

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**ELRC NO. E873 OF 2021**

**(Before Hon. Justice Abuodha Jorun Nelson)**

**JAMES**

**NYANGERI.....**

**CLAIMANT**

**-VERSUS-**

**ROY PARCEL SERVICES LTD.....**

**RESPONDENT**

**NYAMWANGE**

**JUDGMENT**

1. The Claimant through an Amended Statement of Claim dated 6<sup>th</sup> June, 2021 pleaded inter alia as follows: -

- a. The Claimant averred that he was employed by the Respondent in the year 1998 as a permanent staff of the Respondent's organization.
- b. The Claimant averred that he worked for the Respondent with diligence, honesty and commitment which propelled him to be considered fit to take respective positions which included but not limited to general clerk in the year 1998, branch manager in the year 2000 and branch manager in Meru, Kisumu and Eldoret respectively over the subsequent years.
- c. The Claimant averred that the Claimant's commitment, dedication, punctuality and hard work propelled the Respondent business upwards as the Claimant was able to maintain, improve and manage the respective branches with little to no supervision and remained faithful hence considerable increase in the Claimant's salary over the years.
- d. The Claimant averred that on or about the 18<sup>th</sup> of August 2020, without notice, warning or plausible justification, the Respondent severed ties with the Claimant by summary dismissal.
- e. The Claimant averred that the Respondent's allegations of the letter dated 1<sup>st</sup> July, 2021 that the Claimant was subjected to disciplinary hearings and actions are unfounded and untrue and that the said claims are unjustified and cannot be substantiated at all.

- f. The Claimant averred that his termination of employment was unlawful and unfair for failure to conduct a proper investigation, lack of fair hearing, going against the Respondent's code of conduct and business ethics, discriminating the Claimant and failure to adhere to laws and rules governing disciplinary process.
- g. The Claimant averred that there is an inordinate attempt to delay his dues which is without justification which has caused him undue anguish, psychological trauma and uncertainty taking into consideration the difficult economic times.
- h. The Claimant averred that he is entitled to be paid leave days due, days worked and any outstanding amounts up to and including his last day of work which the Respondent acquiesces in the letter of termination titled summary dismissal.

1. The Claimant in the upshot prays for the following against the Respondent:

- i. A declaration that the Claimant suffered unfair and unlawful termination by the Respondent
- ii. Damages for unfair and unlawful termination.
- iii. Payment of arrears of terminal dues amounting to Kshs. 656,196.00
- iv. Interest on the above from the date of filing until payment in full.
- v. Certificate of service
- vi. Costs of the suit

2. The Respondent filed its Statement of Defence dated 3<sup>rd</sup> October, 2022 and averred inter alia as follows: -

- a. The Respondent averred that the Claimant was not a diligent employee. That on a number of occasions, the Claimant failed to execute his duties with good faith and had all manner of flimsy reasons for his behavior and even tried to circumvent the outcome of the impending disciplinary action by not signing or even acknowledging the receipt of warning letters.
- b. The Respondent averred that the Claimant's behavior meant that at all times the Respondent had to bear with the Claimant even when it was right for the Respondent to summarily dismiss him. That looking at the

career of the Claimant his service to the Company and age it opted to try and mold him, giving him a chance to improve and salvage his career.

c. The Respondent averred that both verbally and written warnings were severally given to the Claimant based on his dealings while on duty but that did not change his ways.

d. The Respondent averred that through a series of acts which, when taken together can be considered gross misconduct, the Claimant severally behaved with a deliberate intent to break the rules of employment contract as well as Human Resource policies by refusing to carry out lawful and reasonable instructions from management, failure to give his financial reports on time, which was in its strict sense, compliance with the Company's business interest making it impossible to have any finance decisions.

e. The Respondent averred that the Claimant was bringing the organization into severe repute causing loss and damages through his gross negligence. At a particular point in time, the Claimant declined to serve clients in Edo met branch, which was against the human resource policy and was confirmed through a letter dated 8<sup>th</sup> August, 2020 that more complaints would attract a disciplinary hearing.

f. The Respondent averred that it did not wrongly or unfairly dismiss the Claimant. That the dismissal was substantively and procedurally proper.

