REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI

APPEAL NUMBER E252 OF 2025

ANTHONY KIMUGE……..…………..……………...APPELLANT

-VERSUS

G4S KENYA LIMITED……………………..RESPONDENT

(Being an Appeal from the Judgment and Decree of the Hon. A. Nyoike (SPM) delivered on 21st July 2025 in Nairobi MCELRC E2176 of 2023)

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. A. Nyoike (SPM) delivered on 21st July 2025 in Nairobi MCELRC E2176 of 2023 between the parties filed a Memorandum of Appeal dated the 29th July 2025 seeking the following orders: -

a) The Judgment and Decree of the Hon. Nyoike in Milimani MCELRC E2176 of 2023 be set aside.

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b) **The Honourable Court be pleased to award the Appellant 12 months compensation for wholly termination.**

GROUNDS OF THE APPEAL

2. The Honourable Magistrate erred both in fact and in law in dismissing the claimant's suit but allowing some prayers for salary and half costs.

3. The Honourable Magistrate erred both in fact and in law in failing to award the Appellant compensation for unlawful termination when the claimant had proven his claim on a balance of probability.

4. The Honourable Magistrate erred both in fact and in law in failing to find that there was procedural unfairness in the process and hearing of the claimant and that the hearing was a sham with the claimant not being given an opportunity and documents to prepare for the said hearing.

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BACKGROUND TO THE APPEAL

5. The Claimant/Appellant filed a claim against the Respondent vide a memorandum of claim dated the 6th of November 2023 seeking the following orders: -

a) A declaration that the termination of the Claimant's contract of service is unfair, unlawful, invalid and null and void.

b) General damages for unfair and unlawful termination in the sum of Kshs. 255,680.00 being equivalent to 12 months' salary at the rate of Kshs.15,980/-per month.

c) Unpaid salary for the last worked three months of Kshs 47,940.00

d) Unpaid salaries from December 2021 to date at the rate of Kshs 15,980/-per month.

e) Costs of this suit

f) Interest in (2), (3), (4) and (5) above

g) Any other relief as the Court may deem just

(pages 3-5 of Appellant's ROA dated 26th July 2025).

14. The Claimant filed his list of documents with the bundle of documents attached dated 6th November 2023; and undated witness statement (see pages 7-18 of ROA).

15. The claim was opposed by the Respondent who entered appearance and filed a response to statement of claim dated 4th April 2024 (pages 76-78 of Supplementary ROA dated 11th August 2025). They also filed a witness statement of WYCLIFFE SAWANGA dated 3rd April 2024 (pages 23-25 of Appellant's ROA and pages 79-81 of Supplementary ROA); a list of documents dated 4th April 2024 with the bundle of documents attached; and a supplementary list of documents dated 4th July 2024 with the bundle of documents attached (pages 82-157 of ROA).

16. The Claimant/Appellant's case was heard on the 15th of July 2024 where the claimant testified in the case, relied on his filed witness statement as his evidence in chief, produced his documents as exhibits, and was cross-examined by counsel for the Respondent Mr. Andiwo (pages 63-68 of Supplementary ROA).

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17. The Respondent's case was heard on the same day with the Respondent calling one (1) witness, Wycliffe Sawanga, to testify on their behalf. He relied on his filed witness statement as his evidence in chief, and produced the documents attached to the Respondent's list of documents as well as supplementary list of documents, as exhibits. He was cross-examined by counsel for the claimant Mr. Ayugi (pages 68-71 of ROA).

18. The parties took directions on filing of written submissions after the hearing, and complied.

19. The Trial Magistrate Court delivered its judgment on the 21st of July 2025, dismissing the Appellant's claim for unfair termination, but awarding him one month's salary in lieu of notice and interest on the same from the date of judgment, and half of the costs of the suit (judgment at pages 55-61 of Appellant's ROA).

