



**Murithi v Insta Products (EPZ) Limited (Cause E004 of 2024)
[2026] KEELRC 316 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 316 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE E004 OF 2024
SC RUTTO & RC RUTTO, JJ
FEBRUARY 4, 2026**

BETWEEN

MARTIN MBUREA MURITHI CLAIMANT

AND

INSTA PRODUCTS (EPZ) LIMITED RESPONDENT

JUDGMENT

1. The Claimant states that he was employed by the Respondent under a contract dated 12th November 2016, in the position of Manager, Logistics and Clearing. He asserts that throughout his employment, he carried out his duties diligently and with integrity.
2. The record bears that the Claimant's employment was terminated on 23rd March 2023. He contends that the termination was unlawful and procedurally unfair. As a result, he seeks the following reliefs:
 - a. A Declaration that the Claimant's termination from employment was unlawful, unfair & unprocedural.
 - b. Kshs.3,660,000.00/- being 12 Months' salary as compensation for unlawful, unfair & unprocedural termination of employment.
 - c. Kshs.798,809.53/- being the total amount for 55 unpaid leave days.
 - d. Kshs. 203,333.30/- being part unpaid wages for 20 days in the month of January 2023.
 - e. Kshs. 305,000.00/- being unpaid wages for the month of February 2023.
 - f. Kshs. 305,000.00/- being unpaid monthly wages for the month of March 2023.
 - g. Kshs.172,833.00/- being part monthly wages unpaid for the month of April 2023.
 - h. Kshs. 305,000.00/- being payment of salary in lieu of notice.



- i. Kshs. 20,000,000/- being compensatory damages payable for violation of the Claimant's constitutional rights and in accordance with Article 23 (3) (e) of the Constitution of Kenya 2010.
 - j. Costs of the suit.
 - k. Interest on (b) to (j) above at prevailing Court rates.
3. In its Statement of Response, the Respondent asserts that the Claimant's employment was lawfully, fairly, and procedurally terminated on grounds of gross misconduct, specifically the reasonable suspicion of his involvement in the theft of the Respondent's container, resulting in significant loss, and negligence in performing his contractual duties. The Respondent therefore urges that the Claim be dismissed with costs.
 4. The matter proceeded for hearing on 26th September 2025 and 31st October 2025, during which both parties called oral evidence in support of their respective cases.

Claimant's Case

5. The Claimant testified as CW1 in support of his case and for starters, he adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed with the Statement of Claim as exhibits before the Court.
6. The Claimant testified that on or about 13th February 2023, he was served with a show cause letter dated 31st January 2023, requiring him to explain why disciplinary action should not be taken against him in relation to a theft of a consignment of milk powder that occurred on 10th January 2023. The letter indicated that he had been named as a co-conspirator in the theft by one of the main suspects, Stephen Kariuki.
7. The show cause letter also notified him of his suspension from duty for two weeks pending his response to the allegations.
8. He responded in writing on 16th February 2023, denying any wrongdoing and requesting to be accorded a fair disciplinary hearing at which he could fully defend himself. He further requested that the alleged co-conspirator, Stephen Kariuki, be availed at the hearing.
9. By the time he submitted his response, the Respondent had already reported the matter to the police, leading to his arrest and subsequent arraignment in Mavoko Criminal Case No. E069 of 2023: Republic v. Martin Murithi & 5 Others.
10. The Claimant further stated that Stephen Kariuki, who had allegedly implicated him, was neither arrested nor charged, despite the Respondent's position that he was an accomplice in the theft.
11. He was later invited to a disciplinary hearing held on 9th March 2023, which was attended only by the Respondent's legal officer and a representative from the Human Resource Department.
12. The Claimant contended that he was not informed of his right to be accompanied by a fellow employee or representative during the disciplinary hearing, nor was he allowed to have one present. He further stated that no evidence was presented against him and no witnesses were called, including Stephen Kariuki, whom he had expressly requested to be availed.
13. He added that the dismissal letter made no reference to the alleged collusion with Stephen Kariuki as stated in the show cause letter. Instead, it relied solely on the testimonies of Adelaide Akinyi and Jonathan Ntiati, whose evidence had not been produced during the disciplinary hearing.



