

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**APPEAL NO. E050 OF 2022**

**ERICK KINUTHIA WAKABA.....**

**APPELLANT**

**-VERSUS-**

**DEPUTY COUNTY COMMISSIONER**

**KAHADO NORTH SUB-COUNTY..... 1<sup>ST</sup>**

**RESPONDENT**

**SECRETARY/CEO PUBLIC**

**SERVICE COMMISSION..... 2<sup>ND</sup>**

**RESPONDENT**

**CABINET SECRETARY MINISTRY**

**OF INTERIOR AND CO-ORDINATION**

**OF NATIONAL GOVERNMENT..... 3<sup>RD</sup>**

**RESPONDENT**

**THE ATTORNEY GENERAL..... 4<sup>TH</sup>**

**RESPONDENT**

**(Being an appeal from the Judgment and Decree of the Hon. Mr. D. M. Kivuti Principal Magistrate dated the 18<sup>th</sup> day of March 2022 in MCELRC No. 360 of 2020)**

## JUDGMENT

1. Through the Amended Memorandum of Appeal dated 28<sup>th</sup> July 2024, the Appellant appeals against the Judgment of Honourable Mr. D.M. Kivuti (PM).

2. The Appeal was based on the grounds that:

- i. *The Learned trial Magistrate erred in law and in fact in dismissing the Appellant (Appellant's) claim dated 24<sup>th</sup> April 2020.*
- ii. *The Learned trial Magistrate erred in law and in fact in failing to hold that the dismissal of the Appellant's employment amounted to wrongful termination, unlawful and unfair termination.*
- iii. *The Learned trial Magistrate erred in law and in fact by failing to hold that the Appellant had disproved all the allegations levelled against him.*
- iv. *The Learned trial Magistrate erred in law and in fact by disregarding the provisions of the law on the basis of proof and thereby finding that the Appellant did not prove his case on a balance of probability.*
- v. *The Learned trial Magistrate erred in law and in fact in failing to hold that the Respondent failed to prove their case on a balance of probability.*
- vi. *The Learned trial Magistrate erred in law and in fact in disregarding the fact that the Respondent did not produce an iota of evidence, documentary or otherwise, in support of the charges or allegations leading to the dismissal of the Appellant's employment.*

vii. *The Learned trial Magistrate erred in law and in fact by failing to appreciate that the substratum of the Respondent's case was the allegations by the 1<sup>st</sup> Respondent herein which allegations were never substantiated.*

viii. *The Learned trial Magistrate erred in law and in fact in failing to hold that the Claimant was not accorded a fair hearing prior to the termination.*

ix. *The Learned trial Magistrate erred in law and in fact by failing to find that the 1<sup>st</sup> Respondent cannot be the accuser of the Appellant, cannot be the Intermediary in a fair process.*

x. *The Learned trial Magistrate erred in law and in fact by failing to hold that the Claimant should be granted an order of specific performance to be paid the Kshs. 412,500/- being half salaries for the duration he was interdicted.*

3. The Appellant prayed that the Appellant be allowed with costs of this appeal and that the Appellant be allowed with costs of the Judgment and Decree of the Hon. Mr. D. M. Kivuti Principal Magistrate dated the 18<sup>th</sup> day of March 2022 and all consequential orders be set aside; Payment of Kshs. 600,000/- being 12 months' pay as compensation for wrongful dismissal and for termination and an order of specific performance for the Appellant to be paid the Kshs. 412,500/- being half salaries for the months of April 2017 to 14<sup>th</sup> August 2018 both months inclusive.
4. The Appeal was disposed of by written submissions.

