Karanja v Taphe Guest House (Civil Appeal 196 of 2019)
[2026] KECA 372 (KLR) (27 February 2026) (Judgment)

Neutral citation: [2026] KECA 372 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 196 OF 2019

W KARANJA, K M'INOTI & AO MUCHELULE, JJA

FEBRUARY 27, 2026

BETWEEN

DENNIS NG'ANG'A KARANJA ..... APPELLANT

AND

TAPHE GUEST HOUSE ..... RESPONDENT

(Appeal from the judgment and decree of the Employment & Labour Relations Court at Nairobi (Onyango, J.) dated 13th July 2018 in ELRCC No. 1624 of 2014)

JUDGMENT

1. By a fixed-term contract dated 1st December 2011, the respondent, Taphe Guest House & Resort, employed the appellant, Dennis Karanja Ng'ang'a, as a manager for a period of three years ending on 31st December 2014 and renewable on mutually agreed terms. The contract provided for four distinct methods of its termination.

2. On 17th September 2014, the appellant filed a claim in the Employment & Labour Relations Court (ELRC) at Nairobi for wrongful or unfair termination. The termination was said to have taken place in February 2012, after the appellant had worked for slightly over a month. By way of remedies, the applicant prayed for:

    a. a declaration that the termination of his employment was wrongful and unfair;

    b. salary for February 2012

    c. Kshs 90,000, being three months salary in lieu of notice;

    d. Kshs 1,020,000.000 being the aggregate salary that the appellant would have earned from the date of the termination of the contract to the conclusion of the contract;

    e. Kshs 360,000 being 12 months salary as damages for wrongful termination; and

f. Certificate of service.

3. On 30th October 2014, the respondent filed its response in which it denied the appellant's averments and pleaded that he walked out of his employment on 22nd February 2012 after being confronted with allegations of fraud and mismanagement of the guest house. It was further pleaded that the appellant had procured his employment by false representation regarding his qualifications and that he was offered an opportunity to explain himself, which he spurned.

4. The appellant's case was heard by Nduma, J. (as he then was), while that of the respondent was heard by Onyango, J., who also wrote the judgement. Each side called one witness.

5. The appellant testified on his own behalf and told the court that he entered into the three-year contract of employment with the respondent, represented by Taphe Rose Nyamweya, one of the directors of the guest house. Thereafter, Mrs. Nyamweya went to the United States of America and he was left running the guest house. She returned after 11 days and he was accused of mismanaging the guest house. With the consent of Mrs. Nyamweya, he took leave on 21st February 2012. When he returned on 27th February 2012, he met a director of the respondent, Mr. Nyamweya, whom he had not met before, who proceeded to relieve him of his duties and denied him access to the premises. He was subsequently charged with the offence of theft by servant at the instigation of Mr. Nyamweya, but he was acquitted.

6. Mr. Ezekiah Nyamweya Kebati testified on behalf of the respondent. He confirmed that there was a contract of employment between the appellant and the respondent but denied having terminated the appellant's employment. He maintained that the appellant was not an employee of the respondent. He however admitted that he had caused the arrest of the appellant, who was acquitted. He explained that the respondent did not pay the appellant's salary for February 2012 because he was not at the guest house and when he was called, he did not respond. The witness conceded that the appellant was not given any notice in accordance with the contract.

7. By a judgment dated 13th July 2018, which is impugned in this appeal, the ELRC held that there was indeed a contract of employment between the parties; that from the evidence it was not clear which of the parties terminated the contract; that under section 47 of the *Employment Act* (the Act) the burden of proving unfair or wrongful termination was on the appellant while the respondent bore the burden of justifying the grounds of termination; and that the appellant had not discharged his burden of proving that the termination was wrongful or unfair.

8. As regards remedies, the court awarded the appellant Kshs. 30,000.00 being his salary for February 2012 and certificate of service. All the other claims were disallowed and each party was ordered to bear their own costs.