14. The Claimant further asserted that the dismissal letter introduced a new allegation, ‘negligence in the discharge of duties’, which had neither been raised prior to nor during the disciplinary hearing, thereby denying him an opportunity to respond to it.
15. In his view, the termination process was a mere formality with a predetermined outcome.
16. He maintained that the Respondent failed to conduct proper investigations and presented no evidence to support the allegations. He further noted that after investigations by the Directorate of Criminal Investigations (DCI), no culpability was established on his part, resulting in the withdrawal of the criminal charges.
17. According to the Claimant, the Respondent’s actions have effectively excluded him from the labour market at the age of 49, despite having several productive years ahead of him, and without any lawful justification.

Respondent’s Case

18. The Respondent called oral evidence through Adelaide Akhenda, Daisy Cheruiyot and Alice Muigai, who testified as RW1, RW2 and RW3, respectively. Ms. Akhenda, who was the first to go, identified herself as a Logistics Coordinator with the Respondent and similarly, she adopted her witness statement to constitute her evidence in chief.
19. RW1 testified that at the material time, she was working under the Claimant’s supervision in the Respondent’s logistics department.
20. She averred that together with her colleague, Carol, they undertook clearance procedures under the Claimant’s instructions.
21. RW1 proceeded to explain that once a consignment was ready, the Claimant would send hard-copy documents, upon which they would prepare two files, one for transmission to customs and one retained for their records.
22. She added that sea consignments arrived through the Port of Mombasa, while air consignments came through the Jomo Kenyatta International Airport (JKIA). She further stated that the Respondent engaged a clearing agent at ICD Embakasi.
23. According to her, once containers at ICD Embakasi had undergone all required procedures and been released, the Claimant would inform them when a consignment was expected.
24. She stated that containers are identified by container numbers, and upon arrival, they are parked outside the Respondent’s premises pending verification by the Customs Officer.
25. RW1 testified that upon arrival, the container number, truck number, trailer number, customs seal (RECTS), and shipper’s seal are checked and recorded, but only after confirming that the container number corresponds with the Bill of Lading. Once confirmed, the file is taken to the customs office for a verification officer to check whether the details match the information keyed in at ICD Embakasi. The verification officer thereafter physically verifies the cargo to confirm it matches the documentation.
26. RW1 further stated that before a container is opened, the customs officer, logistics personnel, and the driver must all be present to verify the container number against the Bill of Lading. She added that the shipper’s seal is also confirmed before the officer authorizes the driver to cut the bolt seal and any other seals, including the RECTS seal.



