

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E474 OF 2024

HARNOLD HARRYSON AMOLLO.....CLAIMANT
VERSUS
RAA LIMITED.....RESPONDENT

JUDGMENT

1. Through a Statement of Claim dated 19th June 2024, the Claimant alleges that he was employed by the Respondent as a Field Sales Manager from 6th February 2023 and continued in that position until his employment was unfairly terminated on 13th January 2024.

2. The Claimant asserts that the decision to terminate his employment was premeditated and that the purported disciplinary process was merely a facade to justify his wrongful dismissal. He further contends that the termination of his contract was conducted in contravention of the law, lacking due process, and was both malicious and unlawful. Accordingly, the Claimant seeks the following reliefs against the Respondent:

(a) That the Court do find the termination of the Claimant's employment Contract without giving reasons was wrongful, Malicious, Unprocedural, illegal, and unconstitutional.

(b) That the Court do find the procedure for the termination of the Claimant's services was wrongful, Malicious, unprocedural, illegal and unconstitutional.

(c) That the Court do find that the Respondent's action of refusal and or neglecting to pay the Claimant his accrued leave days unlawful and untenable.

(d) That the Court do find that the Respondent's action of refusal and or neglecting to issue the Claimant with a certificate of service Illegal, Malicious and Unlawful.

(e) That as result this Court do hereby ORDER that the Respondent to pay the Claimant all his terminal dues and other accrued unpaid dues as computed below:

i. 11 leave days Kes. 130,641.76

ii. Damages due to wrongful termination of contract. Salary Kes. 249,407.00 X 12 Months – Kes. 2,992,884.00.

iii. General, aggravated, exemplary, and or special damages.

iv. Issuance of a proper Certificate of Service.

- v. *Cost of this suit.*
- vi. *Interest on i, ii, iii, v*
- vii. *Any other relief that this Honourable Court may deem fit and expedient to grant.*

3. The Respondent filed a Response dated 30th July 2024, opposing the Claim and asserting that the Claimant was provided a fair opportunity to present his case, with no predetermined outcome.
4. Accordingly, the Respondent holds that the Claimant is not entitled to the reliefs sought in the Statement of Claim.
5. The matter proceeded for hearing on 21st July 2025, during which both parties presented oral evidence.

Claimant's Case

6. The Claimant testified in support of his case as CW1. At the commencement of his testimony, he adopted his witness statement as his evidence in chief and tendered the list and bundle of documents filed with the Memorandum of Claim as exhibits before the Court.

7. The Claimant testified that on or about 11th November 2023, he was issued with a Notice to Show Cause regarding a Sales Representative from another company who allegedly changed her route without prior notice. The Notice referred to him as the Head of Sales, a position he did not hold.
8. He asserted that he believed he was being unfairly targeted, as he was neither the Head of Sales nor responsible for logistics or managing Sales Representatives.
9. The Claimant averred that in his response, he explained that the route change was made under direct instructions from Mzuri Sweets, the employer of the Sales Representative, and was therefore beyond his authority. Despite this explanation, the Respondent proceeded to withdraw his benefits without prior warning, even though he had no involvement in the matter.
10. He further averred that on or about 21st November 2023, the Respondent issued him another letter of inquiry addressing four issues.
11. The Claimant contended that the four issues raised were not within his responsibilities as Field Sales Manager/Business Development Manager, nor had

he ever prepared or approved reports on those matters, which were normally handled by the Head of Sales, Head of Merchandisers, and Sales Admin staff.

12. He further stated that he did not prepare, amend, or share the Senri Report, the Summary Visit Report, the Merchandiser Visit Check Report, or the Merchandiser Report for fare allocation. That further, he did not prepare or amend Merchandisers' route plans and therefore could not explain deviations from the planned routes.

13. The Claimant further stated that the undue scrutiny and what he described as a "witch-hunt" led to illness, resulting in a diagnosis of hypertension.

14. In the Claimant's view, his employment was unprocedurally terminated on 13th January 2024.

15. He added that during his tenure, he successfully onboarded several clients and consistently met his targets.

16. The Claimant further averred that he maintained a clean service record and was a diligent and devoted employee, having served for a long period without warnings or notices; yet, the Respondent has failed to issue him a Certificate of Service.

Respondent's Case

17. The Respondent presented oral evidence through **Elisha Okinyi**, who testified as RW1 and identified himself as the Respondent's Finance Manager. Equally, he adopted his witness statement, along with the list and bundle of documents filed on behalf of the Respondent, as his evidence in chief.