9. The appellant was aggrieved and filed a notice of appeal on 23rd July 2018, followed by this appeal in which he faults the ELRC on six grounds. He contends that the court erred by:

   a. Holding that he had not discharged his burden of proof as regards the wrongfulness or unfairness of the termination of employment;

   b. Failing to find that the respondent had violated his right to be heard in violation of the rules of natural justice;

   c. Failing to determine whether the respondent had followed the proper procedure under Employment Act before terminating the employment;

   d. Finding in favour of the respondent without giving any reasons;

e. Failing to find that the respondent had not given any substantive reasons for terminating his employment; and

f. Failing to consider his evidence.

10. Relying on written submissions dated 26th June 2024, Mr. Mbuthia, learned counsel for the appellant, submitted as regards the first ground of appeal, that the burden on an employee to prove that the termination was wrongful or unfair is discharged once he establishes a prima facie case that the termination was not within the law in terms of validity of the reasons for termination and the procedure adopted. It was argued that once the employee establishes a prima facie case, the burden shifted to the employer to justify the grounds of termination and the fairness of the procedure followed. In support, he cited the decision of the ELRC in Josephine M. Ndung'u & Others v. Plan International Inc. [2019] KEELRC 663 (KLR).

11. Counsel added that in this case, the appellant established a prima facie case of wrongful termination by producing the respondent's letter dated 27th March 2012, which indicated that his employment had been terminated with effect from 22nd February 2012 without prior notice or hearing. It was contended that the burden then shifted to the respondent to prove the grounds set out in the said letter and in respect of which the appellant had been acquitted in a criminal trial, but it failed to do so. Counsel also argued that the respondent's allegations of fraud remained unsubstantiated and untrue, both before the criminal court and the ELRC.

12. On violation of the right to be heard, the appellant submitted that the right was underpinned by Articles 47 and 50 of *the Constitution* as well as section 41 of the Act, which demands that before an employer dismisses an employee on grounds of misconduct, poor performance or incapacity, he must explain the reasons and hear the employee in the presence of another employee or a representative of his choice. Counsel added that even in a case of summary dismissal, an employee is entitled to be heard and have his representations taken into account. In support, counsel relied on the decision of this Court in Lamathe Hygienic Food v. Wesley Patrick Simasi Wafula & 8 Others.

13. It was further submitted that the appellant received the letter of termination on 27th March 2012 and although it purported to ask him to show cause why he should not be dismissed, his fate had already been sealed because the letter was in reality a letter of dismissal rather than a notice to show cause. The appellant argued that the respondent never gave him a notice as required by the contract of employment.

14. Turning to the third ground of appeal on procedural fairness before termination, it was submitted that section 41 of the Act demands that before an employer terminates an employee, he must explain to him in a language that he understands the reasons for considering his termination; in the presence of another employee or union representative of his choice; and afford him an opportunity to make representations which must be taken into consideration. Counsel added that the respondent blatantly violated the above procedure.

15. As regards whether the ELRC failed give reasons why it found in favour of the respondent, the appellant submitted that the court was under a duty, imposed by Article 47 (2) of *the Constitution*, sections 4, 5, and 6 of the *Fair Administrative Action Act*, section 45 of the *Employment Act*; and Order 21 rule 4 of the Civil Procedure Rules to give reasons for its decision. In support, he relied on the decisions of this Court in Suchan Investment Ltd v. Ministry of National Heritage & Culture & 2 Others [2016] eKLR and Judicial Service Commission v. Mutava & Another [2015] KECA 741 (KLR) and submitted that the ELRC failed to give reasons for the decision in favour of the respondent.

16. Next, the appellant submitted that the ELRC erred by failing to find the respondent did not give any substantive reason for the termination of his employment. Relying on section 43 of the Act, the appellant submitted that the respondent was under a duty to prove that the substantive reasons for termination of the employment were based on facts, matters and circumstances that existed at the time of termination and that failure to do so rendered the termination unfair. It was submitted that although the respondent alleged to have had an audit report prepared that showed irregularities and mismanagement of the guest house by the appellant, no such evidence or report was produced in court.