### **APPELLANT'S SUBMISSIONS**

5. The Appellant's Advocates Anyonje & Company Advocates filed written submissions dated 26<sup>th</sup> June, 2025.

6. Counsel submitted on the duty of this Honourable Court as a first appellate court as well stated by the Court of Appeal in **Selle v Associated Motor Boat Company Limited [1968] E.A 123** quoted with approval in **Veterinary Pharmaceuticals Limited v Ngeresa (Employment and Labour Relations Appeal E052 of 2022) [2022] KLR C 2919 (KLR)**

7. On the issue of whether the termination of the Appellant's services amounted to wrongful dismissal, wrongful and unfair termination counsel relied on Section 45(2) of the Employment Act on proof of reason for termination in relation to Section 45(2) on unfair termination.

8. That the crux of the Appellant's case was that there were no evidence, documentary or otherwise, in support of the charges or allegations levelled against him. There was no "overwhelming evidence" as RW1 put it. There were no copies of the alleged post-dated cheques, no copies of notices to show cause why the Appellant, as RW1 put it, "habitually absented

himself”, no written complaints by the many complainants nor notices to show cause on any of the complaints.

9. Counsel submitted that even the warning letter dated 5<sup>th</sup> May 2014 in relation to criminal case against the Appellant, he was acquitted and employer proceedings terminated in that respect. Counsel relied on Sections 107 and 108 of the Evidence Act on the principle of “he who alleges must prove”. That this being a court of record, it should not be swayed by the speculations by the Respondents but can only be guided by the documents produced by the Appellant to rebut the allegations by the Respondents.

10. Counsel submitted that to the contrary, the state failed to uphold the rights of the Appellant as guaranteed in Article 41(1) Constitution of Kenya 2010 by promoting unfair labour practices. That the Respondents failed to produce even one document in support of the allegations brought against the Appellant and therefore the termination was unfair within the meaning of Section 43 (1) as read with Section 44 of the Act.

11. Counsel relied on Section 41 of the Act on fair hearing and contended that it was undisputed that the Appellant was not

invited to the sittings of the Committee; the Committee allegedly only considered his response to the show cause letter. In blatant breach of Section 41 of the Act the Respondents never explained the reasons for considering termination to the Appellant, in the presence of another employee of his choice or a shop floor union representative.

12. Counsel submitted that during the disciplinary hearings the Respondents never bothered to invite the Appellant, and another employee of his choice or a shop floor union representative, to their sittings to appear and consider any representations by the Appellant and the person chosen by the Appellant.

13. Counsel submitted that Section 41 of the Act should be abided with by all state officers. That the present case was sealed when his accuser the DCC was the intermediary between the employer and the Appellant, that the accuser could not be the intermediary in a fair process. Counsel relied on the holding of the case of **Mwendwa Malu v the Kenya Power and Lighting Company Limited** [2014] eKLR.

14. Counsel submitted that when the Committee sat for its deliberations neither the Appellant nor another employee of his choice or a shop floor union representative was present. The accuser was the conveyor of written responses by the Appellant, the DCC would not deliver show cause letters to the Appellant or until when asked to do so, would curtail the Appellant's responses to ensure that the Committee deliberates on the case without the Appellant's presence. There was no fairness. That the procedures under Section 41 of the Act were not followed and therefore the termination was unlawful.

15. Counsel submitted that vide letter dated 14<sup>th</sup> August, 2018 the Appellant's services were terminated. The Appellant was not paid the one month's notice pay contrary to the dictates of Section 36 of the Act the amounting to wrongful dismissal.

16. On the issue of whether the Appellant was entitled to compensation for wrongful dismissal and upon termination counsel submitted that considering there was no iota of evidence in support of the Appellant's termination and withholding of terminal dues, counsel urged the Court to award

12 months' pay as compensation. That compensation was preferred to reinstatement.

17. On the issue of whether the Appellant is entitled to an order of specific performance to be paid Kshs. 412,500/= being half salaries for the months of April 2017 to 14<sup>th</sup> August, 2018 both months inclusive counsel submitted that the Appellant while averring that his monthly salary together with allowances and benefits totaled Kshs. 500,000/- the Appellant testified that he could not produce pay slips as the same were system generated and that he could not produce the pay slips as they were now system generated as he was not in the system.

