

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E430 OF 2023

MOSES NGUGI NJUGUNA.....

CLAIMANT

VERSUS

DHL WORLDWIDE EXPRESS KENYA

LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. For determination is the Claimant's Statement of Claim dated 11th May, 2023, wherein the Claimant seeks the following reliefs as against the Respondent: -

(a) THAT the termination of the Claimant's services by the Respondent be declared wrongful, unfair, unjustifiable, and illegal.

(b) THAT the Claimant be paid maximum compensation for wrongful termination of services, being 12 months' salary amounting to Kshs. 2,529,020.04

(c) THAT the Claimant be paid exemplary damages in the amount of Kshs.3,500,000.00

(d) THAT the Claimant be paid his thirteenth-month salary in the amount of Kshs.210,751.67

(e) THAT the Claimant be awarded costs of the entire suit.

(f) Interest on items (b), (c), and (d) until payment in full.

2. The Respondent filed a Response to the Statement of Claim dated 18th January, 2024, denying the Claimant's averments.
3. The Claimant's case was first heard on 4th March, 2025, and concluded on 21st May, 2025. The Claimant testified in support of his case, adopted his witness statement, and produced his list and bundle of documents as exhibits.
4. The Respondent's case was also first heard on 21st May, 2025, when the testimony of one Michael Hartzenberg (RW1) was taken. RW1 adopted his witness statement and produced a list and bundle of documents filed in support of the Respondent's case. RW2, John Irungu, further testified on 16th June, 2025, also in support of the Respondent's case.
5. Submissions were filed for both parties.

The Claimant's case

6. It is the Claimant's case that he was first employed by the Respondent on 5th February 2001 as a Grounds Operations Courier and later confirmed into permanent employment on 1st April 2001. The Claimant states that he exhibited hard work and diligence, and has, over the years, received support and recognition from the Respondent in various courses and awards that he undertook.
7. He avers that as a further testament of his loyalty, trustworthiness, and hard work, he received various

assignments and promotions throughout his career and service with the Respondent.

8. The Claimant avers that his promotion resulted in being placed in charge of thirty-three (33) staff members in various positions within ground operations, as well as twenty (20) vehicles and seven (7) motorcycles. The Claimant states that his conduct was governed by the Respondent's Employee Handbook.
9. The Claimant further states that his title was later changed to Service Center Operations Supervisor, which was a further testament to his dedication, loyalty, and hard work, as he received salary increments from his initial annual basic salary of Kenya Shillings One Million Seven Hundred and Four Thousand (Kshs.1,704,000) to Kenya Shillings Two Million Five Hundred and Twenty-Nine Thousand and Twenty and Four Cents (Kshs. 2,529,020.04) as at the time material to this suit.
10. It is his case that in early November 2022, he was informed of an inquiry regarding VW seats removed during the Respondent's fleet conversion in 2021. He avers that he was advised to state that he was unaware of the disposal process to prevent escalation, and that he was subsequently taken through the disposal process by the Operations Manager.
11. The Claimant further avers that he informed the Operations Manager that he had collected the seats in

December 2021, stored them at the DHL compound, and instructed DT Dobie to discard unusable components, which the Operations Manager acknowledged.

12. It is the Claimant's assertion that he recorded a statement with the Respondent's Head of Security regarding the VW seats, and shortly thereafter, on or about 8th November 2022, the Operations Manager berated him over a conflicting work assignment issued by the Managing Director.
13. It is his case that on or about 10th November 2022, he was summoned to Human Resources and issued with a suspension letter pending investigations concerning VW Caddy seats. He avers that the suspension was based on allegations of theft and loss of VW Caddy parts, unauthorized release of DHL property, violation of the Employee Handbook and disposal policy, and causing financial loss to the Respondent.
14. The Claimant further states that following issuance of the suspension letter, the Operations Manager escorted him to his desk, directed him to pack his personal belongings, and required him to surrender his office laptop and telephone. He avers that, despite his request for time to remove personal information from the devices, the Operations Manager returned shortly thereafter, noted that only a few items had been packed due to the suspension, and placed the Claimant's remaining belongings into a box, including

his twenty-year service award plaque, and shouted that the Claimant was to pack all his personal belongings.

