



**Kiptoo v Chemartin Tea Company Limited (Appeal E031 of 2024)
[2026] KEELRC 342 (KLR) (6 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 342 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
APPEAL E031 OF 2024
MA ONYANGO, J
FEBRUARY 6, 2026**

BETWEEN

KIRWA JOSHUA KIPTOO APPELLANT

AND

CHEMARTIN TEA COMPANY LIMITED RESPONDENT

*(Being an appeal from the Judgment of Hon. S. Mokuu (CM) delivered on 24th September 2024
in Kapsabet CMELRC NO. E009 OF 2022, Kirwa Joshua Kiptoo vs Chemartin Tea Co. Limited)*

JUDGMENT

1. The Appellant herein was the Claimant in Kapsabet CMELRC No. E009 OF 2022 wherein he had sued the Respondent vide a Memorandum of Claim dated 3rd October 2022 seeking compensation for alleged unfair termination of his employment and for payment of his terminal dues.
2. After hearing the parties, the trial court delivered its judgment on 24th September 2024 and dismissed the Appellant's suit with costs on the basis that the Claimant did not prove his case to the required standard.
3. The Appellant being dissatisfied with the said Judgement instituted the instant appeal vide the Memorandum of Appeal dated 27th September 2024 on the following grounds of appeal:
 - i. That the learned magistrate erred in fact and law in dismissing the Claimant's claim with the evidence on record
 - ii. That the learned magistrate erred in law and in fact in failing to hold that the termination was un....
 - iii. The learned magistrate trial magistrate erred in law and in fact in failing to find that the Claimant was never paid his arrears.



- iv. That the learned magistrate erred in law and fact in disregarding the relevant evidence on record resulting to a wrong decision.
4. Consequently, the Appellant prayed for the following orders:
- a. The appeal be allowed
 - b. The judgement of the lower court delivered on 24th September 2024 be set aside and the same be substituted with proper finding/ judgment
 - c. The Respondent to pay the costs of this appeal.

Analysis

5. This being a first appeal, this Court has the duty to analyze and re-examine the evidence adduced in the lower Court and reach its own conclusion but to bear in mind that it neither saw nor heard the witnesses testify and make due allowance for that.
6. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the Court stated as follows:-
- “This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze 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.”
7. Vide his Memorandum of Claim dated 3rd October 2022, the Claimant (now the Appellant) averred that he was employed by the Respondent on 4th September 2010 as a tea plucker and worked continuously until July 2022, when the Respondent unlawfully terminated his services and declined to pay his terminal dues.
8. The Claimant particularized the unlawfulness of his termination from employment as follows:
- i. He was not informed of the intention to dismiss him nor accorded an opportunity to be heard
 - ii. He was not paid leave dues
 - iii. He was not paid salary in lieu of notice
 - iv. He was not paid the requisite severance pay.
9. The Appellant further averred that during his employment he was grossly underpaid contrary to the applicable Regulation of Wages (General) (Amendment) Orders, worked overtime without compensation, worked on rest days without pay, and worked on public holidays without due remuneration.
10. The Appellant contended that following the unfair termination, he was not paid his terminal dues, which he particularized as follows:-
- i. Two months’ salary in lieu of notice.....Kshs. 25,044
 - ii. Gratuity for 20 yearsKshs. 90,158
 - iii. Salary arrears from November 2019 to
September 2021.....Kshs. 56,634



iv.	Compensation for unfair termination.....Kshs.	172,803
Kshs. 344,639	
	Total	

11. The Appellant therefore sought the following reliefs:-
 - i. A declaration that the termination process was unlawful and that he was not remunerated as required by law during his employment
 - ii. Payment of the sums pleaded under paragraph 10 above
 - iii. Issuance of a certificate of service
 - iv. Costs and interest
 - v. Any other relief the Court may deem fit to grant
12. In response, the Respondent filed a Response to the Memorandum of Claim dated 6th December 2022, denying the Appellant's allegations. The Respondent contended that the Claimant absconded duty, was issued with notices to show cause, and attended a disciplinary hearing.
13. The Respondent further asserted that the Claimant's engagement was contractual and that he failed to apply for renewal of his contract. It was contended that there was no termination of employment and that as such, the Claimant was not entitled to the sum of Kshs. 344,639, having absconded duty.
14. The Respondent urged the trial court to dismiss the Claim with costs.

