

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

ELRC CAUSE NO. E085 OF 2025

FAITH KALECHE CLAIMANT

VS

S.C JOHNSON & SONS KENYA LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. By the Memorandum of Claim dated 26th August, 2025, the Claimant sues the Respondent, and seeks against them the following reliefs;

- a) One month's pay in lieu of Notice, Kshs 158,106
- b) Leave pay for the years 2018-2025 Kshs 1,106,742
- c) Compensation for unfair termination Kshs 1,897,272
- d) Costs.

2. The Respondent neither entered an appearance nor filed a response to the Claimant's suit, and consequently, the matter proceeded as undefended.

3. At the formal proof proceedings, the Claimant adopted her witness statement dated 26th August 2025, as part of her evidence in chief, and tendered the documents filed under the list of documents dated 26th August 2025, as her documentary evidence.

Claimant's case

4. The Claimant was engaged by the Respondent as a sales distributor representative in 2017 and served continuously until April 2025, when her employment was terminated. At the time of termination, she was earning a gross monthly salary of Kshs 158,106. She asserts that throughout her tenure, she worked with dedication and diligence, in accordance with their expected standards. 5. The Claimant states

that on or about 25th March 2025, she received an email notifying her that her employment was to terminate effective 1st April 2025, on account of poor performance.

6. She contends that the termination was unjust and unlawful. The Respondent did not issue her a show-cause letter nor conduct any disciplinary hearing.
7. She further states that upon termination, the Respondent failed to pay her terminal dues, including accrued leave from the year 2018.
8. As a result, the Claimant seeks from the Court one month's salary in lieu of notice amounting to Kshs 158,106, leave pay for the period 2018 to 2025 amounting to Kshs 1,106,742, and compensation for unfair termination amounting to Kshs 1,897,272, bringing the total claim to Kshs 3,162,120. She also requests the costs of the suit.

Claimant's submissions

9. The Claimant's Counsel identifies two issues for determination: whether the termination of the Claimant's employment was fair, and whether she is entitled to the reliefs sought.
 10. He submits further that it is now trite that for a termination of an employee's employment or summary dismissal of an employee, to be considered fair, it must be demonstrated that the employer complied with the mandatory procedure set out in section 41 of the Employment Act, 2007, and that the employer had a reason for the termination/ summary dismissal [section 43 of the Act], and that the reason[s] was fair and valid [section 45 of the Act]. In other words, the presence of procedural and substantive fairness must be demonstrated. To buttress this submission, he places reliance on the decision in Pius Machafu Isundu v Lavington Security Guard Limited [2017] KECA 225[eKLR].
 11. He concludes his submissions by stating that no doubt, the Respondent did not discharge the legal burdens they bore under the said provisions of the Employment Act.
 12. Regarding reliefs, the Claimant's Counsel submits that the Claimant is entitled to notice pay. The Claimant's employment was terminable by notice. It wasn't. She is therefore entitled to notice pay under Section 35 of the Employment Act, 2007, as read together with Section 36.
 13. It is further submitted that the Claimant's claim for compensation for earned but unutilized leave days was not contested; as such, the relief should be availed to her.
 14. Having demonstrated that the termination of her employment was unfair, the Claimant is entitled to the compensatory relief contemplated under section 49[1][c] of the Employment Act. Considering that the Respondent opted to dismiss the Claimant summarily without justifiable reasons and adherence to the cannons of procedural fairness, justice would be best served by an award of twelve months' gross salary.
- Analysis and Determination

15. I have carefully considered the Claimant's pleadings and evidence, and her Counsel's submissions, and the following issues emerge for determination; a) Whether the Claimant's employment was unfairly terminated

b) Whether the Claimant is entitled to the reliefs sought

Whether the Claimant's employment was unfairly terminated.

16. 6. before I proceed further into this issue, it is essential to note that the Respondent did not file a defence to the Claimant's claim. However, it should be emphasised, and this aligns with my view, that the fact that a Respondent or Defendant fails to enter an appearance, file a response or defence, or respond to their opponent's pleadings, does not automatically mean the success of that opponent's (in our case, the Claimant's) case.

17. This is true, especially considering that the Employment Act, 2007, places upon both the employee and the employer legal burdens that must be sequentially discharged. Section 47[5] of the Act provides;

“(5) For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee” [Emphasis added].

Thus, any employee has the burden to prove not only that their services were terminated, but also that the termination was unfair or wrongful. Only when this foundation has been laid will the evidential burden shift to the employer, requiring them under section 43[1] to prove the reasons for the termination, that the reason[s] was fair and valid, and that the procedure set out under section 41 was adhered to. See also *Kenya Revenue Authority v Reuwel Waithaka Githai & 2 others* [2019] KECA 300[KLR].

18. In light of the stated provision, the Claimant was required to prima facie demonstrate that the dismissal took place and that it was not in accordance with the principles of procedural and substantive fairness. This, in my view, she did. The evidential burden then shifted to the Respondent. 19. Burdens of proof are discharged by a party legally shouldering the same upon them, rendering sufficient evidence to prove the matter or facts the law enjoins them to, not unless there is a situation where there is an admission, or the Court takes judicial notice, of the matters of fact they are supposed to prove.

20. Having failed to tender any evidence to prove those matters, the law required them to, undersections 41, 43, 45, and 47[5], I find no difficulty in concluding that the Respondent didn't discharge its legal burdens. The Claimant's assertions were not discounted. Her summary dismissal [for that is what happened] was both procedurally and substantively unfair. Whether the Claimant is entitled to the reliefs sought One month's pay in lieu of notice:

21. The Claimant was terminated without notice, despite her employment being terminable by twenty-eight days' notice as provided under section 35 of the Act. Since the summary dismissal has not been

shown to have been fair, I find she is entitled to the relief. She should be paid one month's salary in lieu of notice under Section 36 of the Employment Act.

22. Leave pay for 2018–2025:

Section 28 of the Employment Act entitles employees to accrued leave pay. The Respondent did not contest this claim. The Claimant is therefore entitled to compensation for earned but unutilized leave days.

Compensation for unfair termination:

23. Section 49 of the Employment Act grants this Court the authority to award a compensatory remedy to an employee who has successfully challenged their employer's decision to terminate or summarily dismiss them. However, it is important to note that this authority is discretionary and exercised on a case-by-case basis.

24. I have carefully considered the fact that the Claimant had worked for the Respondent for a period of almost 7 years, the Respondent summarily dismissed her without substantive justification and procedural fairness, and that she was not in any proven manner contributing to the dismissal, and come to the conclusion that she is entitled to the relief, to the extent of seven [7] months' gross salary.

25. In the upshot, judgment is hereby entered for the Claimant in the following terms;

- a) A declaration that her summary dismissal was both procedurally and substantively unfair.
- b) Compensation pursuant to the provisions of section 49[1] of the Employment Act, seven [7] months' gross salary, KShs. 1,106, 742.
- c) Compensation for leave days earned but unutilized, $[21/30 \times 7 \times 158,106]$, KShs. 727,287.00.
- d) One month's salary in lieu of notice, KShs. 158,106.
- e) Costs of this suit.
- f) Interest on the awarded sum above, at court rates, from the date of this Judgment till full payment.

Read, Signed and Delivered this 4th Day of December 2025.

OCHARO KEBIRA

JUDGE