27. Before cutting the seals and opening the trucks, they would be required to take direction from the Claimant on how many trucks were to be opened each day. After opening, the trucks would be sealed with the Respondent's private bolt seal and remained outside until authorized into the premises. Once the truck was allowed in, the Respondent's seal would be cut under the supervision of store personnel, and offloading would commence.
28. RW1 further stated that the storekeeper would then physically verify and count the products and check the delivery note against the packing list. If everything matched, the storekeeper would sign the delivery note and issue a copy to the driver.
29. With regards to the incident giving rise to this case, RW1 testified that on 11th January 2023, she received a call from one Jonathan inquiring about the location of a truck. She informed him that the truck was outside and asked him to instruct the gatekeeper to let it in, as it had been unsealed the previous day by KRA and resealed with the Respondent's bolt seal.
30. Upon arriving at work, she checked whether the truck was still outside, following reports from Jonathan and Joseph (the gatekeeper) that they could not locate it. She confirmed the truck was missing and that it did not have a KRA seal. She noted that all other trucks outside remained sealed and unverified.
31. She then confirmed from office records the truck and container numbers unsealed on 10th January 2023 and discovered that one truck had been opened on 9th January 2023 but had not been offloaded.
32. RW1 further stated that on 9th January 2023, they had unsealed five trucks of skimmed milk powder from two suppliers and on the same day, four trucks were offloaded while the fifth truck was offloaded on 10th January 2023.
33. According to RW1, the Respondent had two trucks of skimmed milk powder from different suppliers on 10th January 2023. On that morning, she had verified the containers as usual, collected the customs verification officer, completed verification, and sealed the containers with the Respondent's bolt seal.
34. On 11th January 2023, after reconciling records with Jonathan and conducting a physical stock check, discrepancies emerged. She contacted Edwin Gisemba of General Cargo regarding truck KBW 452X/ZF 1257 because the store did not have its delivery note.
35. She called the driver, who claimed to have offloaded the truck and asked him for the delivery note, but he did not provide it.
36. When she asked Edwin for the delivery note, he initially refused, stating that the Claimant had instructed him not to share it. He eventually sent it on condition that she not disclose this to the Claimant. She then forwarded the delivery note to Jonathan, who denied that the signature appearing on the said delivery note was his.
37. RW2, Ms. Daisy Cheruiyot, testified as the Respondent's Human Resource Manager. She adopted her witness statement to constitute her evidence in chief and produced documents filed on behalf of the Respondent as exhibits before the Court.
38. RW2 testified that the Respondent reported the loss of 1,020 bags of skimmed milk powder valued at Athi River Police Station under OB No. 82/11/01/2023 and obtained a police abstract.
39. She stated that the Claimant was issued a Notice to Show Cause on 31st January 2023 for allegedly colluding with colleagues, including Stephen Kariuki and a forklift operator, to steal the Respondent's container, which was then in the custody of General Cargo.



40. The Notice to Show Cause required the Claimant to respond within seven days and he was suspended for two weeks pending the response and management's decision under the Respondent's HR Policy.
41. RW2 added that the Notice to Show Cause outlined the particulars of the charge and noted that the DCI at Athi River had investigated, interrogated, arrested, and charged the Claimant and others with theft-related offences.
42. The Claimant, together with others were subsequently charged at the Mavoko Magistrates Court in Criminal Case No. E069/2023 on 17th January 2023.
43. The Claimant responded to the Notice to Show Cause on 16th February 2023, and by a letter of 2nd March 2023, the Respondent invited him to a disciplinary hearing scheduled for 9th March 2023. He was informed of his right to be accompanied by an employee of his choice and his suspension was extended.
44. A disciplinary hearing was held, which the Claimant attended and a decision was made and communicated by a letter dated 23rd March 2023.
45. According to RW2, the Respondent found the Claimant's defence unsatisfactory and held him culpable of gross misconduct under his employment contract. He was summarily dismissed and notified that his terminal dues and Certificate of Service were ready for collection.
46. The Claimant collected and acknowledged receipt of his final dues and Certificate of Service on 3rd May 2023. RW2 observed that there was an error in the termination date on the Certificate of Service, which the Respondent is willing to correct.
47. She clarified that the Respondent did not report the Claimant personally to the police but reported the loss of the container, prompting police investigation and arrests based on police assessments.
48. RW2 further stated that the criminal charges against the Claimant were withdrawn by the DPP on 25th September 2023, and the Respondent had no role in influencing the investigation or prosecution.
49. She was categorical that the Respondent did not rely on police investigations or criminal proceedings in determining the Claimant's culpability, and that its internal disciplinary process preceded the DPP's withdrawal.
50. She dismissed the Claimant's allegations of improper investigations as false and misconceived.
51. She further denied the assertion that no evidence or witnesses were presented against the Claimant.
52. RW3, Ms. Alice Muigai, identified herself as the Respondent's Legal Manager. Equally, she adopted her witness statement to constitute her evidence in chief. She further produced the list and bundle of documents filed on behalf of the Respondent as exhibits before the Court.
53. RW3 testified that the Claimant, who was responsible for customs and logistics, failed to exercise due diligence regarding the missing container of skimmed milk powder and appeared indifferent to efforts to trace it.
54. She added that the Claimant relied on the transporter's delivery note despite the container being unaccounted for, displayed hostility towards colleagues seeking answers, and provided false information to the Managing Director.
55. She further stated that police investigations led to the Claimant's arrest and arraignment on 17th January 2023.