The Evidence adduced

15. At trial, the Appellant testified as CW1 and adopted his witness statement dated 3rd October 2022. He also relied on the documents he filed in court in support of his claim.
16. Upon cross-examination, the Appellant testified that he did not have a written contract of employment and that payment of his dues was based on the quantity of tea plucked. He maintained that he was terminated and not paid his dues.
17. The Respondent called Moses Kipyegon Chepkwony (RW1), who adopted his witness statement dated 22nd September 2023 and relied on the Respondent's documentary evidence.
18. On cross-examination, RW1 stated that the Claimant was employed from 2010 until July 2022, when he was terminated. He asserted that the Claimant was issued with a notice to show cause. He admitted that some of the documents relied upon by the Respondent were blank. It was his testimony that the Claimant was invited to a disciplinary hearing scheduled for 9th July 2022 vide an invitation letter dated 5th July 2022 which was sent to him by registered post on 7th July, 2022. RW1 asserted that the invitation letter was sent three days before the hearing and that the Claimant was not reporting to the post office. RW1 further admitted that salary arrears amounting to Kshs. 56,634 were not paid to the Claimant and further, that he was not paid any terminal dues. He also stated that the Claimant was not issued with a certificate of service.
19. After hearing the parties, the trial court delivered judgment on 24th September 2024, dismissing the Claimant's suit.
20. It is that judgment which is the subject of the present appeal.



The Appeal

21. The appeal was disposed of by way of written submissions. Both parties filed their submissions. The Appellant's submissions are dated 2nd October 2025 while the Respondent's submissions are dated 4th November 2025.

Appellant's submissions

22. The Appellant submitted on the following issues:
- i. Whether the trial magistrate erred in law and fact in dismissing the Appellant's case with the evidence on record
 - ii. Whether the appellant was unfairly terminated
 - iii. Whether the appellant is entitled to the relief sought
 - iv. Whether the trial magistrate erred in law and fact in failing to find that the appropriate was never paid his arrears
23. On the first issue, the Appellant faulted the trial magistrate for failing to take into account the evidence clearly on record. He submitted that the trial magistrate in his judgment stated that the appellant was duly paid his dues but from the evidence and testimony of the Respondent's witness, it was indicated that the appellant was not paid any amount and also his arrears were never paid.
24. The Appellant submitted that the trial magistrate relied on alleged notices that were never received or acknowledged by the Appellant.
25. The Appellant further submitted that the trial magistrate erred in holding that the Appellant's dues were paid and uncontested, whereas the Appellant consistently disputed any payment and sought settlement of his arrears and benefits.
26. On the second issue, the Appellant submitted that documentary evidence on record confirmed salary arrears of Kshs. 56,634. He argued that the notice to show cause dated 28th June 2022 required attendance the following day, which constituted inadequate notice and violated procedural fairness. In this regard, the Appellant contended that RW1 admitted uncertainty as to whether the notices reached the Appellant, rendering the disciplinary process procedurally flawed.
27. In response to the allegation made by the Respondent that the Appellant was taken through due disciplinary hearing, the Appellant submitted that the minutes of the disciplinary hearing produced by the Respondent, are not dated, do not have the letter head of the company, do not have designation of the people in attendance of the meeting and also do not have any resolutions/conclusion of the alleged disciplinary hearing.
28. The Appellant maintained that the Respondent failed to comply with all the substantive and procedural aspects of termination of employment as required by Section 43 and 41 of the [Employment Act, 2007](#) and therefore the termination was wrongful, unfair and unlawful.
29. On the third issue, the Appellant submitted that he is entitled to the reliefs sought having established a case of unlawful termination of employment. He contended that the Respondent did not prove reasons for termination of his employment thereby contravening section 43 and 45 of the [Employment Act](#)



30. On salary arrears, the Appellant submitted that these were specifically pleaded and proved, and that the Respondent's witness admitted non-payment.
31. The Appellant urged the Court to allow the appeal in its entirety.

