among other cases the case of *Fredrick Oduor Lamba v Kenya Electricity Generating Company PLC (Civil Appeal E126 of 2021) [2023]* to submit that the Respondent adhered to procedural fairness by giving the Claimant notice to attend a disciplinary hearing and the opportunity to be heard before summarily dismissing the Claimant.
 33. Counsel further relied on Section 41 of the *Kenya Employment Act 2007* on procedural fairness before termination. That the process leading up to the summary dismissal of the Claimant was fair. The Claimant was given a notice to attend a disciplinary hearing dated 24th January 2022, informed of the charges against her and her rights, the Claimant confirmed that she understood the language in the notice, therefore understanding the charges against her as well as her rights.
 34. Counsel submitted that the disciplinary hearing panel was properly constituted in line with the disciplinary policy. The hearing was chaired by Ms. Sivashnee Naidoo, an independent and neutral party. The Claimant was informed of her right to have a representative or employee present which she declined.
 35. Counsel submitted that the Claimant was informed of her right to challenge the charges against her and call any witnesses during the hearing and to be assisted by an employee. That she declined needing any interpreter and confirmed she was given enough time to prepare for the hearing.
 18. Counsel submitted that the Claimant was actively involved in the hearing and on several instances questioned the Respondent and challenged the evidence adduced by the Respondent. That the Claimant was informed of her right to Appeal against the outcome of the hearing before concluding the hearing on 31st January, 2023 as well as timelines for the appeal.
 36. Counsel distinguished the cases relied on by the Claimant stating that they were different from this case and that the Claimant's summary dismissal passed the test in that it was for good cause and was procedurally fair.
 37. On the issue of whether the Claimant was entitled to any of the reliefs sought in the Amended Memorandum of Claim, counsel submitted that the Claimant was not entitled to a declaration of unlawful and unfair termination and compensation for wrongful termination as she was summarily



dismissed following valid grounds and fair procedure. Counsel relied on the above case of CFC Stanbic Bank (cited above) where the court dismissed an appeal after it was proved that the employee was terminated on valid grounds and due procedure followed.

38. On the claim for general damages, exemplary general or aggravated damages counsel submitted that the Claimant was not entitled to any award of damages for unfair termination and unlawful termination. That it was not available remedy while relying on among others the case of Kenya Broadcasting Corporation v Geoffrey Wakio to submit that in a claim for unfair and or unlawful termination, an award for general damages is not an available remedy as it is not provided for under section 49 of the *Kenya Employment Act 2007* and that the Claimant had not shown any special circumstances upon which the court may exercise its discretion to award any general damages.

Determination

39. The court has reviewed and considered the pleadings, documents filed and submissions by both counsel in support and opposition to the case. The court has also considered authorities relied on by counsels.
40. The Court has come up with two main issues;
- i. Aa. Whether the Claimant's dismissal was unfair and unlawful.
 - ii. Whether the Claimant is entitled to the reliefs sought.
- (a) Whether the Claimant's dismissal was unfair and unlawful
41. It was the Claimant's case that the Respondent summarily dismissed her from employment on allegation that she had committed gross misconduct of dishonesty, fraud and or misrepresentations which were not true. That she never misrepresented any facts because the Veeva tool was not up to date and in any case, she could meet clients where convenient. That she could park away from where she met clients and it was not a must that the Veeva tool be in tandem with the car tracking report. That in any case, what mattered was that she met her targets.
42. The Claimant stated that for the over 7 years she worked for the Respondent she had no warning letters or any history of disciplinary issues on her performance and the Respondent was hellbent to terminate her services through fabricated reasons without giving her an opportunity to be heard since she was not given a show cause letter and the disciplinary hearing was not properly constituted.
43. The Respondent on the other hand alleged that the Claimant misrepresented the data at the Veeva tool which had discrepancies with the car tracking report and this was against the Respondent's policies and standard operating procedures as well as car policy hence the Claimant's whereabouts were unknown. Further that the Veeva tool had to be in tandem with the car tracking report and if any data needed to be updated it was the responsibility of the Claimant to do so. No notice was required to be given to the Claimant as she had committed gross misconduct warranting summary dismissal.
44. The requirements for employers to terminate employee's employment contracts on fair and valid reasons is governed by section 43 of the *Kenya Employment Act 2007*. The termination will be found unfair if there was no valid reason for termination under section 45 of the Act. The reasons must be those which the employer believed to exist and which caused the termination of the employees' employment.