18. Counsel further submitted that vide letter dated 14<sup>th</sup> August 2018 the Appellant was notified under paragraph 10 that:

*"Note that on dismissal, you forfeit all claims to terminal benefits from the Government."*

19. Counsel relied on the case of **Fredrick O. Onyere v Kenya National Union of Teachers [2015] 1 KLR 1** where the court being of the same view quoted its decision in **Industrial Court of Kenya at Nairobi, Cause No. 56 of 2014, Joseph**

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**Limited)** that termination of employment does not extinguish payment of work emoluments and terminal benefits due and owing to the employee by fact of service rendered and so long as the emoluments and benefits remain unpaid, the same constituted continuing right or damage within the meaning of Section 90 of the Employment Act.

20. Counsel submitted that the Respondent was mandated to keep employment records. Having failed to produce pay slips in respect of the Appellant counsel urged this Court to award the Appellant unpaid salaries during the period totalling Kshs. 412,500/=.

**RESPONDENTS' SUBMISSIONS**

21. The Respondents' Advocates Beatrice Akumu, Principal State Counsel for the Attorney General filed written submissions dated 16<sup>th</sup> July, 2025.

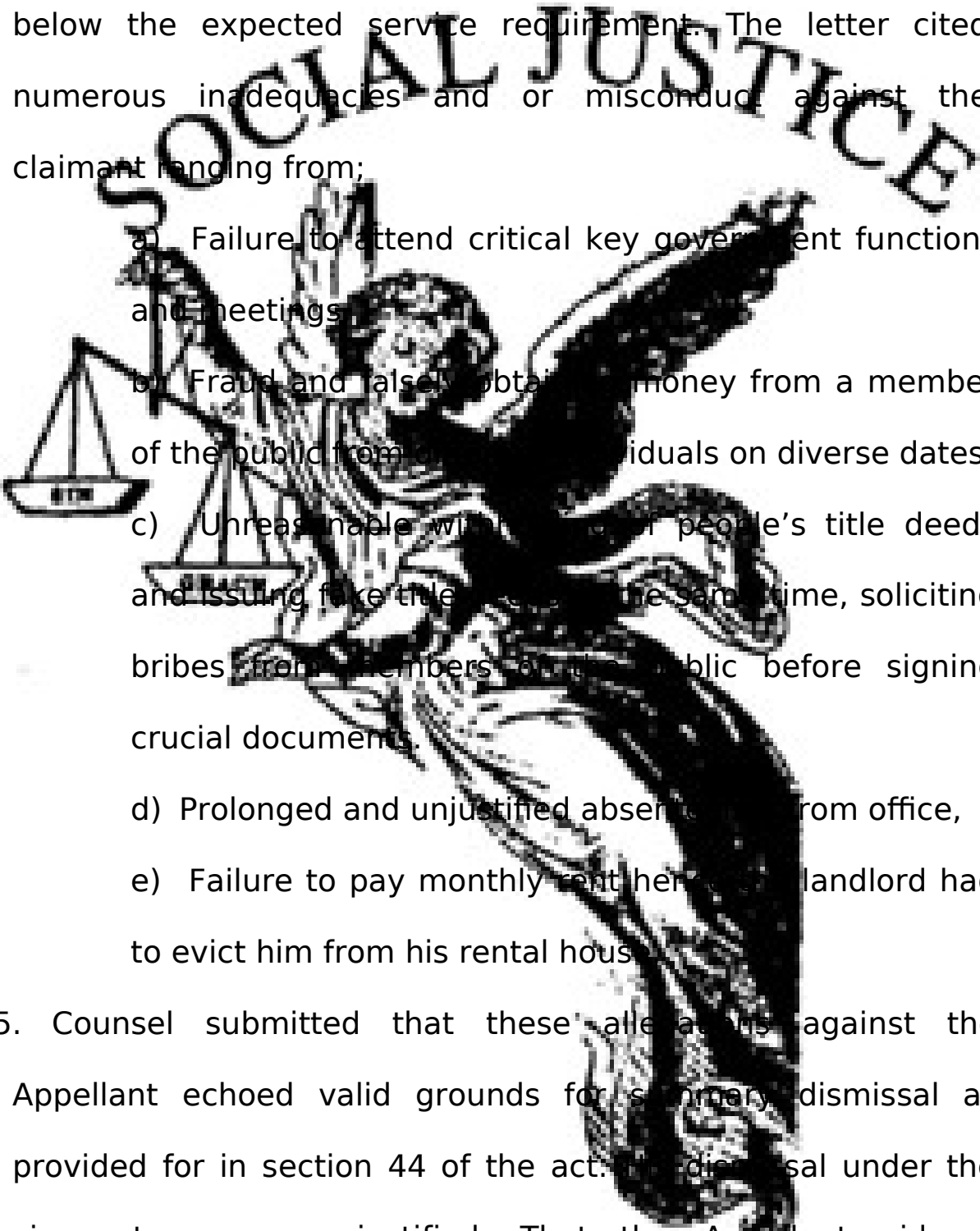
22. On the issue of whether there were valid reasons for dismissal counsel submitted that the Employment Act Section 44 describes summary dismissal as where an employer terminates the employment of an employee without notice, or