18. In his testimony, RW1 stated that on 21st November 2023, the Claimant was served with a letter of inquiry requesting explanations regarding the following issues that had arisen on that date:

- i. *The Senri Report had been changed to Summary Report without Management approval.*
- ii. *The Merchandisers Visit Check Report issued to the Managing Director for fare allocation was incorrect.*
- iii. *Information regarding the Saturday visits by merchandisers in the upcountry team was not captured in the Merchandisers Visit Check Report.*
- iv. *It was noted that Merchandisers were not following the set route plan.*

19. RW1 testified that the Claimant's response to the Enquiry Letter dated 22nd November 2023 was deemed unsatisfactory by the Respondent, leading to the

issuance of a Notice to Show Cause and an Invitation to a Disciplinary Hearing dated 23rd November 2023.

20.He stated that due to unavoidable circumstances, the hearing scheduled for 23rd November 2023 did not take place, and the Claimant was instead served with a rescheduled Invitation for Hearing dated 14th December 2023.

21.RW1 further testified that the disciplinary hearing, originally scheduled for 18th December 2023, was held on 22nd December 2023 due to the Claimant's illness, during which the Claimant admitted that the charges against him were true.

22.He averred that a Sales Administrator informed the Respondent that she altered the Senri Report under directives from her department head, the Claimant, following consultation with the Head of Sales.

23.RW1 stated that by issuing such directives, the Claimant violated the Respondent's Human Resources Policy.

24.He further testified that as Field Sales Manager, the Claimant was responsible for all reports from Sales Representatives and Heads of Merchandisers, including Customer Route Planning, Attendance, Market, and Stock-Out Reports, as well

as processing payments and transport allowances for Promoters before submission to the accounts department.

25.RW1 further stated that the Claimant was aware of the route changes, which were implemented without proper management approval and only reported by him upon inquiry.

26.He added that all issues raised by the Respondent fell within the Claimant's job description.

27.RW1 asserted that the Claimant was afforded a fair hearing and ample opportunity to present his case during the disciplinary meeting.

28.The Respondent's disciplinary committee recommended termination as a disciplinary measure after establishing that the case against the Claimant had been proven.

29.On 13th January 2024, the Claimant was issued with a Notice of Termination of Employment Contract in accordance with his contract and the Employment Act.

30.RW1 further testified that the Claimant served his three-month notice period, leaving the Respondent's employment on 13th April 2024. Upon termination, he

received all terminal dues and was issued a Certificate of Service, which he is yet to collect.

31. According to RW1, the Claimant had exhausted all accrued leave at the time of termination.

Submissions

32. The Claimant argued that the letter of termination did not disclose the reason for termination of his employment. To support this position, he cited the decision in **Kagai v Kenga Equatorial Hotels Limited t/a Mombasa Continental Resort (Cause E021 of 2022) [2024] KEELRC 2641** and **Esther Wanjiku Wangari v AAR Health Care Holdings Limited [2021] KEELRC 483**.

33. The Claimant further submitted that the disciplinary process lacked impartiality and that the reasons cited did not relate to his actual job duties. He maintained that the minutes of the disciplinary hearing were altered to portray him as guilty, rendering the process a mere formality aimed at validating an unlawful decision.

34. The Claimant further asserted that the Respondent failed to establish any breach of company policy on his part. He added that the Respondent sought additional evidence shortly before his termination, yet this evidence was never shared with him for a response. Instead, it was secretly relied upon to terminate his

employment and was only disclosed after this suit had been filed, contrary to Article 50 of the Constitution and the Fair Administrative Action Act. In support of this position, the Claimant cited the case of **Wanyera v Central Isiolo Investment Limited (Appeal E002 of 2023) [2024] KEELRC 596**.

35. Referencing the decision in **Duncan Gitungo Kithinji v CIC General Insurance Limited [2020] KEELRC 623**, the Claimant contended that he was neither informed of, nor afforded, the right to appeal the termination decision. In his view, this violated the Constitution and the Fair Administrative Action Act.

36. On the other hand, the Respondent submitted that it had a valid basis for terminating the Claimant's employment. According to the Respondent, the Claimant was dismissed for failing to perform, or carelessly and improperly performing, his duties as captured in the four charges levelled against him. To support this position, the Respondent relied on the decision in **Galgalo Jarso Jillo v Agricultural Finance Corporation [2021] eKLR**.

37. The Respondent further argued that the Claimant was fully aware of the reasons for his termination. In its view, the Claimant's assertion that no reasons were provided amounts to dishonesty and a deliberate misrepresentation. The Respondent added that the notice of termination expressly indicated that the

decision was the product of a review of the disciplinary process undertaken, and not an arbitrary action.

38. To this end, the Respondent urged the Court not to place undue emphasis on what it termed an inadvertent omission to expressly enumerate the reasons in the termination letter, asserting that the reasons were nonetheless valid and compliant with Sections 43 and 45 of the Employment Act.