15. It is the Claimant's case that on or about 16th November 2022, he was contacted by the Respondent's Head of Human Resources and encouraged to resign to protect his reputation and obtain a positive reference, which he declined. He further avers that, following his refusal, the Respondent invited him to a disciplinary hearing scheduled for 30th November 2022, citing a security investigation report that was not made available to him.

16. The Claimant states that he attended the hearing and raised concerns that his defence was prejudiced by the confiscation of his work devices and the failure to provide the investigation report or particulars of the charges. He avers that he further objected to the composition of the disciplinary panel on grounds of bias, and states that the minutes of the disciplinary meeting were subsequently shared with the Claimant.

17. It is his case that the Respondent thereafter rendered its decision summarily dismissing him from employment on the basis of findings that he knew that a Mr. Eddy Kamau, had provided inconsistent accounts regarding the loading and offloading of the VW seats, failed to document the disposal of VW parts by DT Dobie, raised doubts as to how the seats were handled without assistance given their size and weight, and was consequently found guilty of theft of the VW car seats and accessories.

18. The Claimant states that he lodged an appeal against his summary dismissal by letter dated 19th December 2022, challenging the decision on the grounds that it was excessive, unfair, and issued without notice. He further states that the disciplinary procedure was flawed due to failure to provide the investigation report, thereby prejudicing his defence, and that the process was engineered to ensure his termination.

19. The Claimant avers that he was subsequently invited to an appeal hearing scheduled for 22nd December 2022, with the invitation being issued within an hour of lodging the appeal, which the Claimant contends demonstrated a rehearsed, predetermined, and biased appeal process.

20. He avers further that following termination of his employment, the Respondent belatedly availed the investigation report in an apparent attempt to sanitize the flawed disciplinary process. He states that the appeal hearing was conducted and concluded unreasonably, with the Respondent relying on a purported distinction between sending an email and copying a recipient to justify the termination, despite his having copied his immediate supervisor in the email instructing DT Dobie to dispose of unusable parts.

21. The Claimant states that the Appeal Committee thereafter upheld the termination without justifiable or reasonable basis, thereby perpetuating the injustice against him.

22. On cross-examination, the Claimant confirmed that he served the Respondent for 21 years. He further confirmed that employee benefits are available to eligible employees, including the 13th salary.
23. The Claimant told the court that he purchased motor vehicle registration No. KBY348P from the Respondent through a bidding process.
24. The Claimant further confirmed that he received a call in November 2021 from a person named Mr. Mungai of DT Dobbie informing him that there was equipment belonging to the Respondent that needed to be picked up from DT Dobbie. He told the court that he informed his supervisor of the call and that his supervisor asked him to pick up the equipment.
25. It is the Claimant's testimony that he did not pick the equipment up as instructed and that he received a call again in December 2021 to pick the equipment within 24 hours or DT Dobbie would dispose of it.
26. The Claimant confirmed that he took his personal motor vehicle and used it to pick up the equipment. He confirmed that the use of the Respondent's vehicles was approved by him or Eric Chomba, and that he did not ask either Eric or his operations manager for a vehicle since he was in charge of the Respondent's fleet.

27. It is the Claimant's evidence that he signed for and picked up the equipment, took it to the Respondent's premises, and deposited it where such items are deposited. He avers that he did not inform his supervisor of what he had done and that he told Derrick he had purchased the seats/equipment.

28. The Claimant told the court that the seats were the property of the Respondent. He confirmed that he did not write an email upon his return and did not alert anyone in the finance department when he dumped the seats.

29. The Claimant further confirmed that he released accessories belonging to the Respondent and that the items were damaged and had become obsolete. He further confirmed that he did not seek the Respondent's authority to dispose of the items/accessories.

30. The Claimant told the court that he had seen emails indicating that the Respondent was going to dispose of the items, and that that is the same process that he followed when he purchased a vehicle from the Respondent.

31. The Claimant confirmed on cross-examination that he spoke to the investigators and that he gave his side of the story. He further confirmed that he had access to the documents he required to respond to the charges levelled against him.

32. It is his position that he wrote a statement and was informed of the grounds for the suspension. He further confirmed that the invitation informed him of the hearing date, the venue,

the allegations against him, and that he would have an opportunity to present his evidence and to be represented during the hearing.