g. The Respondent averred that by a letter dated 14<sup>th</sup> August, 2020 the Claimant was invited for an oral hearing before a committee and defended himself. The letter gave him the right to call witnesses, produce documents and also be represented by another employee which he chose to have the union representative present at the hearing. He was also given the right to appeal but chose not to appeal or acknowledge receipt of the summary dismissal letter.

h. The Respondent averred that the Claimant was summarily dismissed after hearing for negligence and gross misconduct in accordance with the Employment Act and in accordance with the Respondent's Human Resource Policy, which the Claimant had knowledge of and of which the Claimant was aware.

i. The Respondent averred that the computation of damages as claimed are untrue and made with intent to deceive and mislead the court.

j. The Respondent averred that all efforts to settle the matter with the Claimant have gone in vain despite the Claimant showing a conscious effort to settle the matter out of court.

3. The Respondent in the prayer prayed as against the Claimant that the Claimant's Claim be dismissed with costs.

4. The Claimant in the defence dated 25<sup>th</sup> November, 2022 and averred that he performed his duties in good faith and responded to all queries which were made to him, that there were some notices which came to his notice after dismissal which he could not attend to.

5. That he worked for the Respondent for 22 years and he was due to retire when the Respondent decided to stall the retirement and payment of terminal benefits purpose to summarily dismiss the Claimant. That the letters of disciplinary action do not conform with the law of the company and Employment Act.

6. That the queries being complained of were directly being handled by another manager in the branch by the name Festus Juma who was also a manager in charge of finance while the Claimant was in charge of operations.

### **EVIDENCE**

7. Both the Claimant's and Respondent's case were heard on 13<sup>th</sup> March, 2025. The Claimant (CW1) testified and

adopted his witness statement and documents filed as his evidence in chief.

8. In cross-examination CW1 confirmed that he was promoted in the course of employment but he never signed any promotion letters. He confirmed that he was not subjected to disciplinary hearing prior to his dismissal. That he only received one warning letter and he responded by denying that a parcel was lost and he denied responsibility.

9. CW1 stated that he was issued with a show cause letter. That he was summoned and interrogated and there was no hearing. That he was subsequently transferred to Eldoret and immediately accused of messing up a customer. That he was called back to Nairobi and he denied messing up the customer. That he was told he could continue working and he was not given transport back to Eldoret.

10. CW1 confirmed that he later got a dismissal letter. That the person from union was there who he found in the office. That he tried to speak but was shut up. He did not remember employees being taken through disciplinary hearing.

11. CW1 confirmed that his exit salary was Kshs 36,000/= and he was forced to keep on working without leave. That they were allowed up to 5 days off. The 40 days were throughout his working period. That he used his own money to attend to office matters and was not refunded but he did not have receipts in court. CW 1 further that he received the summary dismissal letter but did not read the minutes of 17<sup>th</sup> August, 2020. He denied receiving the warning letter of 3<sup>rd</sup> August, 2020 as the one that he responded to.

12. In re-examination CW1 claimed that he was called from Eldoret and there was a letter that he was not informed of the charges in advance that he was not informed of the presence of the union officials.

13. The Respondent on the other hand called its witness Tehseen Omar the Managing Director of the Respondent. RW1 adopted his witness statement and the documents filed as his evidence in chief and in cross-examination stated that he was appointed in 2020 and he was not with the company before then. The Claimant was there before him and they are related as it was a family business.

14. RW1 confirmed that he saw several warning letters to the Claimant and he responded. That in July the Claimant was informed of the charges through Whatsapp but the messages were not before the court. That the Claimant was also informed through the telephone.

15. RW1 confirmed that the Claimant explained himself at the disciplinary hearing. That the Claimant was a branch manager and he was abusive towards their clients. That he had email showing the Claimant's mess. RW1 further stated that the Claimant had worked for many years and retirement benefits came from NSSE.

16. In re-examination RW1 clarified that the Claimant was issued with a certificate of service because he was not terminated to avoid payment of retirement benefits. That the Claimant was failing in his branch. He further clarified that the Claimant was transferred to Eldoret the best performing branch but he started messing. That he was not following orders and never responded to customer calls. That they recalled him from Eldoret. RW1 further clarified that if the Claimant was a good

worker he should not have had several warnings and transfers.