39. To bolster its submissions, the Respondent invited the Court to consider the authorities in **Echwa v Kenya Airports Authority (Civil Appeal E099 of 2021) [2024] KECA 828 (KLR)**, **Lawrence Nyamichaba Ondari v National Hospital Insurance Fund [2018] eKLR**, and **Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 Others [2019] eKLR**.

40. On procedural fairness, the Respondent maintained that the Claimant had sufficient time to prepare his defence and to call a witness during the disciplinary hearing, a right he elected not to exercise. For this proposition, reliance was placed on the case of **Matsesho v Newton (Cause 9 of 2019) [2022] KEELRC 1554 (KLR)**.

41. In conclusion, the Respondent asserted that the Claimant's termination was both substantively justified and procedurally fair, and was therefore lawful.

Analysis and Determination

42. The Court has considered the pleadings of both parties, the evidence on record, and the rival submissions, and has identified the following issues for determination:

- i. Whether the Respondent has established a valid and fair reason for termination of the Claimant's employment;*
- ii. Whether the Claimant was afforded procedural fairness prior to dismissal; and*
- iii. Whether the Claimant is entitled to the reliefs sought.*

Valid and fair reason for termination from employment?

43. Pursuant to **Section 43(1) of the Employment Act**, the employer bears the burden of proving the reason or reasons for terminating an employee's employment. Failure to discharge this burden renders the termination unfair within the meaning of Section 45 of the Act.

44. According to **Section 45(2)(a) and (b) of the Employment Act**, a termination is unfair if the employer cannot demonstrate that the reason for dismissal was valid

and fair, relating either to the employee's conduct, capacity, or compatibility, or arising from the employer's operational requirements.

45. Based on the foregoing statutory provisions, the Respondent was required to demonstrate that it had a valid and fair reason for terminating the Claimant's employment, and that the reason was related to his conduct.

46. In the present case, the termination letter issued to the Claimant does not disclose the reasons for his termination from employment. While it references the disciplinary process, the Respondent was nonetheless obliged to state the precise grounds for termination and identify the allegations substantiated against the Claimant. Given that the Claimant was issued with an enquiry letter and two separate Notices to Show Cause (18th November and 23rd November 2023), it remains unclear what specific grounds led to his termination from employment.

47. In light of the foregoing, the Court is unable to identify the reasons for termination against which to assess the standards of validity and fairness

48. Notwithstanding the above, the Court has reviewed the enquiry letter dated 21st November 2023 and the Notice to Show Cause dated 23rd November 2023, in which the following allegations were made against the Claimant:

- (a) The Senri report that was being shared on email was changed to a summary visit report;*
- (b) The Managing Director was provided with a merchandiser's visit check report for fare allocation and the report was incorrect;*
- (c) The information regarding the visits of merchandisers in the upcountry team during Saturdays was not being captured in the Merchandisers Visit Check Report;*
- (d) The merchandisers had not been following the set route as initially planned.*

49. The Claimant contended that the four issues raised by the Respondent did not fall within his responsibilities as Field Sales Manager/Business Development Manager, nor had he ever prepared or approved reports on those matters. He stated that such reports were ordinarily prepared, amended, and circulated by the Head of Sales, Head of Merchandisers, and Sales Administrators.

50. In support of its case, the Respondent submitted a copy of the Claimant's job description, which indicated that among his duties he was to be *"responsible for all reports from the sales representatives, head of merchandisers, including customer route planning, attend markets, stock out reports etc"*

51. The Claimant stated that he first saw the job description exhibited by the Respondent during the Court proceedings. Notably, the document bears only the signatures of the HOD who prepared it and the HR Manager who reviewed it. Conspicuously missing is the Claimant's signature. It is also instructive to note that the job description was signed on 25th May 2023, whereas the Claimant executed his employment contract on 6th February 2023.

52. Connected to the foregoing, the Respondent did not present evidence to show that the Claimant was issued with the job description or that he was aware of the roles and expectations set out therein.

53. What's more, the Respondent did not refute the Claimant's assertion that the allegations against him did not fall within his responsibilities, but were instead within the scope of the Head of Sales, Head of Merchandisers, and Sales Administrators.

54. Similarly, the Respondent failed to clarify the distinctions between the Claimant's roles and those of the Head of Sales and Head of Merchandisers, notwithstanding that the allegations levelled against the Claimant related to sales and merchandising. As a result, it remains unclear where the responsibilities of each role begin and end.

55.The Respondent further exhibited a handwritten statement from a Sales Representative, by the name Kerubo, indicating that the Summary Visit Report had been altered without proper guidelines, following directives from the Claimant, her supervisor.

