

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT MACHAKOS

APPEAL NUMBER E022 OF 2024

ROYAL GARMENT INDUSTRIES (EPZ) LIMITED.....APPELLANT

-VERSUS

EVERLYN NGINA MURIUKI.....RESPONDENT

*(Being an Appeal from the Judgment and Decree of the Hon. D. Kuto (SPM) delivered on 6th
August 2024 in Mavoko MCELRC No. E011 of 2020)*

CORAM

Before Lady Justice J. W. Keli

C/A Otieno

JUDGMENT

1. The Appellant herein, dissatisfied with the Judgment and Decree of the Hon. D. Kuto (SPM) delivered on 6th August 2024 in Mavoko MCELRC No. E011 of 2020 filed a Memorandum of Appeal dated the 20th of December 2024 seeking the following orders: -
 - a) The Appeal be allowed.
 - b) The Judgment of the Honourable Trial Court in Mavoko CM. ELRC Case No. E011 of 2020 Citation: Everlyn Ngina Muriuki vs. Royal Garments EPZ Limited be set aside.
 - c) Judgment be entered in favour of the Appellant.

d) The Appellant be awarded costs of this appeal and the costs in the lower Court.

GROUNDS OF THE APPEAL

2. The Honourable Magistrate erred in law and fact in failing to properly evaluate the evidence presented, which led to a wrong conclusion that the Respondent's termination was unlawful and unfair.
3. The Honourable Magistrate erred in law and fact by finding that the Respondent had provided valid reasons for her purported unlawful termination from employment, despite insufficient or contradictory evidence.
4. The Honourable Magistrate erred in law and fact by failing to take into account critical evidence presented by the Appellant regarding the procedural fairness of the termination which were in line with the express provisions of the Employment Act, 2007.
5. The Honourable Magistrate erred in law and fact by ignoring critical evidence to the effect that the Respondent had not only failed to plead forgery and fraud regarding her purported signatures but also failed to prove that indeed, there was forgery and fraud associated with her alleged forged signatures.
6. The Honourable Magistrate erred in law and fact by wholly rejecting the expert evidence of the document examiner who scientifically proved that indeed, the Respondent had executed all the critical documents leading to her lawful termination herein.

7. Crucially, the Honourable Magistrate equally erred in law and fact by wholly rejecting the discharge and indemnity voucher voluntarily executed by the Respondent which indemnified the Appellant against any further action herein upon settlement of the Respondent's terminal dues.
8. The Honourable Magistrate erred in law and fact in failing to apply the correct legal standards and guidelines under the Employment Act, 2007, especially Section 41 on procedural fairness in termination.
9. The Honourable Magistrate erred in law and fact by disregarding relevant case law and legal precedents cited by the Appellant in support of their claim.
10. The Honourable Magistrate's decision was manifestly unjust and unreasonable in light of the circumstances of the case and the evidence on record.

BACKGROUND TO THE APPEAL

11. The Respondent filed a suit against the Appellant vide a memorandum of claim dated 13th November 2020 seeking the following orders: -
 - a) A declaration that the Claimant's dismissal from the Respondent's service was unfair and unlawful and totally failed to follow any due process.
 - b) An order for the Respondent to pay the Claimant her terminal dues and compensatory damages totaling Kshs. 189,078/- with interest thereon.
 - c) The Respondent to pay the Claimant costs of this cause plus interest thereon.(pages 30-32 of Appellant's ROA dated 15th March 2025).

14. The Respondent filed her list of witnesses dated 13th November 2020; witness statement of even date; and list of documents of even date with the bundle of documents attached (pages 34-44 of ROA).
15. The claim was opposed by the Appellant who entered appearance and filed a response to claim dated 18th March 2021 (pages 45-48 of ROA). In support of their response, the Appellant filed a witness statement of VICTORIA IRIMA NYAGA dated 3rd May 2022; list and bundle of documents dated 2nd May 2021 (pages 49-72 of ROA). The Appellant later filed a further list of witnesses dated 4th September 2023; and further list of documents of even date (pages 73-112 of ROA).
16. The Claimants/Respondent's case was heard on the 22nd of June 2023 with the Claimant/Respondent testifying. She was cross-examined by counsel for the Appellant, Mr. Farah (pages 150-152 of ROA).
17. The Appellant's case was heard on the same day. 12th February 2024 with The Appellant called two witnesses: EMMANUEL EKENGA, the Forensic Document Examiner, as DW1, and VICTORIA NYAGA, as DW2. DW2 relied on her filed witness statement as her evidence in chief, and produced the Appellant's documents attached to their list of documents as aforesaid. DW1 produced the Forensic Report attached to the Appellant's further list of documents. The witnesses were both cross-examined by counsel for the Respondent Mr. Nampa (pages 152-154 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 6th of August 2024 partially allowing the Claimant/Respondent's claims in respect of one month's salary in lieu of notice; and 12 months' gross salary as compensation for unfair termination; plus costs of the suit and interest (judgment at pages 15-22 and 130-137 of ROA).