### **CLAIMANT'S SUBMISSIONS**

17. The Claimant's Advocates Kiboi & Co. Advocates filed written submissions dated 26<sup>th</sup> May, 2025. Counsel relied on Section 44 of the Employment Act 2007, to submit on what amounts to summary dismissal. That the Claimant was allegedly given a warning letter on 3<sup>rd</sup> August, 2025 by the financial controller of the company for not submitting daily reports but no evidence was provided that he was an accountant or an accounts clerk.

18. Counsel submitted that the Claimant was a manager who was in charge of clients responsible for sending the reports. No evidence was tendered that the Claimant was solely responsible for financial reports.

19. Counsel submitted that the Claimant had on several occasions complained that memos and memos to him were written and filed and never delivered to him. All those he received he promptly answered. Counsel submitted that the final warning was by an email from the Human Resource office dated 8<sup>th</sup> August, 2025 to the Claimant. That the complaint was about neglecting to answer calls from a client and or respond to their Whatsapp messages. The copy of the physical letter was to be made by delivery via motor vehicle registration number KBY 497V. There was no evidence of such delivery owing to the fact that the respondent was a courier

company and delivery of parcels was its hallmark. The Claimant never received the letter.

20. Counsel submitted that contrary to the claims that he never sent the reports, the Claimant averred that he sent the reports as requested which were found from pages 20-30 of his list of documents.

21. Counsel relied on section 45 of the Employment Act 2007 to submit that no employer should terminate the employment of an employee unfairly and that the termination was unfair if the employer failed to prove that the reason for termination was a valid and a fair reason related to the employees conduct, capacity, compatibility and based on the operational requirements of the employer.

22. Counsel submitted that the Claimant was terminated unfairly. That he was transferred to the Eldoret branch in May 2020 during the time of COVID-19. The manager who was in the branch was not moved and did not hand over to the Claimant but continued performing the duties of the manager to the knowledge and approval of the Respondent.

23. Counsel submitted that the Claimant nevertheless responded to the email dated 13<sup>th</sup> August, 2020 by sending reports dated 3<sup>rd</sup> August, 2020, a memo and email dated 3<sup>rd</sup> August did not serve as a warning. That the WhatsApp messages marked "B" in Respondent's documents did not include the Claimant and those communication were undermining the Claimant without his knowledge.

24. Counsel submitted that the Claimant was employed by the Respondent and worked continuously for a period of 22 years and was due to retire in 4<sup>th</sup> August, 2020. The Claimant had reached the mandatory retirement age at the time summary dismissal was meted on him and should have been retired and given his benefits.

25. Counsel submitted that the procedure followed by the Respondent to dismiss the Claimant was unfair in that to fulfil the requirement of the law there had to be three warnings. The first warning which was dated 3<sup>rd</sup> August, 2020 was responded to. The second and third warning were never received.

26. Counsel submitted that the summons to appear before the disciplinary committee were a sham because the Claimant was never given time to prepare his defence. The Claimant was called from Eldoret on 15/8/2020 for a hearing in Nairobi on 15/8/2020. He did not receive the charge sheet framed before he came.

27. Counsel submitted that the Managing Director was the accuser, the prosecutor and the witness in her own cause and the witness. Nobody from the claimant's establishment was called to give evidence. Counsel further submitted that the Claimant was convicted on hearsay evidence and the person from the union was an employee of the Respondent and could not stand against the employer. The Claimant was not allowed to say anything in his defense otherwise it could have been recorded.

28. Counsel submitted that the Claimant had no time to consult neither was he presented any written charges to understand what he was charged with. That he had no opportunity to consult or to choose a representative and brief him as he found the alleged representative in the boardroom. He had not briefed him and he was not representing him. The star witness from the complainant company in Eldoret was not called as witness.

29. Counsel relied on Section 49 of the Employment Act and the case of **Munir Sheikh Ali v National Bank of Kenya Ltd Nairobi Petition No. 17 of 2018** where the court found breach of Petitioner's right to fair hearing in a disciplinary hearing and he was not given adequate time and opportunity to respond to the allegations to submit that the Claimant suffered prejudice and was unfairly dismissed and the Honourable court should rule in favour of the Claimant.

### **RESPONDENT'S SUBMISSIONS**

30. The Respondent's Advocates **Obera Law Advocates** filed its submissions dated 14 July 2025. On the issue of whether the termination of the Claimant's employment was wrongful, unfair and unlawful, counsel submitted that the Respondent agreed that the Claimant was its employee but denied the unfair termination. Counsel relied on sections

43,45(2) and 47(5) of the Employment Act which places the burden of proof of the reasons of termination on the employer. That to arrive at a fair or unfair termination the reasons for termination and the procedure adopted in effecting the termination are paramount.