56. RW3 further testified that due to the gravity of the allegations, the Claimant was suspended under the HR Manual to safeguard the integrity of ongoing investigations.
57. She asserted that the Claimant attempted to obstruct and conceal information concerning the container loss, making suspension necessary.
58. RW3 stated that the Claimant submitted a response to the Notice to Show Cause but denied that he requested the attendance of Stephen Kariuki at the hearing.
59. She testified that the Claimant was properly invited to the disciplinary hearing with the option to be accompanied by another employee, which he declined. He also called no witnesses.
60. She added that Stephen Kariuki, a co-accused in the criminal case, was in custody during the disciplinary hearing and could not be called as a witness.
61. RW3 reiterated that the Respondent merely reported the container loss, and the police independently decided to arrest and charge the Claimant.
62. She insisted that the Respondent had no influence over police investigations or prosecutorial decisions, adding that the Respondent's disciplinary process was entirely independent of police investigations.
63. RW3 added that the disciplinary process was grounded on reasonable and sufficient evidence following internal investigations, and the Claimant was suspected of involvement in the theft.
64. She further averred that the Claimant neglected and improperly performed his duties, failed to prevent the loss, obstructed investigations by giving false information, and intimidated his subordinates.
65. She also denied the Claimant's assertions that the Respondent failed to conduct proper investigations.
66. RW3 further testified that the Respondent called two witnesses, Adelaide Akhenda and Jonathan Ntiati, and the Claimant had an opportunity to question them.
67. According to RW3, the Claimant presented no evidence or witnesses in his defence, and his explanation was found unsatisfactory, resulting in summary dismissal.
68. RW3 maintained that the DPP's withdrawal of charges was independent of the Respondent's disciplinary action.
69. She further denied that the Claimant faced charges not contained in the Notice to Show Cause or that he was denied a fair hearing. She termed the claim of a new charge being introduced during the hearing baseless, stating that the process complied with the HR Manual, the employment contract, and the law.
70. RW3 further stated that the Claimant did not appeal the dismissal despite the availability of an appellate mechanism under the HR Manual.

Submissions

71. The Claimant submitted that the Respondent failed to substantiate the validity of the reasons relied upon to terminate his employment. In support of this position, he referred to the cases of *Nicholus Muasya Kyula v Farmchem Ltd (2012) KEELRC 125 KLR* and *Alphonse Maghanga Mwachanya v Operation 680 Limited [2013] KEHC 3275 (KLR)*.
72. The Claimant further argued that the reasons provided in the Summary Dismissal letter were inconsistent with the allegations outlined in the Notice to Show Cause. He further contended that he was not subjected to any internal investigation before being accused of theft and dismissed, and that