with less notice than that which the employee is entitled by any statutory provision or contractual term. Counsel relied on Section 44(4) on the grounds for summary dismissal which include all the behaviors which would lead to gross misconduct on the part of the employee.

23. Counsel submitted that unfair termination was provided for under Section 45 of the Employment Act where there should be valid and fair reasons for termination and a fair procedure followed if not, it amounted to unfair termination. Counsel also relied on section 47 of the Act as the proof of reason for termination. Counsel relied on the case of **Mary Chemweno Kiptui -V- Kenya Pipeline Company Limited [2014] eKLR** on the procedure for termination including the reasons and notice of hearing.

24. Counsel submitted that the Appellant had absconded duty severally, by failing to attend meetings that fell under his purview. That the nature of his former employment required him attend several meetings in order to perform his duties. Further, the Appellant was reported by the County Commissioner vide letter Ref: No. KJD/CC/CON/HRM/14 VOL.1

(43) dated 27<sup>th</sup> January 2017, that his work as a chief fell below the expected service requirement. The letter cited numerous inadequacies and or misconduct against the claimant hanging from;

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- a) Failure to attend critical key government functions and meetings;
  - b) Fraud and falsely obtaining money from a member of the public from various individuals on diverse dates,
  - c) Unreasonable withholding of people's title deeds and issuing fake title deeds at the same time, soliciting bribes from members of the public before signing crucial documents.
  - d) Prolonged and unjustified absence from office,
  - e) Failure to pay monthly rent hence his landlord had to evict him from his rental house.

25. Counsel submitted that these allegations against the Appellant echoed valid grounds for summary dismissal as provided for in section 44 of the act. The dismissal under the circumstances was justified. That the Appellant vide a response dated 15<sup>th</sup> January 2018, merely made excuses, in a

bid to explain his absenteeism. The excuses did not challenge the fact that he was absent without official leave, nor did he give reasons that his employer would consider true.

26. On the issue of whether the correct procedure was followed counsel submitted that the Appellant alleged that his right to fair hearing was not adhered to. That right to fair hearing as enshrined under Article 47(2) and (3) of the Constitution 2010 are non-derogable rights that cannot be taken away from a party and are applicable during disciplinary hearing and or a process or in any decision made by the employer that has adverse effects on an employee.

27. Counsel further relied on Section 44 to affect on the right to fair hearing. Counsel similarly relied on the **Court of Appeal in the case of Janet Nyaruga vs- Kenya Commercial Bank Limited [2017] eKRF** on employer complying with mandatory provisions of section 41 and 45 of the Act when terminating an employee's employment, and that failure to do so renders the termination unfair.