The Respondent's submissions

32. In its submissions, the Respondent framed the issues for determination to be:-
 - i. Whether the trial court was right in determining that the Appellant's employment was procedurally and lawfully terminated
 - ii. Whether the Appellant was entitled to the reliefs sought.
33. The Respondent submitted that the dismissal of the Appellant from employment complied with the *Employment Act* and principles of fair labour practice.
34. It was contended that the Appellant failed to adduce prima facie evidence of unfair termination and merely restated pleadings without proof.
35. The Respondent maintained that the Appellant deliberately avoided the disciplinary process and that notices were duly delivered.
36. While citing the case of R vs. Immigration Appeal Tribunal ex-parte Jones [1988]1 I WLR 477, 481, the Respondent submitted that Section 41 of the *Employment Act* requires substantial compliance with the rules of natural justice rather than mechanical compliance as a means of confirming that the employee is given a fair and transparent chance to be heard in defense against any allegations made against him. In this regard, it is the Respondent's submission that the format of disciplinary minutes is not regulated by law and that substantial compliance with Section 41 suffices.
37. With regard to the Appellant's claim for notice pay, gratuity, salary arrears, and compensation, the Respondent submitted that the Appellant was not entitled to the claims.
38. On the prayer for Certificate of Service, the Respondent stated it was willing to issue the same if ordered.
39. In conclusion, the Respondent urged the Court to dismiss the appeal with costs.

Determination

40. Having carefully considered the Record of Appeal, the pleadings before the trial court, the evidence adduced by the parties, the rival submissions on appeal, and the applicable law, the issues that arise for determination by this Court are:-
 - i. Whether the Appellant was unfairly terminated from employment,
 - ii. Whether the trial court erred in law and fact in dismissing the Appellant's claim,
 - iii. Whether the Appellant is entitled to the reliefs sought.

Whether the Appellant was unfairly terminated from employment

41. It is common ground that the Appellant was an employee of the Respondent from 2010 until July 2022. RW1 expressly admitted during cross-examination that the Appellant was employed by the Respondent during that period and that his employment came to an end in July 2022.



42. The Respondent's position before the trial court and on appeal was that the Appellant absconded duty and was thereafter subjected to a disciplinary process, culminating in his dismissal. The Respondent therefore bore the statutory burden under Sections 43 and 45 of the Employment Act to prove the reasons for termination and to demonstrate that the termination was both substantively justified and procedurally fair.
43. With regard to the reasons for termination, the Respondent relied on alleged absconding of duty. However, the evidential burden was not discharged. The notices to show cause and invitations to disciplinary hearing relied upon by the Respondent were neither acknowledged nor signed by the Appellant. RW1 conceded under cross-examination that he was uncertain whether the notices ever reached the Appellant and further admitted that the Appellant was not reporting to the post office.
44. Additionally, the invitation letter dated 5th July 2022 required the Appellant to attend a disciplinary hearing on 9th July 2022, affording him only three days' notice. This Court finds that such notice was manifestly inadequate and fell short of the procedural safeguards contemplated under Section 41 of the Employment Act.
45. Further, upon perusal of the half-page document alleged to be minutes of a disciplinary hearing and produced by the Respondent at page 37 of the Record of Appeal, I note that the document is handwritten, undated, and unsigned. With all due respect, the said minutes lack the essential characteristics of formal minutes and cannot be relied upon as a record of a disciplinary proceeding.
46. While the law does not prescribe a formula for disciplinary proceedings, there must be at least credible evidence that the employee was informed of the allegations, given adequate notice, and afforded an opportunity to be heard. In the present case, no evidence has been tabled to prove that the said requirements were met.
47. Consequently, I find that the Respondent failed to prove valid and fair reasons for terminating the Appellant's employment as required under Section 43 of the Employment Act and further failed to observe procedural fairness as required under Section 41 of the Act.
48. The termination was therefore unfair and unlawful.