17. Lastly, the appellant submitted that the ELRC erred by ignoring his evidence and thereby reaching a wrong decision. It was contended that the appellant adduced evidence such as the contract of employment and the letter from the respondent's advocates which showed breach of the contract of employment and termination of the employment without regard to the prescribed procedure. For all the above reasons, the appellant urged the Court to allow the appeal.

18. The respondent, who was represented by Mr. Nyakundi, learned counsel, opposed the appeal vide submissions dated 10th January 2025.

19. The respondent submitted that the ELRC had correctly found that the appellant had not discharged the burden of proof on him to establish wrongful or unfair termination of employment.

20. The respondent admitted that there was a contract of employment between the parties and that the appellant was given time off in February to return on 27th February 2012 pending investigations into allegations of his mismanagement of the guest house. It was further contended that on 27th March 2012, the appellant received a letter from the respondent's advocates communicating the respondent's intention to terminate the employment on account of his conduct, which was in breach of the contract of employment.

21. It was further submitted that the respondent did not terminate the appellant's employment, but instead, it was the appellant who walked out of the employment after being confronted for mismanaging the guest house, thus unilaterally terminating the contract of employment.

22. It was the respondent's further contention that vide the letter of 27th March 2012, the respondent gave the appellant an opportunity of responding to the allegations against him, but the appellant declined, as a result of which his employment stood terminated with effect from 27th February 2012, when he walked away. Relying on the decision of the ELRC in James Mugera Igati v Public Service Commission of Kenya [2014] eKLR, the respondent submitted that a disciplinary process and a criminal process are different and independent of each other, and that a conviction or acquittal in the criminal process did not bind the employer in a disciplinary process.

23. Further, relying on the decision of the ELRC in Pauline Njeri Bwibe v. Jan Rundgren Ingregerd Gustafsson t/a Swedish Dental Clinic Laboratory [2014] eKLR and Kenya Plantation and Agricultural Workers Union v. Maridadi Flowers Ltd [2015] eKLR, the respondent submitted that employees who desert work have themselves to blame as it is unrealistic to expect the employer to show a valid reason for termination.

24. For the foregoing reasons, the respondent urged the Court to dismiss the appeal with costs.

25. We have carefully considered this appeal. Being a first appeal, we bear in mind our obligation to re-evaluate and reappraise the evidence on record so as to come to our own independent conclusions. But we are also to take into account the handicap that we face in deciding from the cold record as opposed to the trial court which saw and heard the witnesses as they testified and was better placed to assess

their credibility. Accordingly, we shall be slow to interfere with the findings of the trial court unless they cannot be supported by the evidence or are otherwise plainly wrong.

26. All the six grounds of appeal presented by the appellant raise just one issue, namely, whether, on a proper evaluation of the evidence on record, and correct appreciation of the law, the trial court erred in holding that it could not determine which of the parties terminated the employment and, therefore, the appellant had failed to discharge the burden on him to show that his termination was wrongful or unfair.

27. To begin with, although the evidence of Mr. Nyamweya before the trial court was quite contradictory in that, while admitting the existence of the contract of employment, he nevertheless insisted that the appellant was not an employee of the respondent, before this Court the respondent readily admitted that the appellant was indeed an employee of the respondent. The contract of employment that was produced in evidence puts that beyond contention.

28. That contract provided for four methods of termination, as follows:

    a). Termination for cause. This applied where the appellant's conduct seriously prejudiced the respondent, including neglect of duty, breach of the contract and violation of County by-laws. Under this head, the respondent was required to give the reasons for termination in writing and the appellant entitled to respond in writing before termination took effect.

    b) Unilateral termination by the respondent. The respondent could terminate the agreement after giving the appellant at least 90 days notice.

    c). Unilateral termination by the appellant. The appellant could similarly terminate the contract by giving the respondent at least 90 days notice.

    d). Termination by consent. The contract could be terminated upon the respondent's proposal after giving the appellant 90 days notice in writing and after the appellant concurred with the proposal

29. Clearly, from the evidence adduced by the parties, the respondent intended to terminate the appellant's employment for cause. The appellant's evidence is that after returning from a mutually agreed leave on 27th February 2012 following allegations of mismanagement, he met Mr. Nyamweya who proceeded to relieve him of his duties and denied him access to the premises. On its part, the respondent's evidence is that the appellant walked off in huff and that his employment was not terminated by the respondent.

