REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
APPEAL NO. E172 OF 2023

(Before D.K.N. Marete)

SIMBI ROSES LIMITED……..……..…..……..……..……..APPELLANT
VERSUS
DOMINIC KIOKO WAMBUA…….……..…..…….RESPONDENT

JUDGMENT

This is an Appeal dated 11th September, 2023 and comes out as follows;

- The learned magistrate erred in law and fact by disregarding the appellant's pleadings, documents, witness statement and oral testimony.
- The learned magistrate erred in law and fact by failing to find that the Respondent had no case before the court for failure to produce document or witnesses in support of his case which therefore was a mere allegation.
- The trial court further erred by considering and relying on extraneous matters that had neither been claimed or led in evidence.
- The trial court again erred by finding that the Respondent was given an opportunity to be heard while the Appellant presented evidence that this was the case.

The Appellant therefore prays that the appeal be allowed and judgment of trial court issued on 22nd August, 2023 be set aside.

The Appellant in their undated January, 2025 written submissions open their case by reciting the facts of the case. It is their case that between 15th October, 2020 and 10th November, 2020, the Respondent did not report to work as was required of him. He also failed to offer a valid justification for his absence from his work station. This amounted to an act of gross misconduct as provided by section 44 (4) (a) of the Employment Act, 2007.

The Appellant's further submissions is that on 10th December, 2020, the Respondent received a show cause letter requesting him to attend a meeting to explain why he did not report to work as per his employment terms. He attended but would not offer a satisfactory answer leading to summary dismissal from employment. The process of dismissal was procedural and the Respondent did not appeal against it. He accepted the dismissal letter and did not appeal against it therefore owning up his mistake. This agrees with the authority of **Fred Onywoki Nyauntu v Mega Park (K) Limited (Cause 378 of 2016) [2019] KEELRC 213 (KLR)** where the court upheld summary dismissal as a remedy of gross misconduct.

The Appellant further raises issues and submits that the trial court involved itself in a mix-up of Employment and Labour issues and injuries. The award for injuries sustained was made without any evidence on the subject. This is beside an award of monetary compensation which is grossly exaggerated.

The Respondent in opposition to the claim filed submissions dated 24th February, 2025 also opening with an introduction and backgrounds of the case. It is his submission that the trial court did not err in making its findings because the Appellant did not pursue due process in the termination of his employment. It did not issue the Respondent with a first and second warning letter as provided in the letter of confirmation of his employment. This was not demonstrated at the first disciplinary hearing where the Respondent was issued with a notice to show cause.

Again, the Respondent was not issued with a one months notice in the event of termination as provided in the said letter of confirmation. In rushing to issue dismissal, the Appellant blatantly ignored and disregarded all procedural requirements of termination of employment provided by their own internal documents and the law.

The Respondent further submits that he was not issued with a show cause letter or even given time to defend himself. This comes out clearly from the evidence of RW1 who admitted in cross examination that the show cause letter had been corrected by the Respondent. The letter does not form part of the Respondent's list of documents and was not accepted as evidence in this regard.

The Respondent's other submission is that whereas he was terminated on grounds of absenteeism, the Appellant never led any evidence in support of the claim as he had been supplying his employer with various sick-off letters and his medical team had recommended that he on return be set on light duties. He *in toto* also denies that the award by the trial court was excessive or exaggerated and posits that this was made in pursued to section 49 of the Employment Act, 2007. This is a judicial discretion awarded to a trial court as was observed in the authority of **Kenfreight (E.A) Limited v Benson K. Nguti [2019 eKLR.**

A look at the proceeding and judgment of court brings out a clear case of a determination in strict compliance with the law and procedure on employment matters. The trial court elaborately took its time to hear and determine the issues in dispute and completed this with a lucid, sober and considered determination of the same. The Appeal only comes out as a gamble and is not substantiated.

I am therefore inclined to dismiss the appeal with costs to the Respondent.

Delivered, dated and signed this 19th day of November 2025.

D. K. Njagi Marete
JUDGE

Appearances:

1. Miss Wahome instructed by A. K Wahome & Company Advocates for the Appellant.

2. Mr Lagat holding brief Jeruto instructed by Y. Jeruto & Company Advocates for the Respondent.