31. Counsel submitted that on the 13<sup>th</sup> August, 2020 the Claimant was issued a summary dismissal on account of gross misconduct which the Respondent asserted to be inefficient customer service. The Respondent still opted to try and mold him, giving him a chance to improve and salvage his career without any success.

32. Counsel submitted that the Respondent produced a copy of the minutes of the Discipline Committee dated 17<sup>th</sup> August, 2020, several warning letters dated 2014, 2015, 2017, 2018 and the recent dated 11<sup>th</sup> November 2019, 3<sup>rd</sup> August, 2020 and final warning dated 8<sup>th</sup> August 2020.

33. Counsel submitted that the Respondent admitted during cross examination that he had seen a show cause letter on the issues leveled against him but went further to contradict himself by stating that he had not seen the warning letter.

34. Counsel submitted that the Claimant acknowledged the union representative being present and negates being accorded a hearing yet he was present.

35. Counsel relied on section 43 (2) of the Employment Act to submit that the employer should prove that at the time of the termination it had reasons that he/she genuinely believed to exist, and which caused the employer to terminate the employee.

36. Counsel relied on the case of **British Leyland UK Ltd v Swift (1998) 1 R.L.R. 1** to submit that the correct test of reasonableness is that if no reasonable employer would dismiss the employee, the dismissal is unfair but if a reasonable employer might reasonably dismiss the employee then the dismissal is fair.

37. On procedural fairness counsel relied on section 41 of the Employment Act and the case of **Co-operative Bank of Kenya Limited v Banking, Insurance & Finance Union [2017] eKLR** to submit that the court must look into validity and justifiability of the reasons for termination before answering the question of procedural fairness. Counsel

submitted that the Claimant's services were terminated because of his misconduct, which was a valid ground for termination.

38. Counsel submitted that whenever an employee was faced with a disciplinary issue, he must be given sufficient if not reasonable time to show cause and to prepare his defence for the (disciplinary) process to be fair.

39. Counsel submitted that the Claimant failed to discount the allegations levelled against him regarding the misconduct, giving false information, being arrogant and speaking rudely to customers and failing to follow instructions during the disciplinary hearing process. The Respondent to issue him with a dismissal letter.

40. Counsel relied on the case of **Nyandiko v Kenya Commercial Bank Limited (2019) 1 ELR** on requirement for both substantive and procedural fairness before termination. That Section 41 of the Employment Act included a notification, a hearing and consideration of the employee's representations and his co-workers before termination. That

absence of any of these aspects will make the termination unfair.

41. Counsel submitted that the Respondent was alive to the fact the procedure under section 41 of the act was mandatory and an employer who intends to terminate an employee's employment must follow it. That the Respondent followed the procedure as laid out in section 41 of the Employment Act and that the procedure was fair, just and fair.

42. On the issue of the dismissal of the Claimant from employment was substantively fair, counsel relied on the case of **David Gicharuwa v Mmbasa Maize Millers Limited** (2021) eKLR to submit that the laws of natural justice demand that an individual be accorded the opportunity to be heard and there should be a fair hearing before any decision is made that would be detrimental to an employee.

43. Counsel submitted that the Respondent explained to the Claimant, in a language that he understood, the reason for which they were considering terminating his service, and that he was entitled to have another employee or shop floor union representative of his choice present during the explanation

verbally through disciplinary hearing invitation as acknowledged by the Claimant during cross examination.

44. On the issue of whether the Claimant was entitled to any of the remedies sought counsel submitted that it was trite law that the Employment Act was not just concerned about ascertaining the validity of the reason for termination but also concerned with ensuring that the employer processes the separation in a manner that is procedurally fair to the employee.

45. Counsel relied on the case of **National Bank of Kenya v Samuel Nguru Mutiso** [2019] eKLR to submit that in determining whether a decision by the employer to terminate was just and equitable, the adjudicating authority was enjoined to scrutinize the procedure adopted by the employer in reaching the decision to dismiss the employee.