28. Further, counsel relied on among others on the Court of Appeal decision in the case of **National Bank of Kenya vs**

**Anthony Njue John [2018] eKLR** on employer adhering to section 41 of the act on the right of fair hearing. Counsel further relied on the case of **Walter Ogal Anuro / Teachers Service Commission [2013] eKLR** on requirement for both substantive justification and procedural fairness.

29. Counsel submitted that the procedure which was adopted subsequent to the dismissal of the appellant met the threshold for procedural fairness. Counsel relied on among other cases the case of **Kabura (As the Administrator of the Estate of Ishak AF) v Board of Directors National Social Security Fund [2009] KECA 233 (K)**, that an employee having been given an opportunity to explain himself, an opportunity which he utilized fully, the appellant could not validly claim to have suffered any prejudice as a result of not being accorded an oral hearing.'

30. Further counsel relied on the case of **Kenya Revenue Authority V. Menginya Salim Murgani, Civil Appeal 108 of 2009**, where the Court held that the fairness of a hearing is not determined solely by its oral nature. It may be

conducted through an exchange of letters. That this amounted to fair hearing.

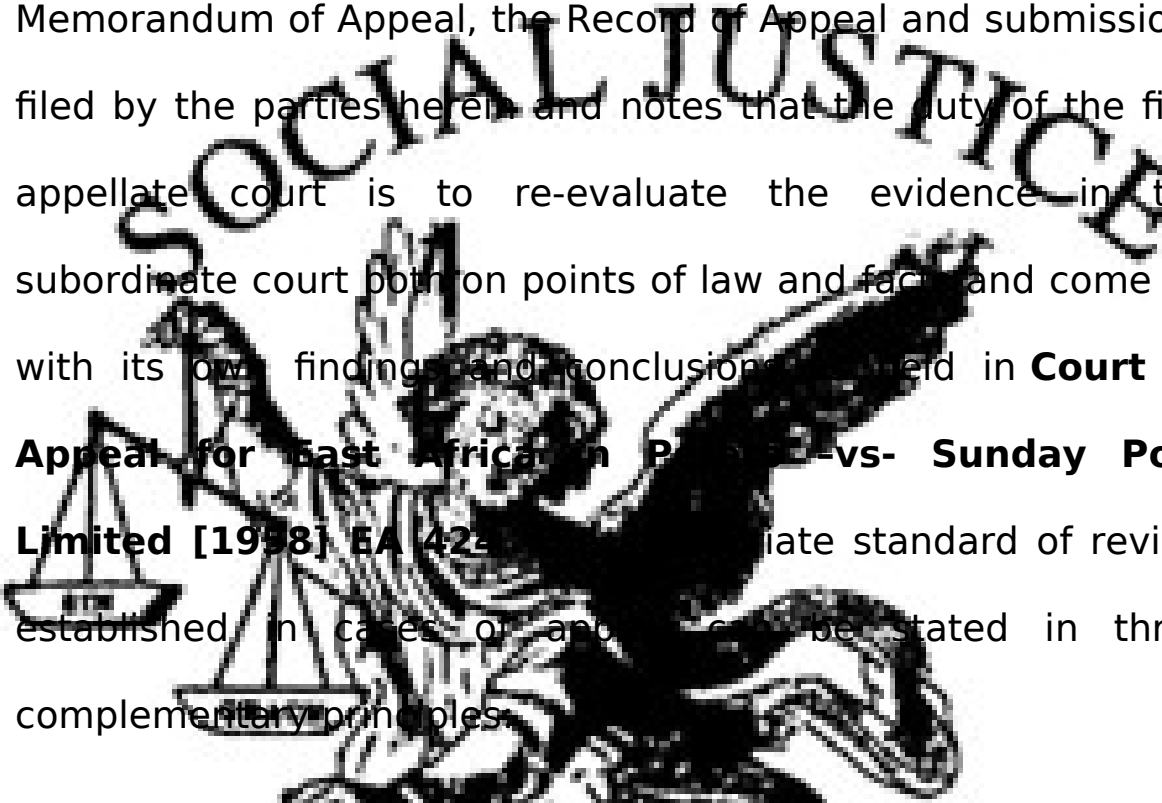
31. Counsel urged this court to take note of the Appellants detailed response to the allegations and uphold the decision by the learned magistrate in the trial suit, that the procedure for summary dismissal was duly followed.