- prior to the disciplinary hearing, he was not given access to the evidence the Respondent intended to rely upon. The Claimant also contended that his response and defense were not properly considered during the disciplinary hearing.
73. In the Claimant's view, the facts and evidence herein demonstrate an employer intent on terminating his contract with disregard for the minimum statutory requirements under Part VI of the *Employment Act*.
 74. He further submitted that the Respondent arbitrarily adjudged him guilty without evidence of culpability, thereby rendering the provisions of the *Employment Act* and the Respondent's HR Handbook irrelevant.
 75. The Claimant argued that the termination was procedurally unfair, and that the Respondent failed to prove that the dismissal was fair and valid, urging the Court to so find.
 76. The Claimant further submitted that the Respondent's unilateral decision to stop paying his salary from January 2023, before the disciplinary process commenced and prior to his premeditated termination in April 2023, left him unable to provide for his family and himself, exposing him to destitution. He contended that this violated his right to inherent dignity under Article 28 of *the Constitution*.
 77. He also contended that his rights to fair labour practices under Article 41(1) and to fair administrative action under Article 47 were violated when the Respondent failed to prove the validity of the reasons for his dismissal.
 78. In support of these arguments, the Claimant relied on the decision in *George Otieno Awiti v National Police Commission & 3 Others* (2024) KEELRC 2653 (KLR).
 79. On the other hand, the Respondent submitted that the onus of proving unfair termination rests on the Claimant. In the same vein, the Respondent argued that it had provided evidence demonstrating that the dismissal was justified, fair, and lawful, citing *Wilfred Olooko Muroka v Nzoia Sugar Company Ltd* [2019] eKLR and *Reuben Ikatwa & 17 others v Commanding Officer British Army Training Unit Kenya & another*, Nyeri Civil Appeal No.97 of 2016.
 80. The Respondent further submitted that it complied with all procedures under Section 41 of the *Employment Act*. That the grounds for misconduct were clearly outlined in the Notice to Show Cause in language the Claimant understood and he was invited to make representations. That further, a hearing was conducted in his presence, in which he waived the right to be accompanied, and a decision setting out the reasons for dismissal was formally communicated. That further, the Claimant did not pursue an appeal.
 81. Citing the case of *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR), the Respondent submitted that the decision to dismiss the Claimant was based on reasonable and sufficient grounds, including his conduct and the testimonies of other witnesses.
 82. The Respondent further argued that the Claimant's gross misconduct at the time of the theft hampered recovery of the stolen container, justifying dismissal. On this score, reliance was placed on *Lawrence Nyamichaba Ondari v National Hospital Insurance Fund* [2018] KEELRC 1023 (KLR).
 83. The Respondent posited that in the absence of evidence of unfair termination and given the overwhelming evidence of justified dismissal, it had met the threshold under Section 47(5) of the *Employment Act*, and urged the Court to find that it had proved its case on a balance of probabilities.



84. The Respondent further argued that the reliefs sought for alleged constitutional violations under Article 23(3) were untenable. In this regard, it was submitted that the Statement of Claim failed to meet the pleading threshold set out in *Anarita Karimi Njeru v Republic* [1979] KLR 162 and *Trusted Society of Human Rights v Mumo Matemu & another* [2013] eKLR, which require the Claimant to plead with precision the provisions allegedly violated, the manner of violation, and supporting facts.

Analysis and Determination

85. Arising from the parties' pleadings, the evidentiary material on record, and the rival submissions, the following issues fall for determination: -

- i. Whether the Respondent has proved the existence of a valid and fair reason for terminating the Claimant's employment;
- ii. Whether the Claimant was afforded procedural fairness prior to the termination of employment;
- iii. Whether the Claimant has established a viable claim for constitutional violations; and
- iv. Whether the Claimant is entitled to the remedies sought.

Valid and fair reason for termination?

86. The record bears that the Claimant's termination stemmed from the loss of a container of skimmed milk powder belonging to the Respondent, which was at the time under the custody of its carrier, General Cargo Limited. In this regard, the Claimant was accused of negligence in the performance of his duties and gross misconduct on account of theft.

87. Pursuant to Section 43(1) of the *Employment Act*, the Respondent was duty-bound to prove the reasons for terminating the Claimant's employment. Further, under Section 45(2)(a) and (b), the Respondent was required to demonstrate that the reasons for termination were valid, fair, and related to the Claimant's conduct.

88. In view of the foregoing statutory provisions, the Respondent was required, on a balance of probabilities, to demonstrate that the Claimant was involved in the theft of its consignment or that he acted negligently, thereby occasioning the loss.

89. The record reflects that the consignment transported on truck KBW 452X arrived at the Respondent's premises on 10th January 2023, but was not offloaded due to time constraints. As such, it was scheduled for offloading the following day, 11th January 2023. However, on the morning of 11th January, it was discovered that the consignment was missing.

90. In the Notice to Show Cause, the Claimant was accused of colluding with one Stephen Kariuki to steal the said consignment, and it was alleged that Stephen Kariuki had implicated the Claimant as his accomplice.

91. The Respondent has maintained that it conducted internal investigations independent of the Police investigations and the criminal proceedings before the Court at Mavoko. Despite this position, the Respondent did not present any investigation report generated from its alleged internal inquiry. RW2 and RW3 admitted as much during cross-examination.

