

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E048 OF 2024

BENARD ATEMA MAKOTSI..

.....**CLAIMANT**

VERSUS

KENSALT LIMITED.....

RESPONDENT

JUDGMENT

Introduction

1. The Claimant lodged this suit vide a Memorandum of Claim dated 19th January, 2024, wherein the Claimant seeks the following reliefs as against the Respondent:-
 - i. A declaration that the Claimant's termination was unfair.
 - ii. Payment of Kshs.1,800,000/= being damages for the unfair termination.
 - iii. One month's salary in lieu of notice at Kshs.150,000/=
 - iv. Unpaid salary for April to December, 2023, of Kshs.900,000/=
 - v. Costs of the suit
 - vi. Interests.
2. The Respondent filed a Response to the Claim dated 14th March, 2024, denying the Claimant's claim. The Claimant further filed a Reply to the response dated 9th April, 2024.

3. The suit was heard on 12th May, 2025, when the Claimant testified in support of his case, adopted his witness statement, and produced his list and bundle of documents and his supplementary list and bundle as exhibits in the case.
4. The Respondent's case was heard on 8th October, 2025, when one Ms. Sheryce Rhoda Otieno testified in support of the Respondent's case, adopted her witness statement, and produced the Respondent's documents as exhibits in the cause.
5. Submissions were received from both parties and have been duly considered.

The Claimant's Case

6. The Claimant states that in September 2022, he was hired as a Senior Sales Executive on a six months' probation period and was later confirmed as a permanent employee. The Claimant states that he worked diligently in his role until 28th December 2023, when the Respondent terminated his employment unfairly, unlawfully, and without proper procedure.
7. It is his case that on 2nd December 2023, he received a letter alleging that he owed the Respondent's company Ksh.1,327,201 in uncollected sales revenue, which he responded to on 4th December 2023, denying responsibility for the outstanding amount.

8. The Claimant avers that on 22nd December 2023, he was summoned to a disciplinary hearing, but claims he was not given a fair opportunity or adequate time to prepare his defense. He argues that the allegations were fabricated, did not amount to gross misconduct under Section 44 of the Employment Act, and did not justify termination.
9. The Claimant further contends that a disciplinary hearing was held on 27th December 2023, and that the hearing was a sham as the same shifted into an investigative process without allowing him to respond properly to the charges levelled against him. It is his case that he was not informed of the substantive charges, that no witnesses testified against him, and that he was not permitted to cross-examine any witnesses or to call his own.
10. The Claimant maintains that the decision to terminate his employment had already been made before the hearing, as the Human Resource Manager drafted a summary dismissal letter dated 28th December 2023 immediately after the proceedings, dismissing him without sufficient reason.
11. The Claimant asserts that although he was willing to defend himself and cooperated during the disciplinary process, the Respondent terminated his employment without following proper procedure. He states that he was not allowed to attend the hearing with his own witnesses, nor was he given a fair opportunity to defend himself.

12. The Claimant states further that he was not granted a right of appeal against the Disciplinary Committee's decision. He maintains that the reasons given for his termination were fabricated, unfounded, and unsupported by evidence.
13. In his reply to the Respondent's response to the claim, the Claimant states that he has never been charged in court or reported to the police for allegedly mishandling the company's property. He argues further that if such misconduct had occurred, a proper report ought to have been made to the relevant authorities for investigation, and in the absence of this, the allegations should be disregarded.
14. It is his case that his Employment Contract dated 15th September 2022 clearly outlines his duties, which did not include responsibility for collecting debts from clients, and that if he assisted in debt collection at any point, he did so in good faith and not as part of his contractual obligations.
15. Additionally, the Claimant notes that the company had introduced a new product that failed to meet customer quality expectations, and the Respondent had been made aware of customer complaints regarding the product.
16. On cross-examination, the Claimant told the court that he had a responsibility to collect outstanding payments. He avers that he did not make the collections, contending that the allotted time was insufficient.

17. It is his evidence that he signed the minutes of the disciplinary hearing, having been forced to do so by the Respondent's management.

18. The Claimant urges the court to allow his claim as prayed.

The Respondent's Case

19. The Respondent states that the Claimant was lawfully terminated on 28th December 2023 for mishandling company property and funds, and for failing to properly perform his assigned duties and responsibilities.

20. The Respondent further asserts that on 25th April 2023, the Claimant, in his capacity as Sales Manager, signed a letter requesting a two day grace period to collect outstanding route balances for invoices issued to customers, and that in that letter, he acknowledged responsibility for collecting outstanding debts amounting to Kshs.2,781,951.00 within two weeks.

21. It is the Respondent's case that, despite several verbal reminders to clear the outstanding balances, the Claimant failed and/or refused to comply. It avers that it subsequently issued a notice dated 7th October 2023 indicating the total outstanding balance from June 2023, excluding amounts handed over to debt collectors, and urged the Claimant to urgently address the collection of outstanding balances, reconcile accounts, and ensure accountability. The Respondent states that the Claimant signed the Notice letter

dated 7th October 2023, acknowledging its seriousness and potential consequences.

22. It is the Respondent's case that on 2nd December 2023, it issued the Claimant with a Show Cause letter requiring him to clear an outstanding route balance of Kshs.1,327,201 as at 29th November 2023 within 30 days. The Respondent contends that the Claimant's response dated 4th December 2023 was unsatisfactory and failed to address the issues raised.

23. It avers that as a result, the Claimant was summoned to a disciplinary hearing scheduled for 27th December 2023 through a letter dated 22nd December 2023. The hearing was to address allegations of mishandling company funds and failing to collect outstanding debts of Kshs.1,327,201 within his sales route.

24. The Respondent denies the Claimant's allegations that the hearing was unfair. It maintains that the Claimant was informed of his right to be accompanied by a fellow employee, but chose to attend the hearing alone. The Respondent asserts that the Claimant was given a fair disciplinary hearing on 27th December 2023, as reflected in the official minutes of the meeting.

25. It is the Respondent's case that the Claimant's termination was procedurally fair. It states that a notice to show cause was issued on 2nd December 2023, to which the Claimant responded vide a letter on 4th December 2023. The

Respondent avers that, after considering the response, it invited the Claimant to a disciplinary hearing scheduled for 27th December 2023 by letter dated 22nd December 2023, and that the Claimant attended the hearing and was informed of his right to be accompanied by a fellow employee, but chose not to exercise that right.

26. The Respondent maintains that the Claimant was given an opportunity to be heard, and did not object to the disciplinary process or express an intention to appeal. It avers further that the Claimant voluntarily signed the minutes of the disciplinary proceedings without coercion, duress, or undue influence, and that based on these steps, the Respondent asserts that the termination followed due process.

27. The Respondent asserts that the Claimant negligently performed his duties and mishandled company funds, causing a loss of Kshs.1,327,201.

28. It further states that the Claimant was formally terminated through a Summary Dismissal letter dated 28th December 2023, which outlined the Claimant's terminal dues and indicated that payment would be made subject to lawful deductions, recovery of any loan advances, and the satisfactory return or refund of company property.

29. On cross-examination, RW1 told the court that it is not true that losses occurred when the company started a new

product, but confirmed that the loss in issue is associated with the new product. She denied that the product was not welcomed in the market.

30. It is her position that it was the Claimant's mandate to collect debts, but this role was not stated in his contract. She further confirmed that the Claimant was not the only employee serving in the Senior Sales Executive position.

31. The Respondent prays that this suit be dismissed with costs.

Analysis and Determination

32. The following issues arise for my determination: -

- i. Whether the Claimant's termination was fair and lawful
- ii. Whether the Claimant is entitled to the remedies sought

Whether the Claimant's termination was fair and lawful

33. Section 41 of the Employment Act 2007 demands that, before terminating the services of an employee on the grounds of misconduct, poor performance or physical incapacity, the employee must be informed of the charges against him or her, allowed an opportunity to make a representation, and the right to be accompanied by a fellow employee or shop floor representative where the employee is unionized.

34. The Claimant's position is that the hearing was a sham on the premises that he was not allowed to call witnesses, and

that the Respondent's decision to dismiss him had been pre-determined.

35. On its part, the Respondent maintains that it issued a show cause letter which the Claimant responded to, and that he was further invited to attend a disciplinary hearing accompanied by a representative, which he did. The Respondent maintains that the Claimant voluntarily signed the minutes of the disciplinary hearing.