32. On the issue of whether the reliefs sought should issue counsel submitted that as stated in his Memorandum of Appeal that the trial magistrate erred by not granting an order of specific performance and award of Ksh. 412,500, costs to the suit and any other relevant remedies. That such orders could not be justified or sustained as the employee neglected his duties and acted contrary to the provisions of the employment Act.

38. Counsel relied on the case of **Echwa v Kenya Airports Authority [2024] KECA 828 (KLR)** where the court disallowed the reliefs sought after finding that the dismissal was by no means unfair.

## **DETERMINATION**

39. The court has considered the grounds in the Memorandum of Appeal, the Record of Appeal and submissions filed by the parties herein and notes that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and fact and come up with its own findings and conclusions. As held in **Court of Appeal for East Africa in P. N. G. vs- Sunday Post Limited [1998] EA 424**, the appropriate standard of review established in cases of appeal can be stated in three complementary principles:

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- i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;*
  - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and*
  - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.*

40. In this case, the Judgment of the trial court was that the Claimant's suit was dismissed with each party bearing their own costs while finding that the Claimant was lawfully

terminated. The Appellant was aggrieved by the said judgment and has raised ten grounds of appeal which this court will condense in to two issues namely: -

*i. Whether the trial court erred by finding that the Appellant was lawfully and procedurally terminated.*

*ii. Whether the trial court erred by not awarding the Appellant his terminal dues and reliefs sought.*

***Whether the trial court erred by finding that the Appellant was lawfully and procedurally terminated.***

41. It is not in dispute that the Appellant was an employee of the Respondent who was first employed as Assistant Chief 1 Ngong Township Sub-location on 18<sup>th</sup> May, 2005 and on 19<sup>th</sup> June 2008 he was promoted to the position of Chief Grade II Ngong Location. The Appellant was again promoted to Chief I vide the letter dated 22<sup>nd</sup> February, 2016 with effect 4<sup>th</sup> December, 2015 until his termination on 14<sup>th</sup> August, 2018.

42. The Appellant alleged that he was terminated without valid and fair reasons and without any disciplinary hearing. The Respondents on the other hand alleged that the misconduct of the Appellant amounted to gross misconduct calling for

summary dismissal. The Appellant was charged with a number of charges including absconding official functions, defrauding the public, withholding titles and failure to pay his rent. That this went against the Public Service Regulations and chapter six of the Constitution.

43. The trial court found that the Respondents had valid reasons to dismiss the Appellant. It is now an established principle that for termination to pass, there should be both substantial and procedural fairness. A number of cases including the cases of **Jayashankar Anandko versus Kenya Commercial Bank Limited (2017) eKLR** and **Walter Ogal Anuro v Teachers Service Commission [2019] 3 eKLR**.

44. This court is awake to the requirement that the employers must terminate the services of employees for fair and valid reasons as required by section 43 of the Employment Act which becomes unfair under section 45 when there is no valid reason and procedure followed unfair.

45. This court is also aware of the respective burden of proof under section 47(5) of the act where the Appellant ought to illustrate that a termination which was unfair took place and

the Respondent had a duty to justify the reasons for the termination. In this particular case this court is convinced that the Appellant illustrated termination occurred and it was upon the Respondent to justify the grounds of termination. Reliance is put on the case of **Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR** on the respective burdens.