DETERMINATION

20. The appeal was canvassed by way of written submissions. Both parties ccomplied.

Issues for determination

21. In his submissions dated 25th August 2025, the Appellant identified the following sole issue for determination:

i. Whether the Appellant's appeal has merit and should be allowed.

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22. On their part, the Respondents submitted generally on the appeal in their submissions dated 9th October 2025.

23. The court on perusal of the grounds of appeal finds the issues for determination in the appeal were-

a. *whether the trial court erred in fact and law in failing to find unfair termination*

b. *Whether the trial court erred in fact and law in finding on relief sought.*

<u>Whether the trial court erred in fact and law in failing to find unfair termination</u>

<u>The appellant's submissions</u>

24. The appellant at trial submitted that the respondent ought to have accorded the appellant a fair hearing in accordance with Section 41 and 45 of the Employment Act and Article 50 of the constitution [see the page 30 of the record of appeal. For a hearing to be fair, the provisions of the constitution and the rules of natural justice ought to be upheld. Whereas the learned magistrate at page 6 of the judgment states that the respondent followed the proper procedure before summarily dismissing the claimant and that the fact that the claimant was not satisfied with the findings of the disciplinary committee does not make the procedure unfair [see page 60 of the record of appeal. We submit that the appellant challenged the procedure in which the hearing was conducted and not the outcome of the hearing. For a hearing to be procedurally sound, the stipulated rules/principles ought to be adhered to. The appellant submitted that the hearing accorded to him by the respondent was unprocedural and fell short of the requirements of sections 41 and 45 of the Employment Act and Article 50 of the Constitution. We submit that the learned magistrate

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erred in fact and in law in falling to find that the appellant's termination was unlawful [see page: 60 of the record of appeal). Section 45 of the employment act provides that a termination of employment by the employer is unfair if the employer fails to prove that the employment was terminated in accordance with a fair procedure. Article 50 of the constitution provides for the right to fair hearing. This right entails the right of one to be informed in advance of the evidence intended to be relied upon and given reasonable access to such evidence. The respondent did not issue the appellant with documents it intended to rely upon at the disciplinary hearing so as to enable the appellant to adequately prepare for his defence. The respondent's failure to issue the appellant with the documents was tantamount to suppression of material evidence from the appellant. We rely on the case of David Wanjau Muuhoro v Ol Pajeta Ranching Limited [2014] eKLR, the court held thus: First the right o sufficient time between the date of service to show cause and the date of hearing to prepare for the hearing, second the right to fully understand the charges, general charges such as dishonesty, fraudulent activities are vogue and offer an employee no opportunity to respond opportunity to respond intelligibly. Lastly the employee has the right to documentation. The employee must be given the documents the employer intends to rely on at the hearing." We further place reliance on the case of Adrew Mutuma v DHL Worldwide Express Kenya Limited [2025] eKLR_where the Employment and Labour relations court at paragraph 66 of its judgment stated that in the absence of documents furnished to the claimant to assist him prepare for his defence, it was the courts finding that the respondent adopted an unfair procedure as tested against the provisions of section 45 of the Employment Act that the employer adopts a fair procedure in terminating a contract of employment. Additionally, in Bernard Ng'eno East African Breweries PLC Cause NO.

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E874 OF 2023, Lady Justice L. Ndolo at paragraph 61 and 62 of the judgment stated thus: "I award the claimant 12 months salary in compensation for unlawful dismissal having further considered the respondents refusal to avail the claimant an opportunity to see the investigation report and witness statement relied upon to make the decision to dismiss him.' Additionally, the right to fair hearing entails the right to challenge evidence. The appellant was not accorded an opportunity to challenge the evidence presented by the respondent [see Page 126 of the record of appeal. The respondent did not issue the appellant with a notice to show cause, so as to adequately answer to the charges brought against him. We rely on the case of Naomi Wangui Kung'u Board of Governors S.C.L.P Samaj School [2022] eKLR where the Employment and labour relations court held thus: The provisions of Section 41, 43 and 45 are clear. An employer who wishes to summarily dism ss an employee without notice in terms of Section 44 of the Employment Act, 2007 must give a Notice to Show Cause to the employee and notify them to respond to specific charges levelled against them for which they may be dismissed if found guilty. The right to fair hearing also entails the right of one to have the charges brought against them read out to them so that they may adequately respond to the same. A reading of the disciplinary hearing conducted by the respondent indicates that after the investigating officer read out the investigation report, the appellant was asked to state what happened [See page 126 of the record of appeal. That no charges were read out to the accused person so as to be put on his defence [see page 126 of the record of appeal)It is now an established principle that an employee must be heard no matter how weak or useless his or her defence might seem to be. An employee must not seem to be heard but heard having followed the due stipulated procedure. To that extent we submit that the hearing conducted by the respondent was a