30. The relevant part of clause 12.3 of the contract of employment regarding termination for cause provided as follows:

> " Reasons for such a proposed termination for cause shall be given in writing and the manager (the appellant) shall be entitled to respond thereto in writing before such termination takes effect. If (the) manager chooses to employ the services of legal counsel while giving such response, the manager shall bear the costs therein involved."

31. From the evidence, it is plainly clear that the respondent did not give the appellant any reasons for intended termination in writing on 27th February 2012. As of that date the respondent had reportedly conducted an audit of the appellant's work. It took the letter from the appellant's advocates dated 12th March 2012, which was seeking confirm of his employment status, for the respondent to give what it considered reasons for "intending" to terminate his employment.

32. In Naima Khamis v. Oxford University Press (EA) Ltd [2017] KECA 480 (KLR), this Court observed as follows:

> "...termination of employment may be substantively and/or procedurally unfair. A termination is also deemed substantively unfair where the employer fails to give valid reasons to support the termination. On the other hand, procedural unfairness arises where the employer fails to follow the laid down procedure as per contract, or fails to accord the employee an opportunity to be heard as by law required.

33. As regards substantive fairness, we note that beyond allegations of lack of qualification, fraud and mismanagement of the guest house, the respondent never produced in court any evidence of the misconduct alleged against the appellant. The respondent was under a duty to adduce evidence justifying the grounds of termination. Even though the respondent claimed to have commissioned an audit report which disclosed the irregularities alleged against the appellant, no evidence was produced in court to prove the allegations. In the circumstances and in the absence of evidence of valid reasons for termination of the employment, we cannot say that the termination was substantively fair.

34. Turning to procedural fairness, in Postal corporation of Kenya v. Andrew K. Tanui [2019] KECA 489 (KLR), this Court rendered itself as follows on the issue:

i. It is our further view that Section 41 provides the minimum standards of a fair procedure that an employer ought to comply with...Four elements must thus be discernible for the procedure to pass muster:-

ii. an explanation of the grounds of termination in a language understood by the employee;

iii. the reason for which the employer is considering termination;

iv. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made; and

v. hearing and considering any representations made by the employee and the person chosen by the employee.

35. In agreeing with the ELRC that the termination was not procedurally fair in the circumstances of that case, the Court concluded:

> "In this case, the letter inviting the respondent to appear before the Board was only two lines containing the date and venue. It said nothing about the reasons for such invitation. It said nothing about the respondent appearing with another employee of his choice. The retort that an employer has no obligation to ask the employee to be accompanied does not avail the appellant because the law requires that such other person be present to hear the grounds of termination and if so inclined, make representations thereon. A hearing not so conducted is irregular." (Emphasis added).

36. We would also wish to refer to the decision of this Court in New Kenya Co-operative Creameries Ltd v. Olga Auma Adede [2019] KECA 1067 (KLR) where the Court held:

> "The repeated use of the word "shall" in section 41 makes it clear that the section is a mandatory provision. The use of the words "present during this explanation" in section 41(1) places an obligation on the employer that the explanation for which the employer is considering the termination be given in an oral explanation where the employee and another

person chosen by the employee is present. Section 41(2) requires that both the employee and the other person present be given an opportunity to make representations which representations should be considered by the employer in making his decision. In our view, section 41 provides for a physical interaction in the disciplinary process and therefore, the hearing provided under section 41 of the *Employment Act* which is a mandatory provision, must be an oral hearing." (Emphasis added).

37. From the record, there was no evidence that the respondent complied with section 41 of the Act, which renders the termination of the appellant procedurally unfair. Beyond asking the appellant to give a satisfactory explanation within seven days, the respondent did not comply with section 41(1) of the Act as regards a hearing in the presence of another employee.