46. This court was not bound to undertake a burden of proof beyond reasonable doubt as in criminal matters but that of civil matters which is on balance of probabilities. In other words, would a reasonable employer act the same. However, the Court will not replace its subjective views of what constitutes a valid reason for termination of an employment contract with that of the employer. Justice Professor Ojwang' in the case of **Kenya Revenue Authority Vs Menginya Salim Murgani, Civil Appeal No. 108 of 2009** as cited in **Republic Vs National Police Service Commission Exparte Daniel Chacha Chacha JR 36 of 2016 (2016) eKLR** observed as follows:-

*“There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of*

*their own procedures. Provided that they achieve the degree of fairness appropriate to their tasks. It is for them to decide how they will proceed”*

47. Further the Court of Appeal in **Civil Appeal No 66A of 2017, Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR** stated as follows:

*“...It is improper for a court to expect that an employer would have to undertake a near forensic examination of the facts and seek proof beyond reasonable doubt as in a criminal trial before it can take appropriate action subject to the requirements of procedural fairness that are statutorily required. The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist,” causing it to terminate the employee’s services...”*

48. Drawing from the above cases although the standard of proof in such cases is on balance of probability the Respondents had a duty to justify the grounds of termination for the termination to be fair. The courts have emphasized on among other cases the case of **Mary Cherono Kiptui v Kenya Pipeline Company Limited [2014] eKLR** that-

*Invariably therefore, before an employer can exercise their right to terminate the contract of an employee there must be valid reason or reasons that touch on grounds of misconduct, poor performance or physical incapacity.*

49. In this case the Respondents never produced any evidence of the charges of absconding of duties, the fraud, withholding the titles, failure to pay rent and poor performance

which would touch on grounds of misconduct and poor performance.

50. The court notes that there was no warning issued to the Appellant on those allegations, no complaints by the people defrauded were filed in court, no investigation report pinning the Appellant or the said postdated cheques. The warning letter of 5<sup>th</sup> May, 2014 in relation to criminal charges was followed by a meeting where termination of disciplinary proceedings and interdiction was uplifted on 15<sup>th</sup> January, 2015.

51. The Appellant if at all he performed poorly he was not placed on any performance improvement plan and he failed to improve and in any case the performance appraisal filed by the Appellant of 2015 showed he was a performer with excellent results. In the case of **Thomas Odi Ojwang versus Kenol Kobil Ltd [2015] eKLR** the court set out the principles that the Respondent needs to incorporate in the Performance Development Plans, the Performance Improvement Plan and the capability hearings which too, actions are to be consistent with section 41 of the Employment Act and Article 47 of the Constitution and on fair administrative action.

52. In the case of **Periosteum Bheekhoo v. Linksoft Group [2015] eKLR: Cause No.1232 of 2014 at Nairobi** it was held that the employer must prove that the employee was aware of performance standards, efforts were made to support improvement, and time was given for the employee to make necessary improvements.

53. On the issue of absconding duties and absenteeism the Respondents ought to have made efforts of reaching the Appellant on those dates when by him that they were considering disciplinary action against him. This never happened. In the case of **Simon Muthi Mbane vs Inter Security Services Ltd (2018) eKLR** it was held that;

*An allegation that an employee has absconded with his duties calls upon an employer to reasonably demonstrate that efforts were made to contact such an employee without success.*

54. The Appellant also produced leave application forms and Medical records to show the time he was accused of absconding duties he was either on leave or sick. There was no notice that the Respondents were considering terminating the Appellant on account of absconding or on the poor performance.

55. It is important to note that the show cause letter was issued on 21<sup>st</sup> April, 2017 after the DCC complained in January, 2017 that the Appellant's services were below expected standards. This court also notes that despite the letter giving the Appellant 21 days to respond no activity took place until January, 2018 when the Appellant responded and he claimed the DCC was hesitant to give him the said show cause letter. If at all it was true the Appellant was hesitant to respond to the show cause letter there was no evidence of the steps taken by the Respondents when he did not respond to the show cause letter.

56. This court therefore disagrees with the trial court that the Respondents had valid reasons to terminate the Appellant who had served them since 2005 as Assistant chief and he climbed the ladder to Chief 1 due to his performance.