Whether the trial court erred in law and fact in dismissing the Appellant's claim

49. The trial court dismissed the Appellant's claim on the basis that he had failed to prove his case to the required standard. However, from the evidence on record, particularly the testimony of RW1, the Appellant had salary arrears amounting to Kshs. 56,634 which were never paid. RW1 further told the trial court that the Appellant was not paid any terminal dues and was not issued with a certificate of service.
50. In disregarding these admissions by the Respondent's witness and relying on unproved notices and unsubstantiated disciplinary process, the trial court misdirected itself both in fact and in law.
51. This Court is therefore satisfied that the trial court erred in dismissing the Appellant's claim notwithstanding the evidence on record.

Whether the Appellant is entitled to the reliefs sought

52. The Appellant having been unfairly and unlawfully terminated from employment, he is entitled to compensation and payment of his terminal dues. In his Memorandum of Claim, the Appellant prayed for several remedies which I will address in separate heads.



i. A declaration that the termination process was unlawful and that he was not remunerated as required by law during his employment. In light of the findings of this Court that the Respondent failed to comply with the substantive and procedural requirements of the *Employment Act*, 2007, the Appellant is entitled to a declaration that the termination of his employment was unlawful. However, the claim for a declaration that he was not remunerated as required by law during the entire period of employment was not sufficiently proved and therefore fails.

ii. Terminal benefits

a. Two months pay in lieu of notice

The Appellant testified that he did not earn a fixed monthly salary but was remunerated based on the quantity of tea plucked. This evidence was not rebutted by the Respondent. Indeed, pages 29 to 31 of the Record of Appeal contain the Appellant's pay slips which confirm that his earnings were not fixed.

From the Appellant's pay slip for June 2022, the Appellant earned a gross pay of Kshs. 9,271. In the absence of evidence from the Respondent to demonstrate fluctuations or a different earnings pattern, this figure represents the most reliable basis upon which the Court can determine the Appellant's average monthly earnings for purposes of computing notice pay.

In the absence of a written contract of employment demonstrating that the Appellant was entitled to two months' salary in lieu of notice, the applicable notice period is one month as stipulated under Section 35(1)(c) of the *Employment Act*. Consequently, and based on the Appellant's average monthly earnings of Kshs. 9,271, the Appellant is entitled to one month's pay in lieu of notice amounting to Kshs. 9,271.

b. Gratuity for 20 years

The Court notes that no contractual or statutory basis was laid to warrant an award of gratuity beyond what is provided for under the law. The claim for gratuity therefore fails.

I decline to make awards under this head as the Appellant did not adduce evidence to show that he is entitled to this prayer.

c. Salary arrears from November 2019 to September 2021

The Appellant specifically pleaded arrears amounting to Kshs. 56,634 covering the period from November 2019 to September 2021. The Respondent's witness admitted that these arrears were not paid. The claim was therefore both pleaded and proved, and the Appellant is entitled to the same.

d. Compensation for unfair termination. Section 49 of the *Employment Act* provides for remedies for wrongful dismissal and unfair termination. The Claimant worked for the Respondent for about 12 years. Taking into account the length of the Appellant's service and relevant factors under section 49(4) of the Act, I award him compensation equivalent to 8 months' salary at a sum of Kshs. 74,168.

iii. Certificate of service

Pursuant to section 51 of the *Employment Act*, the Appellant is entitled to a Certificate of service.



53. In conclusion, the judgment of the Trial Court dismissing the Appellant's suit is set aside and substituted with the following:
- i. A declaration be and is hereby made that the termination of the Appellant was unfair and unlawful.
 - ii. The Appellant is awarded:
 - a. One month's salary in lieu of notice..... Kshs. 9,721
 - b. Salary arrears from November 2019 to September 2021.....Kshs 56,634
 - c. 8 months' salary compensation for unfair termination Kshs. 74,168
 - iii. The Respondent shall issue a Certificate of Service to the Appellant within thirty days of this judgment.
 - iv. The Respondent shall meet the costs of the Appeal and the costs of the Appellant at the trial court.
 - v. Interest shall accrue from date of the judgment of the trial court.
54. Judgment accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 6TH DAY OF FEBRUARY, 2026

MAUREEN ONYANGO

JUDGE

