

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS  
COURT AT NAIROBI  
CAUSE NO. E365 OF 2024**

**ANTONY GITU  
CLAIMANT**

**v**

**ASSOCIATED MOTORS LIMITED  
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT  
JUDGMENT**

1. The Cause was heard on 17 June 2025. Antony Gitu (the Claimant) and the Chief Operating Officer with Associated Motors Ltd (the Respondent) testified.
2. The Claimant filed his submissions on 9 July 2025, and the Respondent on 8 September 2025.
3. The Claimant identified the Issues for Determination as:

- (i) Whether the Claimant was unfairly dismissed?
- (ii) Whether the Claimant is entitled to the reliefs she prays for in her Memorandum of Claim?

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

## **Unfair termination of employment**

### **Procedural fairness**

5. The Respondent placed the Claimant on a Performance Improvement Plan on or around 13 August 2021. The Plan informed the Claimant that he would be monitored for over 90 days starting 16 August 2021 and that assessments would be carried out every two weeks.
6. On 18 August 2021, the Respondent issued a warning to the Claimant after a meeting the previous day. The warning was based on misconduct in that the Claimant had unprocedurally purchased an item without a Local Purchase Order or approval.
7. The warning was followed by a show-cause notice dated 26 August 2021. The Claimant was directed to respond within 24 hours.

8. The Claimant responded on 30 August 2021, and on 2 September 2021, he was invited to attend a disciplinary hearing set for 3 September 2021. The invitation informed the Claimant of the right to be accompanied by a colleague.

9. On 10 September 2021, the Respondent issued a notice to the Claimant referenced Continued Dismal Performance. The notice requested the Claimant to provide a Corrective Action Plan by the end of the month.

10. The Claimant attended the hearing and, on 9 December 2021, was informed of summary dismissal. The Claimant appealed, but the appeal was rejected.

11. Before the Court, the Claimant contended that he was not afforded a fair hearing because of the 3 months it took from the hearing to the notification of dismissal.

12. The Claimant was informed of the allegations to confront and was allowed an opportunity to make

representations. He was also informed of the right to attend the hearing with a colleague.

13. It is not in dispute that the Claimant was informed of the outcome of the disciplinary process about 3 months after the disciplinary hearing.

14. During the interlude, the Claimant was working and was paid accordingly. Despite alleging there was a delay in releasing the outcome, the Claimant did not show that such a delay was unfair or affected any of his employment rights.

15. The Court finds that the Respondent complied with the requirements of procedural fairness.

### **Substantive fairness**

16. Under sections 43 and 45 of the Employment Act, the Respondent had the burden of proving that the reasons for terminating the Claimant's contract were valid and fair.

17. The reasons for the termination of the Claimant's employment were:

You dishonestly misled the COO into believing the cheque to Ryce EA had been requisitioned, causing serious delay in parts delivery to the branch.

Failure to send parts for Sahna Enterprises;

as well as failure to provide an update, leading to loss of customer goodwill and AM's credibility.

Failure to provide urgent parts consumption report required for urgent response to Isuzu East Africa (IEA).

18. In an endeavour to discharge the burden, the Respondent called its Chief Operating Officer.

19. The witness testified that on 23 August 2021, the Claimant was tasked with following up on an order for spare parts with Ryce EA and confirmed to him that he had made the follow-up up but later the witness established that the Claimant had not requisitioned for a cheque payment.

20. In the response to the show cause, the Claimant admitted that he was given the instructions, but he had delegated the follow-up to a colleague who did not act.

21. The Claimant was basically admitting to failure to follow on instructions from his supervisors and the failure meant that the Respondent was not able to keep up its commitments to a customer based on Mombasa.

22. The second reason that led to the termination of the Claimant's employment was the failure to send spare parts to a named customer.

23. The Claimant conceded in his response to the show cause that, though the spare parts had been purchased, full delivery was not made.

24. The last reason the Respondent gave for dismissing the Claimant was his failure to update on parts consumption to the Chief Operating Officer.

25. Again, the Claimant admitted that he did not give the updates. In the response, the Claimant disclosed that though he knew there was an urgency for the required information, he tasked a colleague to update the Chief Operating Officer, but the colleague did not

26. The Claimant admitted the charges that the Respondent had confronted him with in his response to the show cause.

27. Around the same time, the Respondent had placed the Claimant on a Performance Improvement Plan to enable him to improve.

28. Instead of taking his work seriously, the Claimant did not realise that he was treading on slippery grounds by not responding to instructions from his supervisors and customers promptly.

29. The Respondent, an entity in the vehicles industry, had a name and a reputation to keep. The failure to act promptly by the Claimant

would definitely taint its name with its customers.

30. The Court finds that the Respondent had and proved valid and fair reasons to terminate the Claimant's employment.

31. With the findings, the heads of claim for compensation and pay in lieu of notice do not arise.

#### **House allowance**

32. The Claimant pleaded to be awarded Kshs 432,000/- as house allowance for the years 2020 and 2021.

33. The Claimant's contract provided for a gross salary, and in the context of section 31 of the Employment Act, 2007, the Court finds that the salary was inclusive of house allowance.

#### **Certificate of Service**

34. A Certificate of Service is a statutory entitlement, and if the Respondent did not issue one to the Claimant, it should give one.

## Conclusion and Orders

35. Save for an order to issue a Certificate of Service within 21 days if one was not given, the Court finds no merit in the Cause, and it is dismissed.

36. It was not disclosed whether the Claimant had secured alternative employment. Each party to bear own costs.

**Delivered virtually, dated and signed in Nairobi on this 26<sup>th</sup> day of November 2025.**

**Radido Stephen, MCI Arb  
Judge**

### Appearances

For Claimant

Maina Wairimu  
& Associates  
Advocates

For Respondent

Sharpley Barret  
& Co. Advocates

Court Assistant

Wangu

**NAIROBI**