33. It is the Claimant's testimony that the hearing took place, that he attended, and had a representative present. He confirmed that he did not express concerns against any member of the panel and that he stated his case and made his defence.

34. The Claimant confirmed that he was informed of the decision to dismiss him from service and his right of appeal. He avers that he did appeal, and the appeal was heard two days later, and that he did not present new evidence during the appeal hearing.

35. The Claimant further confirmed that he was paid terminal dues.

36. In re-examination, the Claimant told the court that he was never before involved in such an incident nor issued with any warning letter or found guilty of any wrongdoing.

37. It is the Claimant's prayer that his claim be allowed.

The Respondent's case

38. The Respondent's case is that it employed the Claimant as a Service Center Supervisor from 1st April 2020, having previously served as a Dispatch Coordinator and Grounds Operations Supervisor from 1st December 2018.

39. The Respondent states that the Claimant served in that capacity until on or about 13th December 2022, when his employment was terminated for violation of the Respondent's Human Resources policies and worldwide disposal policy.

40. The Respondent states that the Claimant's termination was substantively justified and procedurally fair under the Employment Act, his contract, and internal policies, following investigations in December 2021 into VW Caddy seats and accessories removed from the Respondent's fleet and handled by the Claimant, who allegedly transferred them to an unknown third party for intended sale.

41. The Respondent states that it suspended the Claimant by letter dated 10th November 2021 to allow investigations into allegations that he was involved in the theft and unauthorized disposal of VW Caddy parts, unlawfully authorized an unknown third party to collect company property, violated the Respondent's employee handbook and disposal policy, and caused the Respondent financial loss.

42. It is the Respondent's case that the Claimant was informed that disciplinary action would be considered after investigations were concluded. It avers that, following the investigations in which the Claimant participated and provided written responses, it concluded that, on 16th December 2021, the Claimant used his personal vehicle to

collect various VW Caddy parts belonging to the Respondent from DT Dobie without proper authorization.

43. The Respondent further states that the investigations found that the Claimant collected the items without authorization, failed to inform his supervisors, and did not deliver the assets to the Respondent, resulting in untraced items and financial loss.

44. The Respondent states that the investigations report recommended disciplinary action against the Claimant, and by a letter dated 24th November 2022, it invited the Claimant to attend a disciplinary hearing scheduled for 30th November 2022 at the Respondent's premises, outlining the allegations forming the basis of the disciplinary process.

45. The Respondent avers that the Claimant was informed of his right to be accompanied by a colleague, to cross-examine witnesses, and to present evidence. It avers that the Claimant attended the disciplinary hearing on 30th November 2022 with a colleague, made oral and written submissions, but later declined to sign the hearing minutes.

46. It is the Respondent's position that after considering his representations and finding them unsatisfactory, the disciplinary committee communicated its findings and recommendations to him by letter dated 9th December 2022.

47. The Respondent avers that the disciplinary committee recommended termination by letter dated 9th December 2022. It states further that relying on these findings, it terminated the Claimant's employment by letter dated 13th December 2022 with immediate effect and payment of one month's salary in lieu of notice, citing serious violations of the Respondent's Human Resources and Worldwide Disposal policies.

48. The Respondent states that the termination letter stated that upon clearance, the Claimant would be paid salary up to 13th December 2022, accrued leave, and pension benefits subject to statutory deductions. It avers that, being dissatisfied with the decision, the Claimant appealed the termination by letter dated 19th December 2022, alleging that the termination was excessive, procedurally flawed, and that he was unfairly denied his 13th month salary.

49. The Respondent states that the Claimant was invited to an appeal hearing on 22nd December 2022, where he was again allowed to be accompanied and present evidence. It avers that the Claimant attended the hearing, accompanied by a witness, made his submissions, but declined to sign the hearing minutes.

50. The Respondent states that the appeal committee considered his grounds and, by letter dated 29th December 2022, upheld the termination. The Respondent further avers that the Claimant cleared with the Respondent on 9th January 2023, received his terminal dues, and was issued a

certificate of service in accordance with the Employment Act.

51. It is the Respondent's case that at the time of termination, the Claimant was a Service Centre Supervisor earning a monthly gross salary of Kshs. 210,751.67. The Respondent asserts that the termination was lawful, based on valid grounds, and that procedural fairness and natural justice were observed throughout the process.