92. In addition to the foregoing, the Respondent did not produce any statement from Stephen Kariuki, the Claimant's alleged co-conspirator, supporting the Respondent's claim that he had implicated the Claimant in the theft.



93. Given that the theft occurred during the night of 10th January 2023, it was reasonably expected that the Respondent would provide statements from the security personnel responsible for guarding the container. However, this was not the case.
94. Similarly, there is no statement on record from the driver of truck KBW 452X, which was carrying the consignment.
95. The Respondent did not clarify whether the security team or the truck driver recorded any statements regarding the incident, and if so, what their contents were.
96. Given the circumstances of this case, it is evident that the security personnel and the truck driver were critical witnesses, and their testimony was essential to clarifying the events that led to the disappearance of the Respondent's consignment.
97. These omissions create significant evidentiary gaps, making it unclear how the Respondent concluded that the Claimant was culpable of the theft of its consignment. Put differently, the Respondent did not demonstrate what evidence formed the basis of its belief that the Claimant colluded in the theft.
98. No matter how strong the Respondent's suspicions were against the Claimant, they needed to be substantiated with concrete evidence to justify his termination from employment.
99. The Claimant was also accused of negligence. In this regard, RW3 testified that the Claimant willfully neglected his duties, performed them carelessly, and failed to prevent the loss of the consignment.
100. Despite taking this position, the Respondent did not show how the Claimant's alleged negligence or careless performance of duties resulted in the loss of the consignment. Differently expressed, what actions did he take that contributed to the loss, or what omissions did he make, contrary to his contractual obligations, that could have prevented it?
101. What emerges from the record is that the Respondent took issue with the Claimant's perceived lack of urgency or initiative following the theft. However, beyond this perception, there is no evidence to support the Respondent's reasonable belief that the Claimant was involved in the theft or that his actions or omissions caused or contributed to the loss.
102. In reaching this conclusion, the Court is mindful that the applicable standard of proof in employment disputes is the balance of probabilities, not proof beyond reasonable doubt. Therefore, the Respondent was only required to demonstrate a reasonable belief, based on evidence, that the Claimant's conduct occasioned the loss. Regrettably, this was not achieved.
103. In applying Sections 43 and 45(2)(a) and (b) of the *Employment Act* to the present case, the Court finds that the Respondent did not, on a balance of probabilities, establish a valid and fair reason for terminating the Claimant's employment. In the absence of evidence substantiating the allegations of theft or negligence, the termination was substantively unfair.

Procedural fairness?

104. With regard to procedural fairness, Section 45(2)(c) of the *Employment Act* obliges an employer to demonstrate that a termination is carried out in accordance with a fair process. Section 41 further prescribes the procedure, requiring the employer to notify the employee of the allegations against them and afford the employee an opportunity to respond, in the presence of a fellow employee or a shop-floor union representative of their choice.



105. In the present case, the record shows that the Claimant was issued with a Notice to Show Cause dated 31st January 2023, detailing the allegations against him and requiring a response. The Claimant replied on 16th February 2023.
106. Subsequently, the Claimant was invited to a disciplinary hearing scheduled for 9th March 2023, with notification that he was entitled to be accompanied by an employee of his choice.
107. The Claimant attended the disciplinary hearing, where he was allowed to present his case and cross-examine the witnesses, specifically RW1 and Jonathan.
108. The Claimant contended that his request to have Stephen Kariuki available as a witness was denied. He also argued that he was not provided access to the statements of RW1 and Jonathan and alleged that the dismissal letter introduced a new charge of negligence.
109. RW3 testified that at the time of the disciplinary hearing, Stephen Kariuki was still in police custody and could not be called as a witness. Be that as it may, for reasons outlined elsewhere in this judgment, the statement of Stephen Kariuki was important, as he had allegedly named the Claimant as a co-conspirator.
110. Similarly, it was important for the Claimant to have access to the statements of RW1 and Jonathan prior to the hearing, as they gave testimony against him.
111. On this issue, I concur with the Court's decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, where it was held that the employee is entitled to documents in the possession of the employer which would assist them in preparing their defence.
112. In this case, the statements of RW1 and Jonathan were relevant documents that would have aided the Claimant in preparing for the disciplinary hearing.
113. Regarding the Claimant's contention that an additional charge of negligence was included in the dismissal letter, it is clear that, despite the characterization, the underlying facts leading to the disciplinary process remained unchanged.
114. Accordingly, the matters giving rise to the Claimant's dismissal flowed from the same set of facts, and there was no fundamental deviation. It cannot, therefore, be said that the Claimant was confronted with charges that were substantially different from those outlined in the Notice to Show Cause.
115. In sum, the Court finds that the Respondent did not act in accordance with principles of justice and equity in terminating the Claimant's employment. The termination was therefore procedurally flawed and unfair.