46. Counsel submitted that the Respondent discharged its burden of proof by proving that the termination was fair and lawful. That from the Respondent's conduct of the process leading to the termination of the Claimant's service, it was clear that the decision to dismiss him was fair and just. That

the Claimant had failed to successfully establish a prima facie case that his termination did not fall within the legal threshold set out in the Employment Act, 2007. Counsel based its reliance on section 47(5) of the Act on the respective burden of proof and called upon the court to be guided by the decision in **Josephine M. Ndumbe & Others v Plan**

**International Inc (2019) eKLR**

47. On the reliefs sought by the Claimant counsel submitted that the Claimant's payment of lieu of notice of 4 months had no basis as his release from employment was ~~not~~ one contemplated under section 35 of the Act but one under section 44 which calls for summary dismissal for gross misconduct without notice or less notice than anticipated under section 35.

48. On the claim for unpaid leave, counsel submitted that the claim had no basis and could not succeed because the Claimant knew he was entitled to leave and he utilized the same hence his claim of Kshs. 48,000 payment for 40 days leave.

49. On the claim for maximum compensation for 12 month's salary counsel submitted that the Claimant's termination was

not only procedurally just but also substantively fair, therefore the Claimant's was not entitled to maximum compensation for 12 months to the tune of Kshs. 432,000/- .

50. On the claim for fare to and from Eldoret of Kshs 9,000/= counsel submitted the Claimant's travel from Eldoret to Nairobi was not pegged/subject to the contract, neither was it substantiated by way of receipt hence the Claimant was not entitled to compensation for fare to and from Eldoret of Kshs.9,000/- .

51. On the claim for union membership remittances counsel submitted that the Claimant was not a member of any union neither was it substantiated by way of documents, therefore the Claimant's prayer of union membership remittances of Kshs.9,396/- could not issue.

52. On the claim for NHIF and NSSF remittances counsel submitted that the Claimant's NHIF and NSSF remittances were paid to the authorities and should therefore seek for compensation to the said authority. That the claims were unsubstantiated as no documents had been tendered to the

contrary. The Respondent tendered a pay slip in support of the payments hence the prayers could not issue.

53. On the claim for certificate of service counsel submitted that the certificate of service had been ready for collection in compliance with section 51 of the Employment Act and could be picked at the Claimant's convenience.

### DETERMINATION

54. The court has reviewed and considered the pleadings, testimonies and submissions by both counsel in support and opposition to the case. The court has also considered authorities relating to service counsels. The issues for determination are therefore as follows:

- (a) *Whether the Claimant was fairly dismissed by the Respondent.*
- (b) *Whether the Claimant is entitled to the reliefs sought.*

### **Whether the Claimant was fairly dismissed by the Respondent.**

55. In the instant case, it was in dispute that the Claimant had worked for the Respondent for 42 years dating back to

1998. The Claimant alleged that he worked diligently in different places in the country his last being Eldoret until 18<sup>th</sup> August, 2020 when he was summarily dismissed without notice, warning and justification. The Claimant averred that there was no proper investigation carried out and he was not accorded a fair hearing. That he was due for retirement and the Respondent dismissed him to avoid payment of his retirement benefits.

56. The Respondent on the other hand alleged that they summarily dismissed the Claimant on grounds of misconduct of refusal to carry out lawful instructions, withholding his information and being rude to customers as per summary dismissal letter of 18<sup>th</sup> August, 2020. The Respondent maintained that the Claimant was issued with several warnings, both oral and written but he never changed even after transfers. That it had valid reasons to dismiss the Claimant and they followed the due procedure in terminating the Claimant.

57. The standard of proof in employment cases is governed by section 47(5) of the Employment Act where the employee has a duty to prove that termination was unfair, while the

employer must justify the reasons for termination. In this case it was not dispute that the Claimant was summarily dismissed on 18<sup>th</sup> August, 2020. The Claimant had a duty to lay a prima facie case of unfair termination.

58. It is also now a well-established principle that for termination to pass fairness test there should be both substantive and procedural fairness with a number of cases supporting this position including but not limited to the case of **Walter Ochieng vs Teachers Service Commission [2013] KLR.**

59. Section 43 of the Act requires the employer to prove the reasons for the termination which reasons must be valid and fair and the employer must have believed to exist and to cause the termination of the employee. Failure to prove the reasons for termination of the employee amounted to unfair termination under section 45 of the Act.