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sham hearing. In the case of Nicholas Otieno v Unilever Kenya Limited (Cause 1730 of 2017) [2023]eKLR, the court in upholding that the claimants termination was unfair stated thus;"Section 45 [4] [b] of the Employment Act stipulates that a termination of shall be unfair where it is found out that in all the circumstances of the terminating case, the employer did not act in accordance with justice and equity in the employment of the employee. To make conclusions that are not connected with the charges facing an employee, and make them a basis for sanctioning the employee, and to suppress material evidence from him or her during the disciplinary hearing, amounts not to acting in accord with equity and justice." Section 45 of the Employment Act places the burden of proof on the employer to prove that the termination of an employee was in accordance with fair procedure. Whereas the learned magistrate holds that the respondent had discharged this burden [see page 60 of the record of appeal. We submit that the respondent ought to have shown that indeed the appellant was given documents such as the investigation report so as to adequately prepare for his defence. Additionally prior to the hearing the appellant ought to have been issued with a notice to show cause so as to adequately answer to the charges brought against him. is sued with a suspension letter and later on Additionally, during the hearing no charges to answer to the same. A clear reading of the to confirm what happened [see page 126 of 15). The appellant was only invited for a disciplinary hearing. were read out to the appellant, so as minutes indicate that he was asked the record of appeal. The appellant termination y the respondent was unlawful, We thus submit that the learned magistrate erred in law and in fact in failing to award the appellant compensation for unlawful termination.

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The Respondent's submissions

25. Reason for termination-Section 43(1) of the Employment Act, 2007 provides that an employer is required to prove the reasons for the termination and only where it fails to do so, is the termination deemed to have been unfair within the meaning of section 45 of the Employment Act. In considering those reasons, section 43(2) provides that the reasons for termination 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 (emphasis ours).Section 45 of the same Act provides that a termination is unfair if the employer fails to prove that the reason was valid and fair related to the employee's conduct, capacity and compatibility or based on the operational requirements of the employer. The appellant's employment was terminated for negligent performance of duties and failing to adhere to the standard operating procedures regarding handing over and taking over of duties. Section 47(5) of the Employment Act provides that for any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination or wrongful dismissal has occurred shall rest on the employee. The respondent produced in evidence a copy of its Disciplinary Code of Conduct (DCC) and the respondent's Standard Operating Procedures (SOPs) for guards. Clause 8.3 and 8.6 of the DCC provides that failing to safeguard the company/client's property or failing to complete the handing/taking over procedures constitutes gross negligence and attracts a sanction of summary dismissal (page 98 of the supplementary record). Similarly, clause 7 of the SOPs provides that guards are required to be alert, attentive and observant

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throughout their shifts (page 156 of the supplementary record).Further, clause 3.11 of the SOPs (page153 of the supplementary record) provides that:

"During the handing over/taking over period, both shift guards will physically check the materials lying on the compound to ensure they are secure and intact. They will also inspect the perimeter fence to ensure that it's okay. Once they are satisfied that everything is in good order, they will sign the guard book... the guard will handover duties... after both having physically inspected the premises and confirmed that everything is in good order. They will record the same in the OB and sign off."The appellant only challenges the procedure followed by the respondent. As such, the findings of the learned magistrate at page 5 of the judgment (page 59 of the record) that the respondent had a justified reason on account of the appellant's negligence should not be disturbed as they are not disputed. This is further buttressed by the fact that the claimant admitted during cross examination that:

a. He was on duty on 15th October 2021, the day when the theft occurred and that there were no incidents of vandalism when he took over the night shift from the day shift team (page 65 of the record);

b. There were copper wires that were cut and stolen from the client's premises (page 66 of the record);

c. He was required to conduct a joint patrol of the premises with his colleague during his shift but failed to do so (page 65 to 66 of the record).

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26. Due Process-The appellant's appeal is founded on the ground that the respondent did not follow due process for the following reasons:

a. The appellant was not issued with a show cause letter to enable him to adequately answer to the charges brought against him;

b. No charges were read out to the appellant during the disciplinary hearing so as to be put on his defence;

c. The appellant was not furnished with the necessary documents to enable him to adequately prepare his defence; and

d. The appellant was not accorded an opportunity to challenge the evidence presented by the respondent. These issues are not properly before the court as they were never in issue in the lower court. The issues were not pleaded by the claimant or raised in the course of the hearing and are only being raised for the first time during appeal. The Court of Appeal in Kenya Hotels Limited vs. Oriental Commercial Bank Limited [2018] KECA 692 (KLR) when dealing with a claim wherein a party had attempted to introduce new issued during the appeal held that:

"Where the applicant seeks to introduce an entirely new point, there are well known structures that seek to ensure firstly, that an appellate court does not, in disguise, metamorphose into a trial court and make first-instance determinations without the benefit of the input of the court from which the appeal arises... Due to these fundamental concerns, the Courts have developed fairly elaborate principles that guide it in determining whether

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or not to allow a new point on appeal. In Openda v. Ahn, (ca 42/1981) this Court identified some of the principles to include that all grounds of appeal must arise from issues that were sufficiently pleaded, canvassed, raised or succinctly made issues at the trial; that the point sought to be introduced must be consistent with the applicant's case as conducted in the trial court, not changing it into totally different case; the matter must have been properly pleaded and the facts in support of the new point must have come out in the trial court; a new point which has not been pleaded or canvassed in the trial court should not be allowed to be taken on appeal."The Court of Appeal in Republic v Tribunal of Inquiry to Investigate the Conduct of Tom Mbaluto & others ex-parte Tom Mbaluto [2018] eKLR held that Kenya's appellate system restricts the appellate court to consideration of the issues that were canvassed before and decided by the trial court to avoid instances where appellate courts make decisions without the benefit of the input of the court of first instance. The issues raised in the appellant's grounds of appeal as framed could have been raised before the trial court if at all they had any basis but the appellant conveniently chose to omit them or fail to pursue them. As such, these grounds cannot be considered by this court as the trial court was robbed of the opportunity to determine the issues. The respondent submits that the appeal should be dismissed on this ground, and without more. If the court is not inclined to dismiss the appeal on this ground, the respondent submits on the various issues below.

27. Issuance of a show cause- The appellant's allegation at paragraph 10 of his submissions that he was not issued with a notice to show cause to enable him adequately to answer to the charges before him is incorrect. The claimant was issued with a notice of the

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disciplinary hearing which outlined the charges that he faced (page 121 of the supplementary record).The show cause contemplated under section 44 of the Employment Act, 2007 serves the purpose of notifying the employee to respond to specific charges levelled against them for which they may be dismissed if found guilty. Having set out the charges that the claimant faced in the notice of disciplinary hearing, the said document met the legal requirement for a show cause. The Court in Joseph Mwangi Gioche vs Gatamaiyu Dairy Farmers' Cooperative Society Limited (2019) eKLR held that: "The requirement of issuance of notice to show cause and invitation to a disciplinary hearing does not have to follow a pedantic and mechanical path. Once the court is satisfied as the case here that the employee had reasonable notice of the allegations against him and he has been called upon to answer questions around those allegations and has done so, if a dismissal follows thereafter the employee cannot insist on a mechanical process of notice to show cause and a disciplinary hearing." As demonstrated above, the invitation to the disciplinary hearing outlined the charges that the appellant faced, being, gross negligence with regards to performance of duties In and failure to complete assignment handover /take over procedures. The particulars of the charge were also provided. While the invitation was dated 15th October 2021, the hearing was initially scheduled on 4th November 2021 and subsequently postponed to 9th November 2021 and later to 18th November 2021. By the time the hearing was conducted on 18th November 2021, there had been a span of thirty-four (34) days since the invitation outlining the charges was issued. Having had 34 days before the hearing happened, the appellant never requested any additional information with respect to the charges or prepared a written response to the charges he faced. As such, the

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claim that he was unaware of the charges that he faced before he attended the hearing is made in bad faith and is an afterthought.

28. No charges read out during the hearing- The appellant's claim at paragraph 11 of his submissions that the charges were not read out to him during the hearing to enable him to adequately respond to them is incorrect. The appellant confirmed that he attended the disciplinary hearing held on 18th November 2021 and signed the minutes of the meeting (page 123 of the supplementary record). The minutes of the hearing confirm that the chairperson asked the accused persons, which group included the appellant, if they each understood their rights as spelt out in the invitation and upon the accused persons confirming, the chairperson invited the company representative who read out the charges to the employees in attendance (page 124 of the supplementary record). Minutes are generally a true reflection of what has been resolved at a meeting. There was no evidence to indicate that the document was a forgery or had been fabricated or that the appellant was compelled to sign the minutes. In the absence of a challenge to the contents of the minutes as an accurate record of the proceedings at the disciplinary hearing, the respondent submits that the charges were indeed read out to the appellant.

29. Documents relied upon during the hearing- The appellant's claims at paragraph 14 of his submissions that he was not issued with a copy of documents such as an investigation report to enable him to prepare his defence is also an afterthought. As this was not pleaded, there are no particulars as to the other documents apart from the investigation report which the appellant hoped to be furnished with. There is also no evidence that any request for

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documents was made and declined by the respondent. The Court in Wilson Mutabari Mworia v Barclays Bank of Kenya Limited [2021] KEELRC 541 (KLR) when adjudging a claim by the claimant as to the fairness of his termination on account of him not being provided with an audit report held that: "what is important in determining the fairness of a disciplinary process is the sufficiency and detail of the charge against an employee. Hence, the test should be whether an employee has been sufficiently informed of the allegations he or she is facing... During cross-examination, the claimant admitted that at the time he attended the disciplinary hearing, he was aware that the issue at hand was in regard to the transactions relating to Mr. Floyd Ingram's account. In the circumstances, the claimant was not in any way prejudiced by the absence of the investigation report as the allegations spelt out, were sufficient and comprehensive enough to enable him defend himself adequately. Besides, the claimant participated in the investigations process. He appeared for a hearing and was even invited for a second hearing. In Maina Mukoma v Cannon Assurance Limited [2016] KEELRC 603 (KLR), the court when faced with a challenge to the disciplinary process on account of the investigation report not being availed held as follows: "the Court has carefully reviewed and considered the suspension letter dated 18th April, 2013, the show cause letter dated 12th August 2013 and is reasonably persuaded that they fully informed the claimant of the charges against him for which the respondent was contemplating terminating his services. The claimant was a senior officer of the respondent and actively interacted with the issue of the Arusha Skyline Hotel besides the accusations against him were clearly laid out and all was required of him was to respond. He instead asked to be furnished with an investigation report. What was there to be investigated if at all yet both the claimant and the respondent were fully aware of the Arusha Skyline issue

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and the only question left was whether the claimant as the Chief Executive Officer should bear responsibility? All he needed at this juncture was to appear before the disciplinary panel and give his side of the story but he did not. The respondent cannot be faulted for dismissing him thereafter." In the present case, the appellant was involved in the investigations and confirmed that he recorded a statement with the investigator (page 113 of the supplementary record).The appellant was aware all along that he was required to explain the circumstances under which the client's property was vandalized when he was on duty. The appellant participated in the disciplinary process and presented his defence. The Court of Appeal in Bett Francis Barngetuny & another v Teachers Service Commission & another [2015] eKLR defined what constituted a fair hearing before dismissal from employment as follows:"Each of the appellants appeared in person before the disciplinary panel and defended themselves. Their evidence was considered before a decision was arrived at. It cannot therefore be argued that the appellants were denied an opportunity to defend themselves. In the Nigerian Supreme Court decision, B. A. IMONIKHE V UNITY BANK PLC S. C. 68 of 2001 that was cited by this Court in JUDICIAL SERVICE COMMISSION V GLADYS BOSS SHOLLEI & ANOTHER (supra), it was held that:Accusing an employee of misconduct, etc by way of a query and allowing the employee to answer the query, and the employee answers it before a decision is taken satisfied the requirement of fair hearing or natural justice. The appellant was given a fair hearing since he answered the queries before he was dismissed. (emphasis ours)"The appellant was asked questions regarding the grounds he faced and the circumstances of the theft and responded to them. The requirement of a fair hearing as outlined by the Court of Appeal in the case of Bett Francis above was therefore met.

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30. Opportunity to challenge evidence at the disciplinary hearing-While equally not pleaded, the appellant vaguely claims at paragraph 9 of his submissions that he was denied an opportunity to challenge the evidence presented by the respondent and reference is made to the portion of the minutes where the appellant's case was handled (page 126 of the supplementary record). Halsbury's Laws of England, Volume 16, Fourth Edition states at paragraph 274 that:"At a disciplinary hearing, and on appeal, the procedure must be fair; in particular, the charges or complaints must be made known to the employee who should be given the right to be accompanied by a trade union representative or a fellow employee of his choice. Breach of the rules of natural justice in this context does not form an independent ground upon which to attack a dismissal, but it is an important matter for a tribunal to take into consideration. The rules of natural justice must, however, be applied realistically. In particular, there is no absolute right for the employee to be present at all stages of an investigation or to challenge or cross examine witnesses." The nature of the evidence that the appellant sought to challenge has not been disclosed and at no point during the proceedings did the appellant request to be allowed to challenge any evidence that might have been used against him at the hearing. Based on the foregoing, it is clear that the respondent followed due process and the appellant is merely clutching at straws to invalidate the process. This court should decline the appellant's invitation to be led astray.

Decision

31. The threshold for determination of fairness of termination of employment is according to the provisions of section 45 (2) of the Employment Act to wit:- ‘*45(2) A termination of employment by an employer is unfair if the employer fails to prove—*

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(a) that the reason for the termination is valid

(b) that the reason for the termination is a fair reason—

(i) related to the employees conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure.'' To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the Employment Act (Walter Ogal Anuro v Teachers Service Commission[2013]eKLR).

32. The trial court held –'*In my considered view, the Respondent had a justified reason to believe that the Claimant had conducted his duties negligently, amounting to gross misconduct under Section 14 (c) above. In employment matters, it is not mandatory that the Respondent obtains evidence beyond reasonable doubt, for instance, that the Claimant had failed to discharge his duties as expected of him. The withdrawal of he criminal case against the Claimant also does not clear him of the negligence allegations brought against him by the Respondent. Moreover, the Claimant did not demonstrate that he discharged his duties on the material night diligently. I find the reason given by the Respondent plausible, valid and fair. The Respondent has discharged its legal burden under 43 and 45(2). As a result, I conclude that the dismissal substantially justified.''* The court found no submissions by the appellant on the validity of the reasons. The court on perusal of the minutes of the proceedings found that the appellant admitted that there was vandalism and theft of property he was guarding and he was charged by the police for a criminal offence related to the incident. One Ngetich told the disciplinary panel that the appellant did not

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participate in the patrol and had left without a handover. The appellant confirmed that he took over duties on Friday morning and failed to handover in the evening (page 128 of supplementary record.). The appellant was dismissed on the issues before the disciplinary committee and reflected in the Notice of disciplinary enquiry /hearing dated 15th October 2021 (page 121 of supplementary record of appeal). I find no basis to disturb the finding of the trial court that the reason for termination was valid.

33. On procedural fairness- the appellant told the trial court as follows-'*I was given a notice of suspension on 29/10/2021 in which I was notified of a disciplinary hearing. There were charged. I was to respond to like gross negligence, failure to complete assignment/handover/take over procedures. I was given a chance to defend myself and I asked Boniface questions. I was then given a summary dismissal letter. There were standard operating procedures for guards which I had been enlightened about.''* The appellant having testified that the process he was taken through was as per the standard operating procedures for guards I find no basis for the appeal as they said procedures were not said to be illegal. Procedural fairness is according to section 41 of the Employment Act, to wit- '*41. Notification and hearing before termination on grounds of misconduct (1)Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.(2)Notwithstanding any other provision of this Part, an employer shall, before*

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terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.'' The appellant was invited to the hearing and informed of the charges, and he was heard and asked the employer's representative questions. The appellant confirmed the process was in compliance with the standard operating procedures for guards. I find no basis to disturb the finding of the trial court on fairness.

Whether the trial court erred in fact and law in finding on relief sought.

Appellant's submissions

34. Whether the learned magistrate erred both in fact and in law in dismissing the claimant suit but allowing some prayers for salary and half cost. The Appellant is dissatisfied with the trial court's order awarding only half the costs of the suit, notwithstanding the Appellant's clear and unqualified success. The Appellant respectfully seeks that this Honourable Court sets aside the said portion of the judgment and awards costs of the proceedings below in full. The law is settled that costs follow the event unless the court, for good reason and upon recording those reasons, directs otherwise. Section 27(1), Civil Procedure Act provides: Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge and the court or judge shall have full power to determine by whom and out of what… and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the

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fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order." In the case of Kiteme v Kimanth [2023] KEHC 605 (KLR), the High Court overturned an order for less than full costs, holding that the trial court erred by not awarding costs to the successful į arty without good reason. Similarly, in Julius Irungu Wairia Lilian Kagwiria [2018] KEHC 1491 (KLR) the court held that costs should follow the event unless there are good grounds for departing from the rule. A court's departure from the principle of full costs must be justified by cogent and recorded reasons. A mere reference to "interests of justice" or "partial success" is insufficient where the party has succeeded in substance, as established in Kiteme v Kimanthi [2023] KEHCC 605 (KLR). 22. My lord, the trial court herein did not furnish any sufficient reasons for denying the Appellant full costs.

35. Conversely, the respondent submitted that the notice awarded was erroneous the suit having been dismissed.

36. The trial court dismissed the suit. I find the award of notice pay was contrary to the holding that the suit was dismissed. The error was apparent on the face of the record. Costs follow the event and the event was that the suit was dismissed. Costs could only have been awarded to the respondent. The court holds that the trial court erred in awarding the notice pay and half costs to the appellant subsequent to its dismissal of the suit.

Conclusion

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37. The appeal is held to be without merit and is dismissed. Further, the court held that the award of notice pay and half costs was erroneous, the trial court having dismissed the suit. Consequently, the Judgment and Decree of the Hon. A. Nyoike (SPM) delivered on 21st July 2025 in Nairobi MCELRC E2176 of 2023 is set aside and substituted with a judgment that the suit is dismissed with costs to the respondent.

38. The appellant is granted costs in the appeal.

39. It is so Ordered.

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DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF DECEMBER, 2025.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Ojienda

Respondent- Mwendwa

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