38. The respondent has contended that it was the appellant who terminated the employment by walking away from his employment. Does the evidence on record bear that out? We ask ourselves, if it was the appellant who terminated the employment, why would he then write to the respondent to find out the status of his employment? And if that was the case, why did it take the appellant's letter for the respondent to take the position that the appellant had absconded? It would have been expected that if the appellant had really absconded on 27th February 2012, the respondent would have written to him that very day or very soon thereafter, but not to wait to be prompted. We are satisfied that it is the respondent who constructively terminated the appellant's employment by denying him access to the guest house, and that the letter of 12th March 2012 was a belated ex-post facto attempt to bring the respondent within the law.

39. While we, therefore, agree with the respondent that an employee who walks out of employment cannot turn round and accuse the employer of unfair or unlawful termination, in this case the evidence does not show that the appellant walked out of his employment as alleged by the respondent.

40. Ultimately, we find that a proper evaluation and appreciation of the evidence on record must lead to the conclusion that the ELRC erred in holding that the appellant did not discharged the burden on him to show that the termination was unfair or wrongful. That burden merely required the appellant to make out a prima facie case, namely a case that could have succeeded without a response by the respondent, which is a fairly low threshold.

41. In terms of remedies, the ELRC awarded the appellant only his salary for the month of February 2012 and a certificate of service. Having found that the respondent wrongfully and unfairly terminated the appellant's employment, he was entitled to compensation.

42. Section 49 of the Act provides guidance on compensation and empowers the court to award a wrongfully or unfairly dismissed employee up to a maximum of twelve (12) months of his or her wages or salary at the time of dismissal. In determining the appropriate number of months to award, the court is required to take into account the factors set out in section 49(3), among them, the circumstances of the termination, including the extent to which the employee contributed to it; the length of service; the period the employee would have served; and his or her conduct.

43. This Court has stated severally that in determining the appropriate award of compensation, courts must be guided by the considerations set out in section 49 of the Act. Thus, for example, in CMC Aviation Limited v. Mohammed Noor [2015] eKLR, this Court held as follows:

> "The trial court did not state why it opted to give the remedy provided under section 49 (1) (c) that is, twelve months gross salary, and not the other remedies under section 49 (1) (a) or

(b). The court should have been guided by the provisions of section 49 (4) but the trial judge said nothing about the reasons that led him to exercise his discretion in the manner he did."

44. Similarly, in Kiambaa Dairy Framers Co-operative Society Ltd v. Rhoda Njeri & 3 Others [2018] KECA150(KLR) the Court held that the maximum compensation of twelve months for wrongful or unfair termination of employment should be reserved for the most egregious cases and that courts should justify an award on the basis of the parameters set out in section 49 of the Act.

45. In this case, the employment contract was for a period of three years. The appellant had worked only for slightly more than a month. His salary was Kshs. 30,000.00 per month at the time of termination. Taking all those factors into account, we find that compensation for two months, namely Kshs. 60,000.00 is adequate in the circumstances of this case.

46. None of the parties, before the trial court or in this Court, addressed the justification for payment of the appellant until the end of the contract. That is, therefore an issue that is not before us. We however note in passing that in Ngokonyo & 2 Others v. Telkom Kenya Ltd [2025] KESC 75 (KLR), the Supreme Court considered whether a wrongful terminated employee on permanent and pensionable terms was entitled to anticipatory salaries and allowances until he retired. In rejecting the idea, the Court noted that employment does not create an absolute assurance that an employee will remain in service until retirement, because the employment can still be lawfully terminated through resignation, dismissal for misconduct or poor performance, retrenchment, death or permanent injury.

47. For all the foregoing reasons, we allow this appeal and award the appellant compensation of Kshs. 60,000.00 equivalent of two month's salary, in addition to the salary for February 2012 and certificate of service. The amounts shall attract interest at court rates and the appellant shall have costs of this appeal. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2026.

W. KARANJA

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

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