60. The courts have emphasized among other cases the case of **Mary Chemweno Kiprotich vs Kenya Pipeline Company Limited [2014] KLR** that

*Invariably therefore, before an employer can exercise their right to terminate the contract of an employee, there must be valid reason or*

*reasons that touch on grounds of misconduct, poor performance or physical incapacity.*

61. The Respondent in support of the allegations of not following instructions, giving false information and being rude to the customers produced only the minutes of disciplinary hearing of 17<sup>th</sup> August, 2020. There were no investigations carried out to prove the allegations against the Claimant despite him stating that he was away in Eldoret station and it was during COVID-19 that it took him a while to settle.

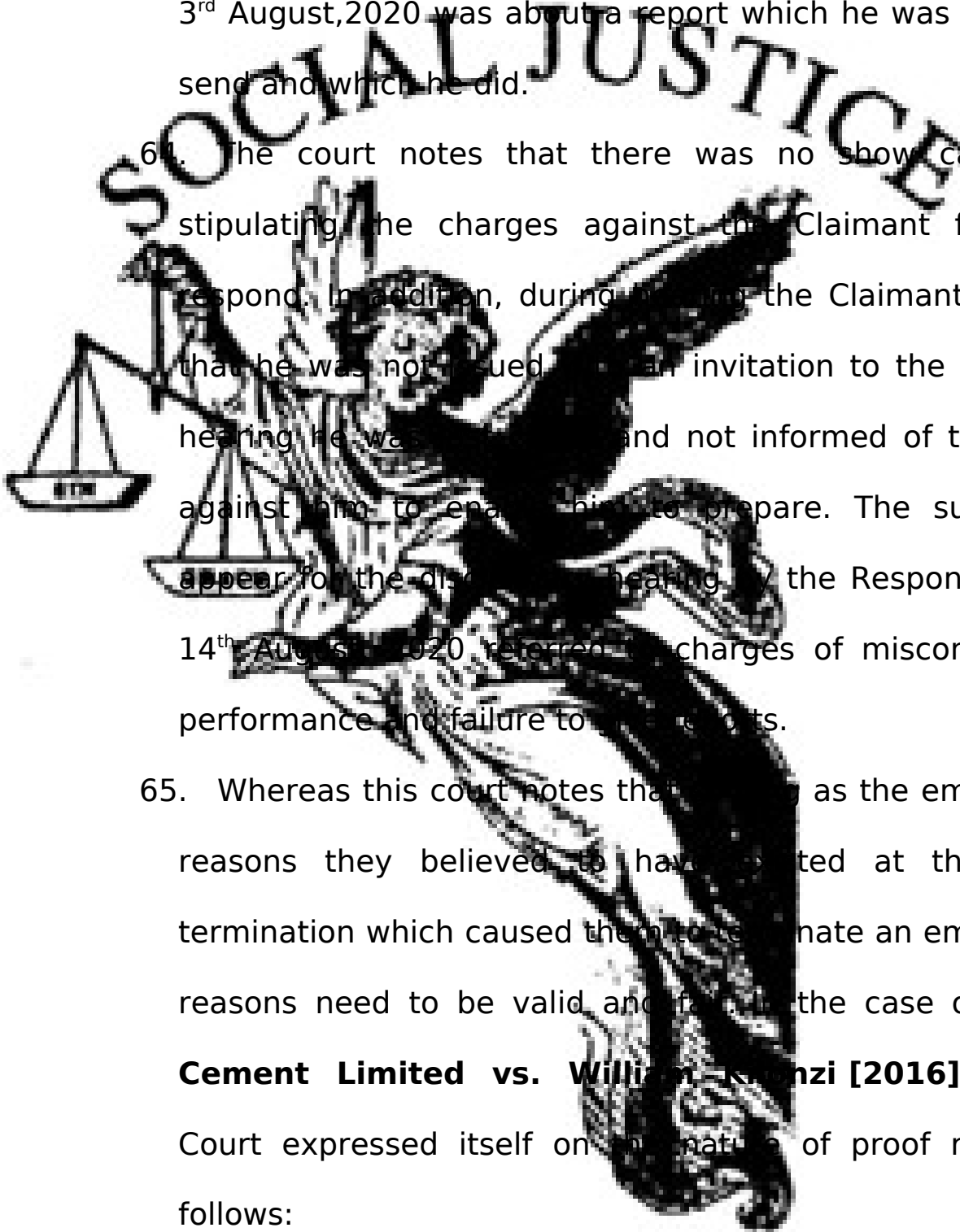
62. In addition, the Respondent illustrated that he sent the requested reports on 17<sup>th</sup> August, 2020 and he denied being rude to the customers. Whereas the court appreciates that the Claimant was given a number of warning letters it was important to note that it became a norm for the said warning letters as some were written five days and last warning and the Claimant used to respond to these warning letters.