56.However, the statement is dated 9th January 2024, nearly three weeks after the Claimant's disciplinary hearing, by which time the decision to terminate his employment had already been made. Consequently, the statement had no bearing on the Claimant's disciplinary proceedings and the reason(s) that may have led to his termination from employment.

57.Revisiting Sections 43(1) and 45 (2) (a) and (b) of the Employment Act, the burden rested on the Respondent, as the employer, to prove a balance of probabilities that the Claimant failed to perform his duties as required.

58.Applying the foregoing statutory provisions to the present case, and for the reasons stated above, the Court finds that the Respondent has not discharged its evidential burden by proving that there existed a valid and fair reason for terminating the Claimant from employment.

Procedural fairness?

59. **Section 45(2)(c) of the Employment Act** requires an employer to demonstrate that an employee's termination was carried out in accordance with a fair procedure. With regard to the specific process to be followed prior to termination of an employee, Section 41 provides that the employee must be notified of the allegations against them and given an opportunity to make representations in the presence of a fellow employee or a shop-floor union representative of their choice.

60. It is evident that the Claimant was served with the Enquiry Letter dated 21st November 2023 and a Notice to Show Cause dated 23rd November 2023. Notably, he was required to submit his response to the Notice to Show Cause by 24th November 2023 at 08:00 hours. The same letter also informed him that the disciplinary hearing would take place on 24th November 2023.

61. It is evident from the foregoing that the Claimant was afforded less than one day's notice both to respond to the Notice to Show Cause and to prepare for and attend the disciplinary hearing.

62. In **Nebert Mandala Ombajo v Institute of Certified Public Accountants of Kenya (ICPAK), Nakuru Civil Appeal No. 62 of 2018**, the Court of Appeal

emphasized that disciplinary proceedings are a grave matter for an employee, given their potentially devastating consequences. The Court held that where serious allegations are involved, an employee must be given sufficient time to prepare psychologically and, if necessary, to seek appropriate advice or representation.

63. While the disciplinary hearing was subsequently rescheduled to 22nd December 2023 for reasons not apparent from the record, it remains evident that requiring the Claimant to respond to the Notice to Show Cause within less than 24 hours likely impaired his ability to prepare a proper defence. Indeed, the record does not contain any response by the Claimant to the Notice to Show Cause, making it highly probable that he was unable to adequately do so, given the unreasonably short notice period.

64. Further, the Claimant was not accorded an opportunity to appeal the decision to terminate his employment.

65. Although the Employment Act does not expressly provide a right of appeal against termination, it is considered best practice in a disciplinary process and an important element of procedural fairness. This position is implicit in Section 45(5)(a) of the Employment Act, which requires the Court, implicit in determining whether a termination was just and equitable, to consider “*the*

procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision.”

66. Coupled with the foregoing, the Respondent's failure to inform the Claimant of the reasons for terminating his employment further undermines the fairness of the process.

67. In the end, and upon considering all the circumstances, the Court is constrained to find that the Claimant's termination from employment was not just and equitable.

Reliefs?

68. Having found that the Respondent neither established a valid and fair reason for terminating the Claimant's employment nor acted in a just and equitable manner in so doing, the Court awards the Claimant compensatory damages equivalent to five months' salary. In arriving at this award, the Court has considered the duration of the employment relationship and the circumstances surrounding the Claimant's termination.

69. The Claimant sought compensation for 11 accrued leave days. However, the Respondent produced the Claimant's leave record reflecting a balance of 0.43

days. The Claimant did not rebut this evidence or demonstrate entitlement to any additional days. Accordingly, this claim fails.

70.Regarding the claim for general, aggravated, and exemplary damages, the Court adopts the position in **NEC Corporation v Samuel Gitau Njenga [2018] eKLR**, which holds that “*the court does not think, however, that violation of every conceivable contractual, statutory, or constitutional right warrants a separate award of damages.*” Accordingly, this relief is declined.

Orders

71.In the final analysis, judgment is entered in favour of the Claimant against the Respondent as follows:

- (a) A declaration that the termination of the Claimant’s employment was unfair and unlawful.**
- (b) Compensatory damages awarded to the Claimant in the sum of Kshs 1,247,035.00, equivalent to five months’ salary.**
- (c) Interest on the amount in (b) at the court rate from the date of judgment until full payment.**
- (d) The Claimant shall also have the costs of the suit.**
- (e) The Claimant is entitled to collect his certificate of service as the employment relationship was admitted.**

DATED, SIGNED and DELIVERED at **NAIROBI** this **1st** day of **December** 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant

Mr. Odipo

For the Respondent

No appearance

Court Assistant

Mohammed

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email.

They have waived compliance with **Order 21 Rule 1** of **the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In

permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering

justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act**

(Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL