



Beauty Line Limited v Chanchima (Employment and Labour Relations Appeal E062 of 2024) [2026] KEELRC 235 (KLR) (30 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 235 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E062 OF 2024**

**AN MWAURE, J
JANUARY 30, 2026**

BETWEEN

BEAUTY LINE LIMITED APPELLANT

AND

VINCENT CHANCHIMA RESPONDENT

(Being an Appeal from the Judgment and Decree of the Honourable Dr. P. Nyotah, Principal Magistrate, delivered on 24th July 2024 in Nakuru MCELRC No. E234 OF 2023)

JUDGMENT

1. The Appellant, being dissatisfied with the judgment and order of Principal Magistrate Hon. Dr. P. Nyotah, filed this appeal vide a Memorandum of Appeal dated 23rd August 2024, on the following grounds that:
 1. The learned Magistrate erred in law and fact by failing to consider the evidence on record, where on one hand she made a finding that there was a valid reason to summarily dismiss the Respondent, but on the other declared that the said dismissal was procedurally unfair and awarded the Respondent compensation for unfair termination
 2. The learned Magistrate erred in law and in fact by applying the provisions of sections 41 and 45(2) of the *Employment Act* on unfair termination, while the claim before her was for summary dismissal under section 44 of the Act and in so doing arrived at an erroneous decision.
 3. The learned Magistrate erred in law and in fact by failing to consider the evidence presented and in so doing, awarded the Respondent compensation



for unfair termination while the claim at hand was for summary dismissal, thereby arriving at an erroneous decision.

2. The Appellant prays that:
 1. The Appeal be allowed.
 2. The judgment in Nakuru MCELRC No. E234 of 2023 be set aside.
 3. Costs of the Appeal be awarded to the Appellant.
3. The appeal was disposed of by way of written submissions.

Appellant's submissions

4. The Appellant submitted that the trial magistrate erred by finding procedural unfairness despite clear evidence that the Respondent was issued with a notice to show cause letter dated 11th May 2023, which outlined allegations of gross misconduct relating to the loss of 50 bags of peat moss. The Respondent replied on 12th May 2023, but his explanation was deemed unsatisfactory, leading to dismissal the same day.
5. The Appellant relied on the case of *Wakhungu & 2 others V Republic* [2024] KECA 1426 (KLR), where the Court of Appeal emphasized the appellate court's duty to re-evaluate evidence afresh, arguing that the trial magistrate misapplied sections 41 and 45(2) of the *Employment Act* instead of section 44 of the *Employment Act*, which governs summary dismissal.
6. The Appellant submitted that a notice to show cause letter is critical because it demonstrates compliance with the procedural fairness requirement: the employee must be informed of the charges against him and given an opportunity to respond before termination. The Appellant relied on *Modern Mail Limited V Omolo* [2025] KEELRC 1043 (KLR), where the court constituted a fair hearing as follows:

“Fair hearing is an all-encompassing principle. The charges the employee faces must be communicated to the employee and opportunity accorded to him or her to respond in writing if the charges are documented and typically, it is only after reviewing the employee's response that the employer may decide to call the employee for a formal hearing to explain his/her case in the presence of a committee or panel constituted for that purpose and the employee is informed of his rights, including the right to adduce evidence and be accompanied by an employee of his choice.”
7. Thus, by issuing the show cause letter and considering the written response, the Appellant contends that it satisfied the procedural requirements. On this basis, the Appellant submitted that both substantive and procedural fairness were met, and the award of compensation for unfair termination was erroneous.
8. In conclusion, the Appellant urged the Honourable Court to allow the appeal as prayed.

Respondent's written submissions

9. The Respondent opposed the appeal against the trial court's finding of unfair termination, arguing that the employer failed to prove a valid reason for summary dismissal under section 43 of the *Employment Act* and did not comply with mandatory procedural safeguards under sections 41 and 45 of the *Employment Act*.



10. The Respondent submitted that although the Appellant issued a notice to show-cause letter dated 11th May 2023, he maintains that he was never accorded a proper disciplinary hearing, representation, or clear communication of charges, rendering the process procedurally unfair. The Respondent relies on several authorities: *Selle & Another V Associated Motor Boat Co. Ltd* [1968] EA 123, affirming the duty of a first appellate court to re-evaluate evidence; *Ouma V Benson Mutie Maithya t/a Tornson Agencies* [2025] KEELRC 1168, holding that procedural fairness applies even in summary dismissal; *Del Monte Kenya Limited V Kiptoo* ([2025] KEELRC 45, emphasizing the employer's burden to prove fairness and validity; *Mwangi V Nairobi Academy* [2025] KEELRC 663, confirming that failure to follow disciplinary procedures renders dismissal unfair; and *Mbogo V Shah* [1968] EA 93, cautioning appellate courts against interfering with discretionary findings absent misdirection.
11. On costs, reliance is placed on *Joseph Oduor Anode V Kenya Red Cross Society* [2012] KEHC 3607 (KLR), affirming that costs follow the event unless the court records reasons otherwise. The Respondent therefore urges dismissal of the appeal, upholding the trial court's award.

Analysis and determination

12. Being the first appellate, the court has a fiduciary duty to re-examine the evidence presented, evaluate it independently, and determine whether the trial court's findings align with both the evidence and the law. In *Selle and Another V Associated Motor Boat Company Ltd & others* (Supra):

“.....this court must reconsider the evidence, evaluate it. itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”
13. In the case of *Abok James Odera T/A A.J Odera & Associates V John Patrick Machira T/A Machira & Co. Advocates* [2013] KECA 208 (KLR), the Court of Appeal held in part that:-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re- evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge, are to stand or not and give reasons either way.”
14. Having considered the grounds of the memorandum of appeal together with the rival submissions by both counsels, the issue for determination is whether the appeal is merited.
15. In *Judicial Service Commission V Muraya & 4 others* [2024] KECA 1599, where the Court of Appeal stated an employee's entitlement to a fair hearing prior to dismissal cannot be taken away, even where their conduct strongly suggests wrongdoing and their defence appears weak or untenable.
16. In *Gogni Rajope Construction Company Limited & another V Omondi* [2025] KECA 161 (KLR), the Court of Appeal held that, even in cases where misconduct such as unauthorized equipment use or absenteeism is proven, termination remains unfair if procedural requirements are not observed. The court stressed that having valid grounds for dismissal is not enough on its own; adherence to fair process is an essential requirement.



17. In *Walter Ogal Anuro V Teachers Service Commission* [2013] KEELRC 386 (KLR), the court held that both substantive justification and procedural fairness go hand in hand to meet the requirement for fair termination.
18. In this instant case, the trial court held that the Respondent was unfairly terminated from his employment, while the Appellant's memorandum of appeal raised the issue that the learned magistrate erred in law and fact by misapplying statutory provisions, failing to properly evaluate the evidence, and awarding compensation despite acknowledging a valid reason for summary dismissal.
19. It is trite law that procedural fairness and substantive justification go hand in hand, and they cannot divorce one another as they are interdependent on one another when it comes to fair termination. The Appellant's argument that the learned magistrate misapplied sections 41 and 45(2) of the *Employment Act* is out of context. Even if an employee is summarily dismissed under section 44 of the *Employment Act*, they are entitled to a fair hearing under Article 47 of *the Constitution*, sections 41, 43 and 45(2) of the *Employment Act*.
20. In the case of *Shaulin Adala Ouma -Vs- Benson Mutie Maithya t/a Rornson Agencies Appeal E119 OF 2024* The Court held:

“Faced with the task of interrogating whether termination of an employee's employment was fair on whether a summary dismissal against an employee was wrongful, the Court has to interrogate the presence or otherwise of two statutory aspects in the termination or summary dismissal, procedural and substantive fairness. Substantive fairness concerns the decision to terminate or summarily dismiss, whilst procedural fairness speaks to the procedure leading to the decision. See (*Pius Machafu Islands -vs Lavington Security Guards Limited* [2017] eKLR.)

Section 41 of the *Employment Act*, 2007 provides for a mandatory procedure that an employer contemplating termination of an employee's employment must adhere to. Otherwise, the termination shall be deemed unfair by dint of the provisions of Section 45[2] of the Act.

The process contemplated under the above-stated provision embodies three components. The absence of any or all of them renders the process unfair. First, the employer must inform the affected employee of the intention and the grounds, the basis thereof. Second, the employer must accord the employee adequate opportunity to make a representation of the grounds. Conjoined with this right to be heard is the right of accompaniment. He or she should be allowed to be accompanied during the hearing by a colleague of his or her choice, or a trade union representative [if he or she is a member of a trade union]. Lastly, the employer must consider the representation made by the employee before taking final decision on the matter.

21. Flowing from the foregoing, and having considered carefully the Record of Appeal as well as the cited decisions and respective submissions the court finds the appeal lacks merits and is dismissed. The award granted is upheld.
 22. Each party to bear its own costs of the appeal but Respondent will be paid half costs of the lower court proceedings.
- Order accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF JANUARY 2026.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