36. In ***Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR***, the Court of Appeal set out what has come to be known as the bare minimums of a fair hearing in the following words: -

“Section 41 of the Employment Act, provides the minimum standards of a fair procedure that an employer ought to comply with. The Section provides for notification and hearing before termination on grounds of misconduct. The court stated that four elements must be discernable for the procedure to pass:-

- a. an explanation of the grounds of termination in a language understood by the employee;***
- b. the reason for which the employer is considering termination;***
- c. entitlement of an employee to the presence of another employee of his choice when the***

explanation of grounds of termination is made

d. hearing and considering any representation by the employee and the person chosen by the employee.”

37. The chronology of events culminating in the Claimant's termination as depicted from the court record is that the Claimant was issued a notice by letter dated 7th October, 2023, and again on 2nd December, 2023, reminding him of his duty to collect money owed to the Respondent by virtue of sales of bread in the route that the Claimant manned, and which amount was said to have been owing for over six months.

38. The record confirms that the Claimant responded to the letters by his letter of 4th December, 2023. It is also not disputed that the Claimant was subsequently issued with a show cause letter, to which he responded, and was invited to attend a disciplinary hearing in the company of a representative, but he attended unrepresented.

39. It is evident that the Claimant was given five days' notice of the hearing and was expressly informed of his right to be accompanied, but he attended the hearing alone. There is further no independent evidence that he was denied the right to call witnesses or that he protested the process at the time.

40.The foregoing chronology, in my view, met the test of procedural fairness, and I find the Claimant’s termination procedurally fair and lawful.

41.On whether the Respondent had valid grounds to terminate the Claimant’s employment, Sections 43 and 45 of the Employment Act 2007 require that the employer prove the reasons for termination and further show that such reasons were valid and fair.

42.The Respondent’s case is that the Claimant failed to collect outstanding route balances amounting to Kshs.1,327,201 and thereby mishandled company funds. It placed reliance on the letter dated 25th April 2023, allegedly signed by the Claimant, acknowledging responsibility for debt collection, and the notices it issued to him demanding that he collect the debts dated 7th October 2023.

43.Although the Claimant initially denied that debt collection was part of his contractual duties, he admitted on cross-examination that he had the responsibility to collect outstanding payments.

44.The Court of Appeal in ***Kenfreight (EA) Ltd v Benson K. Nguti [2016] eKLR*** emphasized that once an employer demonstrates a genuine and reasonable belief in the employee’s misconduct, the court does not substitute its own view for that of the employer, provided the belief was based on reasonable grounds.

45. The court notes that there was indeed a substantial outstanding balance owed to the Respondent on account of sales made by the Claimant and employees serving under him. It is also evident that the Respondent made repeated reminders in writing to the Claimant, and that the Claimant, in cross-examination, acknowledged responsibility for debt collection.

46. In my view, even if market conditions or product performance affected collections, the Claimant did not demonstrate that he had no accountability at all over the sums in question. The Respondent, on the other hand, has shown that there were genuine operational concerns regarding uncollected funds touching on the Claimant's role as Senior Sales executive.

47. In the upshot, the Court finds and holds that the Respondent has proved, on a balance of probabilities, that it had a valid and fair reason to terminate the Claimant's employment.

48. In the end, I find and hold that the Respondent has established both procedural fairness and substantive justification for the summary dismissal.

Whether the Claimant is entitled to the reliefs sought

49. On the prayer for compensation for unfair termination, the court has held that the dismissal was based on valid grounds and the Respondent adhered to the tenets of fair process.

50. Accordingly, the prayer for a declaration of an unfair termination and damages on the same fails and is dismissed.

51. Similarly, the claim for one month's salary in lieu of notice fails, as the dismissal was summary under Section 44 and the dismissal was fair.

52. Further, the Claimant did not lead any evidence to show that he was not paid salaries in the months of April to December 2023. This claim, therefore, equally fails for lack of proof.

53. In the final analysis, I find the Claimant's claim devoid of merit and is hereby dismissed in its entirety with costs to the Respondent.

54.It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2026.**

**C. N. BAARI
JUDGE**

Appearance:

Mr. Onyango present for the Claimant

Mr. Masinde present for the Respondent

Ms. Esther S- C/A