63. The court notes that apart from the said warning letters no disciplinary action was even taken by the Respondent against the Claimant if at all the allegations were that serious. The final warning of 8<sup>th</sup> August, 2020 was with regard to the Claimant not responding to the client's queries. The claimant

denied receiving this letter. The client he was accused of being rude to was not disclosed in the letter. The warning of 3<sup>rd</sup> August, 2020 was about a report which he was required to send and which he did.

64. The court notes that there was no show cause letter stipulating the charges against the Claimant for him to respond. In addition, during the hearing the Claimant confirmed that he was not issued with an invitation to the disciplinary hearing he was not informed of the charges against him to enable him to prepare. The summons to appear for the disciplinary hearing by the Respondent dated 14<sup>th</sup> August 2020 referred to charges of misconduct, poor performance and failure to attend work.

65. Whereas this court notes that as the employer had reasons they believed to have justified at the time of termination which caused them to terminate an employee the reasons need to be valid and fair. In the case of **Bamburi Cement Limited vs. William Kinzi [2016] eKLR** the 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..."*

66. In this case the Respondent's suspicion was not based on fair and reasonable grounds despite the Claimant having worked for it for 22 years. They should have had cogent reasons and well investigated before summarily dismissing the Claimant. The test is whether a reasonable employer would terminate the employee based on the same facts as was being proven in the cited case of **British Leyland UK Ltd v Spragg** [1981] IRLR 91 stated:

*"The correct test is: was it reasonable of 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 range of reasonableness, within which an employer might reasonably take one view; another quite reasonably take a different view. One would not reasonably dismiss the man. The other quite reasonably keep him. 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"*

67. It is the Court's view that the Respondent did not have valid and or fair reasons to dismiss the Claimant although the court takes note of several warnings given to the Claimant over the years but that these may have been choreographed to justify the dismissal and some of them were

not specific as to the offence the claimant was alleged to have committed. In any case the claimant responded to most of them and no further step was taken thereafter.

68. Regarding procedural fairness, section 41 of the Act provides for notification and hearing before termination on grounds of misconduct. The employee must be explained to in a language they understand the reasons for which termination was being contemplated and also consider the representation of the employee in the presence of another employee of their choice.

69. The Respondent claimed that they dismissed the Claimant on grounds of gross misconduct, issued him with warning letters and invited him to disciplinary hearing where he was heard and thereafter subsequently dismissed.

70. As noted earlier in this judgment the Respondent did not undertake any investigations to verify the accusations against the Claimant and some of the warning letters were not specific about the offences allegedly committed. Further, he was not issued with any show cause letter in order to understand the charges against him and make his

representations. It is now clear that the initial disciplinary process starts with a show cause letter as was held in the case of **Vicky Kemunto Ocharo v Independent Policing Oversight Authority [2018] eKLR** the court held as follows;

*The formal disciplinary procedure starts with a “show-cause letter”. The employee will be informed in writing by the supervisor of the nature of the complaint allegation. The employee will be required to submit his response within twenty-one (21) days.*

71. Whereas the summons to appear for disciplinary hearing of 14<sup>th</sup> August, 2020 were duly served upon the Claimant who alleged that he was not allowed to go to Nairobi it was clear that the Claimant was duly informed of the charges against him in advance of the hearing. Even though by the invitation letter the Claimant was notified of his right to call any witness, to make his representations and to have a fellow employee of his choice or union official.

72. This court also notes that the official who attended the alleged disciplinary hearing was an employee of the Respondent and the Claimant already found him in the Respondent’s offices hence he was not of his choice. The Respondent ought to have given the charges they had against

the Claimant in advance and given him time to prepare for the hearing.