45. The court in this regard is guided by the holding in the case of Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR, where the Court of Appeal stated:
- “ There can be no doubt that the Act, which was enacted in 2007, places a heavy obligation on the employers in matters of summary dismissal (Emphasis mine) for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for terminating (section 43) – prove that the grounds are justified (section 47 (5), among other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.”
46. In this case the charges were dishonesty, fraud and misrepresentation. There were discrepancies between the Veeva tool and car tracking report which the Respondent considered as willful disobedience of employer’s directives warranting summary dismissal as per section 44 of the Act. That acts according to the respondent, amounted to claims of poor performance on the part of the Claimant.
47. The Court finds that the main reason prompting the dismissal of the Claimant was solely the discrepancy between the Veeva tool and car tracker report where the data entered in the Veeva tool were totally different from the car tracker reports.
48. Section 43(2) of the *Kenya Employment Act 2007* is clear that 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. Further, section 45(2) of the Act further provides that a termination of employment will be found unfair if the employer fails to prove that the reason for termination is valid and or fair reason and that it is related to employee conduct or compatibility or based on the operational requirements of an employer.
49. The Claimant herein was accused falsifying entries in the Veeva device which was assigned to her for the purposes of her work. The data fed in the Veeva device did not match with car tracking device with regard to locations fed in the device and the data retrieved from the car tracking device. The claimant did not deny the mismatch but stated that she did not have to meet customers where the car was parked and that the device had updating issues at the time. The respondent however stated that the claimant had the permission to update the device to match with the data on the car tracking device. From the record, there is no evidence how the claimant responded to this.
50. The operational requirement of the respondent was that employees in the claimant’s position and carrying out similar jobs were assigned the Veeva device and a car fitted with tracking device to ensure they documented the customers they visited and the car was used only for work related purposes. This was all important to the respondent and the court readily understands that this arrangement was intended to monitor the performance of employees assigned the device and avoid misuse of the car assigned to such employees. As observed earlier, the claimant did not deny that there was mismatch between the data fed in the Veeva device and that retrieved from the car tracking gadget. She defended her action saying that according to her the device in the car was fitted for security purposes a fact the respondent denied.
51. This Court in appropriate cases is clothed with power to indulge in a merit review of the reasons for termination of service of an employee by dint of provisions of section 43 of the *Kenya Employment Act 2007*. However the Court will not replace its subjective views of what constitutes a valid reason for termination of an employment contract with that of the employer. Justice Professor Ojwang’ in the case of Kenya Revenue Authority Vs Menginya Salim Murgani, Civil Appeal No. 108



of 2009 as cited in Republic Vs National Police Service Commission Exparte Daniel Chacha Chacha JR 36 of 2016 (2016) eKLR observed as follows:

“There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their tasks. It is for them to decide how they will proceed”

52. And the Court of Appeal in Civil Appeal No 66A of 2017, Kenya Revenue Authority v Reuwel Waitaha Gitahi & 2 others [2019] eKLR stated as follows:

“...It is improper for a court to expect that an employer would have to undertake a near forensic examination of the facts and seek proof beyond reasonable doubt as in a criminal trial before it can take appropriate action subject to the requirements of procedural fairness that are statutorily required. 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...”

53. Further Lord Denning in the often cited case of British Leyland UK Ltd v. Swift [1981] IRLR 91 stated:

“The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which an employer might reasonably take one view: another quite reasonably take a different view. One would quite reasonably dismiss the man. The other quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him”

54. Drawing from the above cited cases, once the Court is persuaded that there existed reasonable grounds upon which a reasonable employer would consider termination of service as commensurate to the infraction perpetrated by the employee, judges as humans presiding over the matter must not substitute their own view or feeling of what is reasonable with that of an employer unless unavoidable in the circumstances.

55. In this particular case and as observed earlier in the judgment, the operational requirement of the respondent was that employees in the claimant’s position and carrying out similar jobs were assigned the Veeva device and a car fitted with tracking device to ensure they documented the customers they visited and the car was used only for work related purposes. This was to monitor the performance of such employees and obviate the misuse of the car assigned for work related purposes. Breach of this policy was considered by the respondent gross misconduct and an indication of poor performance by the employee concerned.

56. The claimant did not deny that there was mismatch between the data in the Veeva device and that retrieved from the car tracking device. She merely tried to justify the mismatch; an explanation the respondent found unsatisfactory and considered breach of its operational policies. It is therefore not for this court to interrogate or overanalyze what the respondent considered a breach of its standard operating procedures and substitute the same with it feels are fair and reasonable grounds for termination of the claimant’s service. In this respect, the Court finds and holds that there were valid grounds for terminating the claimant’s service.



57. Regarding procedural fairness, the Claimant was issued with a Notice to attend a Disciplinary Hearing dated 24th January 2022, which clearly stated the allegations against her, and invited her to a disciplinary hearing on Friday 28th January 2022. She was informed of her rights prior to the disciplinary hearing scheduled for 28th January 2022 which included the right to be notified of the charges against her and accepted standards, her entitlement to be assisted at the hearing by a fellow employee, her entitlement to furnish evidence and to argue in mitigation of any disciplinary action and her entitlement to call witnesses during the inquiry. On the 28th January 2022 and 31st January 2022, an independent chairman chaired the disciplinary hearing and by a recommendation dated 1st February 2022, the Chairman found that the Claimant was guilty of the charges brought against her and recommended that she ought to be summarily dismissed from her employment with the Respondent.
58. From the foregoing, the Court is satisfied that the respondent reasonably followed a fair procedure while terminating the claimant's service as required by sections 41, 43 and 45 of the *akn ke act 2007 11 Employment Act* as read together.
59. In conclusion the Court finds and holds that the respondent had valid and justifiable reasons for terminating the claimant's service and that the termination was carried through a fair procedure within the meaning of section 45 of the *akn ke act 2007 11 Employment Act*.
60. The claim is therefore found without merit and is hereby dismissed with costs.
61. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF NOVEMBER 2025

DELIVERED VIRTUALLY THIS 13TH DAY OF NOVEMBER 2025

Abuodha Nelson Jorum

Presiding Judge-Appeals Division