52. The Respondent contends that, contrary to the Claimant's allegation in paragraph 3.12 of the statement of claim, he was in fact provided with a copy of the investigation report.

53. The Respondent states that the Claimant's attendance at the disciplinary hearing complied with the law and the Respondent's policies, and that he never challenged the hearing process or panel composition at the time, making his current objections a mere afterthought.

54. On cross-examination, RW1 told the court that items at the Respondent's company are sold through a bidding process. He confirmed that the disposal policy took effect on 1st February, 2022. He further confirmed that the disposal policy was not applicable to the issues in this case.

55. RW1 further told the court that the Claimant was aware of the disposal process since he purchased a vehicle earlier from the Respondent through the same process and that he had discussed the process with him.

56. It is RW1's evidence that he did not have a discussion with the Claimant on the disposal of VW seats, and did not ask him to return the seats. He further confirmed that the matter of theft was not reported to the police.

57. RW1 stated that the Respondent has no tolerance for theft and that the Claimant did steal the goods, having taken them without following proper procedure.

58. On his part, RW2, the head of Human Resources, told the court that the seats and other items removed from the vehicles remained the property of the Respondent. He confirmed that the seats in issue were removed from the vehicles in 2021 and remained idle for more than a year.

59. RW2 further told the court on cross-examination that he had not provided a valuation of the seats and had no proof of financial loss to the Respondent. He stated that vehicles were sold at a lower value due to the loss of seats.

60. He further avers that he did not escort the Claimant to his desk nor call him to ask that he resign from his position so as to get a favourable reference. He further told the court that the Claimant, being asked to leave with his property, was the Respondent's standard procedure.

61. RW2 confirmed that he did not give the Claimant the investigation report before the disciplinary hearing, and further confirmed that the investigation report was the reason for the disciplinary hearing.

62. RW2 finally told this court that the principle of fairness was applied.

63. The Respondent urges that the Court dismiss the Claimant's claim with costs.

Analysis & Determination

64. Having considered the pleadings, the evidence adduced, and submissions by both parties, the Court distils the following issues for 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

65. In determining the fairness or lack thereof of a termination/dismissal, the role of the court is to assess the employer's adherence to the tenets of fair process and the substantive justification for the termination/dismissal espoused under Sections 41, 43, and 45 of the Employment Act, 2007.

66. Section 41 of the Employment Act demands that an employee be given notice of the disciplinary charges levelled against them, an opportunity to make representation and be heard on the charges, and be informed of their right to be represented by either a union representative or a fellow employee.

67. The essentials of a fair process were explained in the case of **Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd [2013] eKLR**, thus:-

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee....Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly, if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give another sanction.”

68. It is evident that the Claimant was suspended and informed of the allegations against him. It is also not in dispute that he was invited to a disciplinary hearing, which he attended with a representative, and was heard in defence of the charges levelled against him.

69. The evidence before the court further confirms that the Claimant was informed of the outcome and further informed of his right of appeal, which he exercised.
70. RW2, who is the Respondent's Head of Human Resources, candidly admitted under cross-examination that the investigation report formed the basis of the disciplinary process, and further confirmed that the report was not made available to the Claimant before the hearing.
71. RW2's admission is, in my view, significant, as an employee cannot meaningfully be expected to defend himself against allegations founded on an investigation report that has not been shared with him. This principle was emphasized in ***Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR***, where the Court of Appeal held that procedural fairness requires disclosure of material relied upon by the employer.
72. In my considered view, the belated provision of the report after termination does not cure the defect, but instead, renders the termination procedurally unfair and unlawful, and so I hold.
73. On whether the termination of the Claimant's employment meets the substantive fairness test, Sections 43 and 45 of the Employment Act provide that the employer bears the burden of proving the reasons for termination, and showing that those reasons are valid, fair, and related to the employee's conduct, capacity, or compatibility.

74. In ***Charles Musungu Odana v Kenya Ports Authority [2019] eKLR***, the Court stated,

“It is now clear that the burden placed on an employer by Section 43 of the Employment Act is to establish a valid reason that would cause a reasonable employer to terminate employment.”

75. The Supreme Court further buttressed this position in ***Kenfreight (EA) Ltd v Benson K. Nguti [2016] eKLR***, in the following words:-

“Termination of employment will be unfair if the court finds that, in all the circumstances of the case, it is based on invalid reasons or if the reason itself or the procedure of termination is itself not fair.”

76. The Respondent terminated the Claimant’s services on allegations that he unlawfully collected, handled, and disposed of VW Caddy seats and accessories belonging to the Respondent, contrary to company policy, which it contends amounted to theft and caused the Respondent financial loss.

77. From the evidence adduced, it is not disputed that the seats and the accessories in issue were the property of the Respondent. Further, the Claimant admitted that he personally collected the seats using his private vehicle,

without written authorization and without documentation of the collection. He confirmed to the court on cross-examination that he did not notify the finance department or formally hand the items into stores.

78. The Claimant further confirmed on cross-examination that he authorized the disposal of the Respondent's accessories without express authority.

79. In an administrative disciplinary process, the law does not require an employer to prove criminal theft beyond reasonable doubt. All that is required is that the employer shows, on a balance of probabilities, that it had reasonable and sufficient grounds to believe that misconduct occurred.

80. This principle was clearly encapsulated in ***Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR***, where the Court of Appeal held that an employer is not required to await criminal conviction before taking disciplinary action, so long as the decision is based on reasonable grounds.

81. The Claimant's argument was that the seats were obsolete and that the Respondent had intended to dispose of them, is, in my view, lame, on the premise that intent to dispose does not translate into authority to self-help. In any event, even obsolete property remains company property until lawfully disposed of.

82. Further, the Respondent's witnesses were consistent that disposal was regulated, formal, and documented, and the Claimant was well aware of the disposal process, having himself previously purchased a motor vehicle from the Respondent following a similar process.

83. In the circumstances, I am persuaded that the Respondent had valid, fair, and justified reasons to subject the Claimant to disciplinary action and ultimately terminate his employment.

84. I thus find the Claimant's termination substantively fair and lawful.

Whether the Claimant is entitled to the reliefs sought

85. The Claimant's prayers under the claim are that the termination of his services by the Respondent be declared wrongful, unfair, unjustifiable, and illegal, an award of maximum compensation for wrongful termination of services, being 12 months' salary amounting to Kshs. 2,529,020.04, an award of exemplary damages in the amount of Kshs.3,500,000.00, that he be paid his thirteenth-month salary in the amount of Kshs.210,751.67and be awarded costs of suit and interests.

Compensation for the unfair termination

86. The finding that the Claimant's termination was unfair on account of procedure entitles him to compensation pursuant to Sections 49 and 50 of the Employment Act, 2007.

87. The Claimant was in the service of the Respondent for over 21 years, most of which he had a clean record of service. It is, however, clear that the Claimant substantially contributed to the termination of his services, which militates against maximum compensation. In ***Kenya Ports Authority v Festus Kipkorir Kiprotich [2014] eKLR***, the Court held that an employee's contribution justifies a reduction in compensation.

88. In light of the foregoing, I find an award of five (5) months' salary sufficient compensation for the unfair termination, and which is hereby awarded.

Exemplary damages

89. Exemplary damages are not awarded as a matter of course in employment disputes. They require proof of oppressive, arbitrary, or unconstitutional conduct. The Claimant has not met this threshold to justify such an award. The claim fails and is declined.

Thirteenth-month salary

91. The Claimant told the court on cross-examination that a 13th salary is a benefit for eligible employees, and that it is not automatically available to all employees.

90. He did not lead evidence to show that it was contractually guaranteed or payable upon termination for misconduct. This claim, therefore, similarly fails.

91. In the final analysis, the Claimant's claim partly succeeds and orders granted as follows: -

- (a) A declaration that the termination of the Claimant's employment is unfair and unlawful on account of procedure.
- (b) An order that the Respondent pay the Claimant five months' salary as compensation for the unfair termination at Kshs. 1,053,758.35/-
- (c) The Respondent shall bear the costs of the suit.

92. Judgment accordingly.

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

C. N. BAARI
JUDGE

Appearance:

Mr. Weru present for the Claimant

Ms. Wanja h/b for Ms. songok for the Respondent

Ms. Esther S- C/A