73. In **Kiilu v Isinya Resorts Limited (Cause E022 of 2021)**

**[2022] KEELRC 13240 (KLR)** it was held that;

*An employee is entitled to be given adequate notice to respond to a show cause letter and adequate notice to attend a disciplinary hearing/meeting. Minutes of a disciplinary meeting must be clear on the issues discussed in detail, and must clearly indicate whether the employee was given an opportunity to be heard, and what representation the employee, his fellow employee or union official made.*

*Issues to be discussed at a disciplinary hearing must be the same as in the show cause letter.*

74. The court notes that the Respondent did not give the Claimant a fair hearing since there was no show cause letter, the Claimant was not served with invitation to disciplinary hearing, he was just called to go to Nairobi and no charges were communicated in advance and the hearing was just but a formality to dismiss the Claimant.

75. The need for procedural fairness was emphasized by the court in the case of **Kenya Union of Commercial Food and Allied Workers v Meru Urban Farmers Sacco Limited**

**[2014] eKLR** that: -

*Section 41 of the Employment Act is couched in mandatory terms. Where an employer fails to follow these mandatory provisions, whatever outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing in the presence of their union representative.*

76. In conclusion the court finds and holds that the Claimant's summary dismissal was unjustified both substantively and procedurally.

***Whether the Claimant is entitled to the reliefs sought.***

77. Having established that the Claimant was unfairly dismissed the court proceeds to find that he was entitled to the damages for unfair termination under section 49 of the Employment Act. The court is guided by considerations under section 49(4) of the Act. The Claimant had served for 22 years which was a long time, he was due for retirement and the summary dismissal was unfair. The court is of the view that the Claimant's case is one where a maximum award of 12 months' is justified.

78. On the prayer for NHIF and NSSF remittances those are done by employer to those organizations. The Respondent produced the payslip which showed it remitted the dues and it was upon the Claimant to produce his statement to show they

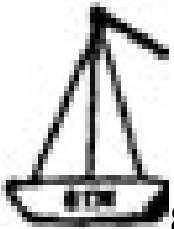
were never remitted. The Claimant could claim service pay but then he is excluded by the provisions of Section 35(5) and (6) of the Act for being a member of NSSF.

79. Regarding the claim for four-month notice pay the court notes that the parties never attached any employment contract stipulating the same four months' notice pay and what is provided for by the Employment Act under section 35(5) is only one-month notice pay. The Claimant is therefore entitled to one-month notice pay since there was no notice given to him.

80. On the award of annual leave this court notes that the same is still pending and the employee must file their claim within 12 months after termination of employment as provided for under section 90 of the Employment Act. In this case the Respondent was terminated in August 2020 and the initial claim made in October 2022. This was outside the timelines given by section 90 of the Act hence this prayer fails.

81. On the prayer for Union dues for 12 months the Claimant never illustrated if the Respondent withheld the dues. This

was an issue he would follow up with the union not the Respondent as his duty was to remit the dues and the payslip was clear that they were deducted. The Respondent allegations that the Claimant was not a member of union were not true since they invited a union member at disciplinary hearing and the payslip showed deductions for union dues. It was upon the Claimant to show if the same were not remitted after being deducted from his salary which he did not show. The prayer therefore fails.



82. On the issue of fare to and from Eldoret again this is a special damage which must be properly pleaded and proved. The Claimant admitted during hearing that he did not have receipts for the fare used. The same prayer fails for lack of proof.

83. On the prayer for certificate of service the Respondent stated the same has been ready it was upon the Claimant to collect the same. This is the Claimant's entitlement under section 51 of the Employment Act and the prayer is allowed.

**84. In conclusion the Claimant's claim is hereby found merited and is hereby allowed with costs as follows: \_**

**a. Notice Pay.....Kshs 36,000/=**

**b. 12 months' salary as compensation for unfair termination Kshs 36,000/= x 12 = 432,000/=**

**TOTAL KSHS 466,000/=**

**c. Certificate of service.**

**d. All the other prayers of leave pay, NHIF and NSSF remittance, union dues and fare to and from Eldoret are disallowed.**

**e. Items (a) and (b) shall be subject to statutory deductions but shall attract interest at court rates from the date of judgment until payment in full.**

**85. It is so ordered.**

**Dated at Nairobi this 28th day of November, 2025**

**Delivered virtually this 28th day of November, 2025**

**Abuodha Nelson Jorum**

**Presiding Judge - Appeals Division**