DETERMINATION

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

Issues for determination

21. The Appellant, in their submissions dated 24th October 2025, identified the following issues for determination: -

- i. Whether the learned magistrate erred in law and fact in holding the dismissal unfair despite valid reasons under sections 43 and 44 of the Employment Act.
- ii. Whether the court misdirected itself by discounting the forensic examiner's unrebutted opinion attributing the impugned signatures to the Respondent.
- iii. Whether Section 41 was satisfied in substance on the undisputed HR narrative, wrongly displaced by a formalistic insistence on particular documents.
- iv. Whether the discharge voucher's legal effect was wrongly denied.
- v. Whether the remedies awarded offended Section 49(4) of the Employment Act.

22. On her part, the Respondent identified the following issues for determination in her submissions dated 6th November 2025:

- i. Whether the trial magistrate properly evaluated the evidence regarding the fairness and lawfulness of the Respondent's termination.

- ii. Whether the trial court correctly assessed the procedural fairness requirements under Section 41 of the Employment Act, 2007.
 - iii. Whether the trial court properly considered the expert evidence on document examination and signature verification.
 - iv. Whether the trial court correctly evaluated the legal effect of the discharge voucher.
 - v. Whether the trial court applied the correct legal standards under the Employment Act, 2007.
 - vi. Whether the trial magistrate properly evaluated the evidence regarding the fairness and lawfulness of the Respondent's termination.
23. The court, on perusal of the grounds of appeal, was of the considered opinion that the issues for determination in the appeal were -
- a. Whether the summary dismissal was lawful and fair.
 - b. Whether the discharge voucher indemnified the appellant from claims on the termination.
 - c. Whether the trial court erred in law on the relief

Whether the summary dismissal was lawful and fair

24. 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 -
- (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).

25. The trial court found the summary dismissal to be unlawful and unfair. One reason for the dismissal, as stated in Ms. Nyaga's witness statement for the appellant, was that the termination was due to poor performance and absenteeism. She stated that the shortfall was communicated verbally. The appellant issued the respondent with a letter of dismissal dated 23rd November 2017, stating as follows- ‘ *SUMMARY DISMISSAL*

It is with regret to inform you of your dismissal from the Company effective immediately.

This is as a result for poor performance coupled with leaving your work station before completing the set target for the day and more so, without the permission from your supervisor.

It is also on record that you have a habit of remaining absent without permission or any prior arrangements with your immediate superiors. On 18/11/2017, you were served with fourth and final letter of warning for being absent for five days without permission, thus, creating unnecessary inconvenience to productivity in general. To be served with the said letter was purely on humanitarian ground otherwise you deserved to summary dismissed.

Take Note that, considering the above historical back ground of yours, it is apparent that we have been quite lenient to you for so long, as you would have been relieved off your duties long time ago. Nonetheless, our leniency to you was to give you time/room to change, but the more we do for you all that is the more your indiscipline cases increases day by day.

This kind of attitude of indiscipline coupled with negligence of duty cannot be condoned at any cost as it amounts to gross misconduct.

Your attention is therefore drawn to Section 44. (4) (a) & (c), of the precepts of Employment Act 2007 and section 18 (a) & (c) of Collective Bargaining Agreement which justifies the lawful action being taken against you.

Your dues will be paid as follows, less statutory deductions and money owed to the company if any:-' (emphasis given).