57. On the procedural fairness as is provided for under section 41 of the Employment Act which is couched in mandatory terms as seen in the case of **Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited [2014] eKLR** that: -

*Section 41 of the Employment Act is couched in mandatory terms. Where an employer fails to follow these mandatory provisions,*

*whatever outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing in the presence of their union representative.*

58. The right to fair hearing is also provided for under the Constitution under Article 47 and it cannot be taken away from the employee. It is clear that the Respondents dismissed the Appellant after he responded to the show cause letter on 15<sup>th</sup> January, 2018. The Respondents alleged that the hearing need not be oral in nature and that exchange of documents is also a fair hearing.

59. Whereas it is true a hearing can be conducted by exchange of letters in this case this court does not agree with this position for the reason that the Appellant only responded to the show cause letter issued over six months earlier. There were no previous warnings or notices on his conduct. This court is of the view that such serious accusations needed the Appellant to make his representations before the disciplinary hearing committee where he would present his evidence to counter the Respondents' allegations and have a colleague accompany him at the hearing. This is supported by the fact that the Appellant had denied the said allegations.

60. This court emphasizes that the right to heard was couched in mandatory terms and any employer who proceeds to take any action to the detriment of an employee without hearing the employee, the same amounts to unfair termination. Whereas the charges amount to the grounds of gross misconduct under section 44(4) of the Employment Act the courts have always emphasized on the right to be heard as was held in the case of **Pius Machafu Isindu vs Lavington Security Guards Limited [2017] eKLR**, the Court of Appeal stated:

*“There can be no doubt that the Act, which was enacted in 2007, places a heavy obligation on the employers in matters of summary dismissal (Emphasis mine) for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for terminating (section 43) - prove that the grounds are justified (section 47 (5), among other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.”*

61. The court notes that the DCC who started the accusations against the Appellant was both the accuser and the intermediary hence he could not give the Appellant a fair hearing. He was the one who was holding on his show cause letter and the one making final decisions after the hearing committee sat. The Appellant appealed the decision to

terminate him on 3<sup>rd</sup> September, 2018 and the Respondents upheld their decision to dismiss him. This court therefore disagrees with the trial court that the Appellant was procedurally terminated. This court returns the verdict that the Appellant was therefore unfairly terminated.

***Whether the trial court erred by not awarding the Appellant his terminal dues and reliefs sought***

62. Having established that the Appellant was unfairly dismissed the court proceeds to find that he was entitled to the damages for unfair termination under section 49 of the Employment Act. The court is guided by considerations under section 49(4) of the Act. The Appellant had served from 2005 to 2018 which was approximately 13, he was unlawfully interdicted and the summary dismissal found unfair. The court is therefore of the view that the Appellant's case is one that justified for maximum compensation and awards him the 12 months' salary as damages for unfair termination.

63. The Appellant claimed that his gross salary was Kshs 50,000/=. He could not get his pay slips which were system generated and the Respondents never produced any evidence

to the contrary. The Respondents being the custodians of employment records under section 74 of the Act ought to have rebutted this assertion but they did not. The court will work with the Kshs 50,000/= as the Appellant's gross salary.

64. On the prayer for specific performance of Kshs 412,500/= being half salary for the months of April 2017 to 14<sup>th</sup> August,2018 this court having found that the dismissal was unfair this was a terminal benefit awardable to the Appellant since he was paid half salary during interdiction to the time he was officially dismissed unlawfully. The Appellant is entitled to the same.

65. **In the upshot the court finds that the Appellant's Appeal is merited and the same is hereby allowed with costs as follows:**

- i. 12 months' salary as compensation for unfair termination..... Kshs 600,000/=**
  - ii. Specific performance..... Kshs 12,500/=**
- TOTAL KSHS 612,500/=**

66. **It is so ordered.**

**Dated at Nairobi this 6th day of February, 2026**

**Delivered virtually this 6th day of February, 2026**

**Abuodha Nelson Jorum**

**Presiding Judge - Appeals Division**