Constitutional violations

116. The Claimant has submitted at length that the Respondent violated his fundamental rights and freedoms under *the Constitution* during the process of terminating his employment.
117. On this point, the Court agrees with the Respondent that the Claimant's claim does not meet the threshold established in *Anarita Karimi Njeru v Republic* [1979] KEHC 30 (KLR).
118. It is trite that any alleged or threatened violation of a constitutional right must be pleaded with a reasonable degree of precision.
119. This principle was reaffirmed by the Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, which emphasized that precise pleadings allow the parties



and the Court to identify the issues in dispute. It was further held that pleadings are fundamental to substantive justice, as they provide fair notice to the opposing party.

120. In the present case, the Claimant seeks compensatory damages for alleged violations of his constitutional rights under Article 23(3)(e) of *the Constitution*.
121. However, the Statement of Claim fails to specify, with reasonable precision, the actions or omissions by the Respondent that allegedly infringed the Claimant's constitutional rights. As it is, the Claimant only detailed these alleged violations in his written submissions.
122. For the foregoing reasons, the claim for constitutional violations cannot be sustained.

Reliefs?

123. Having found that the Claimant's termination was both substantively unfair and procedurally flawed, the Court awards him compensatory damages equivalent to seven (7) months of his last gross salary. In making this award, the Court has considered the duration of the employment relationship and the circumstances surrounding the Claimant's termination.
124. The Claimant's claim for unpaid salary also succeeds. Here is why. The record bears that the Respondent paid the Claimant's salary only up to 11th January 2023. It is unclear why payments ceased from 11th January 2023, whereas the Claimant remained an employee until his termination on 23rd March 2023. Despite being on suspension, the employment relationship continued, and the Respondent was obligated to pay his salary.
125. It is noteworthy that, although the Claimant's employment contract permitted disciplinary suspension without pay, the Notice to Show Cause communicating the suspension made no mention that it would be without pay.
126. Further to the foregoing, the Claimant's suspension and subsequent removal from employment were at the Respondent's behest.
127. All in all, there was no legal basis to withhold the Claimant's remuneration after 11th January 2023.
128. The Claimant further seeks compensation for 55 accrued leave days. The record shows he was compensated for 24 leave days at the point of separation. In support of his claim, the Claimant presented an application form which indicates that as at 12th December 2022, he had a balance of 85 leave days. The Respondent did not adduce evidence to challenge this claim or provide accurate leave records. This is bearing in mind that under Section 74(1)(f) of the *Employment Act*, it is the employer's duty to maintain employee leave records. For these reasons, the Claimant's claim for accrued leave days succeeds.

Orders

129. In the final analysis, the Court hereby enters judgment 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. The Claimant is awarded Kshs 2,135,000.00 as compensatory damages, equivalent to seven (7) months of his last gross salary.
 - c. The Claimant is awarded Kshs 559,166.67 for accrued leave entitlements covering 55 days.



- d. The Claimant is awarded Kshs 742,166.60 for unpaid salary for 20 days in January 2023, the full month of February 2023, and 23 days in March 2023.
- e. The total award amounts to Kshs 3,436,333.27.
- f. Interest on the total sum in (e) at court rates from the date of judgment until full payment.
- g. The Claimant is also entitled to the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant No appearance

For the Respondent No appearance

Court Assistant Catherine

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