26. The court found on record the warning letters of which the claimant disputed. The expert witness evidence was that the respondent's signatures were not shaken and that the trial court found the document examiner proved, on the balance of probabilities, that the signatures were for the respondent. There was no evidence of how the performance was measured. The reason of poor performance was thus not based on any evidence. The Court of Appeal in National Bank of Kenya v Mutonya [2019] KECA 404 (KLR) adopted with approval a decision on proof of reason of termination based on performance as follows- "The reason advanced by the Bank for terminating the respondent's employment was poor performance. In Jane Samba Mukala v Ol Tukai Lodge Limited Industrial Cause Number 823 of 2010; (2010) LLR 255 (ICK) (September, 2013) the court observed as follows;

"a. Where poor performance is shown to be reason for termination, the employer is placed at a high level of proof as outlined in section 8 of the Employment Act, 2007. The employer must show that in arriving at the decision of noting the poor performance of an employee, they had put in place an employment policy or practice on how to measure good performance as against poor performance.

b. *It is imperative on the part of the employer to show what measures were in place to enable them assess the performance of each employee and further, what measures they have taken to address poor performance once the policy or evaluation system has been put in place. It will not suffice to just say that one has been terminated for poor performance as the effort leading to this decision must be established.*

c. *Beyond having such an evaluation measure, and before termination on the ground of poor performance, an employee must be called and explanation on their poor performance shared where they would in essence be allowed to defend themselves or given an opportunity to address their weaknesses.*

d. *In the event a decision is made to terminate an employee on the reasons for poor performance, the employee must be called again and in the presence of an employee of their choice, the reasons for termination must be shared with the employee.” No proof of the respondent's performance was placed before the trial court. The reason for the poor performance was not proved on a balance of probabilities.*

27. Even where the claimant has committed misconduct under section 44(4) of the Employment Act, which can lead to summary dismissal they are still required to be taken through procedural fairness under section 41(2) to wit –*‘Notwithstanding any other provision of this Part, an employer shall, before 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.’* There was no evidence of compliance, as correctly held by the trial court. The court finds no basis to interfere with the finding of the trial court that the dismissal was unlawful and unfair.

Whether the discharge voucher indemnified the appellant from claims on the termination

28. The grounds of appeal were -

- a. The Honourable Magistrate erred in law and fact by ignoring critical evidence to the effect that the Respondent had not only failed to plead forgery and fraud regarding her purported signatures but also failed to prove that indeed, there was forgery and fraud associated with her alleged forged signatures.
- b. The Honourable Magistrate erred in law and fact by wholly rejecting the expert evidence of the document examiner who scientifically proved that indeed, the Respondent had executed all the critical documents leading to her lawful termination herein.
- c. Crucially, the Honourable Magistrate equally erred in law and fact by wholly rejecting the discharge and indemnity voucher voluntarily executed by the Respondent which indemnified the Appellant against any further action herein upon settlement of the Respondent's terminal dues.

29. The court found it was true that the authenticity of the voucher was proved on a balance of probabilities. The court finds that the indemnity only covered terminal dues of the respondent. The question of whether the dismissal was lawful or fair was for the court to decide; hence, it was not subject to the indemnity, and it cannot be, as it is a legal right of an employee who believes they have been unfairly discharged from employment. The trial court correctly proceeded to determine the issue of fairness.

Whether the trial court erred in law on the relief

30. The trial court granted one month's notice, which is upheld for lack of procedural fairness and was due under section 35 of the Employment Act.

31. On compensation, the trial court granted the maximum award of 12 months. The court did not justify the maximum award. The Court of Appeal in Kenya Broadcasting Corporation v Geoffrey Wakio stated “This Court has established the rule that an award of the maximum 12 months’ pay must be based on sound judicial principles. In *Oi Pejeta Ranching Limited vs. David Wanjau Muhoro* [2017] eKLR this Court categorically stated that the trial Judge must justify or explain why a claimant is entitled to the maximum award; that the exercise of discretion must not be capricious or whimsical.” The award of the trial court was not justified and thus arbitrary. The trial court was obliged to apply the factors under section 49(4) of the Employment Act. The court on appeal proceeded to apply the factors. The claimant was employed from 1st June 2012 to 23rd November 2017. That was approximately 5 years and 5 months. Evidence was placed before the court of warning on past absenteeism. The claimant contributed to the termination. She did not deserve the maximum compensation and the same is reduced to the equivalent of 6 months' gross salary.

32. In the upshot, the appeal is allowed partially. *The Judgment and Decree of the Hon. D. Kuto (SPM) delivered on 6th August 2024 in Mavoko MCELRC No. E011 of 2020 is set aside and substituted as follows-*

- a. A declaration that the claimant’s dismissal from the respondent’s service was unfair and unlawful.

- b. A month's salary in lieu of notice Kshs 13,959/-.
- c. Compensation equivalent of 6 months gross salary Kshs 83,754/-.
- d. Costs and interest from date of judgment.

33. The appeal was partially successful. Appellant is awarded ½ costs in the appeal.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 6TH DAY OF
FEBRUARY, 2026.

J. W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Farrah

Respondent – Mwanyangu h/b Namada