

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT KITALE**

**CAUSE NO. E007 OF 2025**

*(Before Hon. Lady Justice Maureen Onyango)*

**STEPHEN THUO MENYI .....**  
**CLAIMANT**

**VERSUS**

**AGRICULTURAL DEVELOPMENT**  
**CORPORATION ..... RESPONDENT**

**JUDGMENT**

1. Vide a Memorandum of Claim dated 30<sup>th</sup> April, 2025, the Claimant avers that the Respondent unfairly terminated his employment.
2. It is the Claimant's case that he was employed by the Respondent as a Senior Complex Manager from September 2006 to February 2012 when he left employment. He was thereafter again engaged by the Respondent from March 2015 until 18<sup>th</sup> February 2025 when his services were expectedly and unfairly terminated without justifiable cause.
3. The reason for his termination was that there was an incident of theft of reject maize and animal feed at Feedmill where he was working as manager in charge.

4. The Claimant avers that at the time of the termination of his employment, he was earning a basic salary of Kshs 72,513 and gross salary of Kshs 110,346 per month.
5. The Claimant avers that his dismissal was unprocedural, unfair and illegal as he was terminated from employment without any justifiable cause.
6. He averred that the Respondent unprocedurally terminated his employment and declined to pay his terminal dues which he particularised as hereunder: -
  - i. One month salary in lieu of notice.....Kshs 110,346
  - ii. Leave pay for 186 days.....Kshs 648,145.2
  - iii. Unpaid salary.....Kshs 187,012
  - iv. Gratuity.....Kshs 629,413.46
  - v. 12 months compensation for unfair termination.....Kshs 1,324,152
7. The Claimant thus prays for the following reliefs:
  - (i) A declaration that the Claimant's termination from employment was unlawful and unfair and in the

circumstance the Claimant is entitled to compensation as prayed,

- (ii) A declaration that the Respondent had engaged in unfair labour practices,
- (iii) Salary arrears,
- (iv) Costs of this suit and interests at court rates from the time when he was dismissed until payment in full,
- (v) Certificate of service,
- (vi) Any other relief that the court may deem fit and just to grant.

8. The Respondent filed a Statement of Response dated 25<sup>th</sup> June 2025 denying the averments made by the Claimant. The Respondent prayed that the claim be dismissed with costs.

### **The Evidence**

- 9. At the hearing of the claim, the Claimant testified on his own behalf, while the Respondent called Betty Wendot, its Deputy Human Resource Manager.
- 10. The Claimant adopted his witness statement dated 30<sup>th</sup> April 2025 as his evidence in chief and relied on the documents filed in court in support of his case. He testified that his

termination arose from a theft incident that occurred on 15<sup>th</sup> October 2024.

11. It was the Claimant's testimony that a lorry was allegedly intercepted at night with the stolen property of the Respondent and he was terminated despite not being on duty when the alleged theft occurred. He further stated that he was placed on interdiction the day after the incident and was eventually dismissed in March 2025.
12. The Claimant maintained that he was not accorded a fair hearing, although he was served with a show cause letter which he responded to. He stated that security guards and employees on the night shift were on duty when the theft occurred and that he reported to the office at 2:00 a.m. after he was informed of the incident.
13. The Claimant stated that no criminal charges were preferred against him and that he had never had any disciplinary issues during his employment. He asserted that he was terminated for an incident that was not his fault. He urged the Court to grant the prayers he sought in his Memorandum of Claim.
14. On cross-examination, the Claimant stated that as Complex Manager he was in charge of all operations. He confirmed

that his interdiction letter dated 17<sup>th</sup> October 2024 placed him on half salary with full house allowance pending investigations. He further confirmed that he was served with a show cause letter outlining four allegations, to which he responded, and that he was invited to a disciplinary hearing vide a letter dated 31<sup>st</sup> January 2025 which he attended.

15. The Claimant stated he had accumulated leave days and had applied to take leave, but his request was declined by the Regional Manager.
16. On re-examination, the Claimant testified that he went to the office immediately after being alerted by a manager who was his neighbour and by the Regional Manager.
17. He stated that other individuals were charged in connection with the incident, but he was not. He maintained that investigations did not implicate him and that the disciplinary hearing was unfair. He explained that the stores clerk was responsible for the area where the 80 kgs bags were kept and that the keys were usually locked in his office.
18. He stated that when he arrived at the factory, the keys were in his locked office.
19. For the Respondent, Betty Wendot testified that she had worked for the Respondent for 26 years. She adopted her

witness statement dated 27<sup>th</sup> June 2025 and the Respondent's bundle of documents as her evidence. She testified that the Claimant was engaged on a fixed-term contract commencing on 1<sup>st</sup> September 2022 and expiring on 31<sup>st</sup> August 2025.

20. RW1 testified that a report on the loss of rejected maize and dairy meal was made on 15<sup>th</sup> October 2024 followed by a memo dated 16<sup>th</sup> October 2024 from the Managing Director at the Head Office indicating that 83 bags of rejected maize and 34 bags of dairy meal were lost. RW1 stated that following the incident, all employees, including the Claimant, were suspended and an internal audit team conducted independent investigations.
21. The Respondent's witness stated that the audit revealed variances in records and serious deficiencies in security, stock management and staff supervision, which facilitated unauthorized access, stock manipulation and financial losses.
22. It was her testimony that the responsibility of ensuring procedures were followed lay with the Claimant, who reported directly to the Regional Manager.
23. RW1 further testified that after investigations, the Claimant was issued with a notice to show cause, that he responded to

the show cause letter and was invited to a disciplinary hearing.

24. RW1 maintained that the disciplinary committee observed that on the material day when the theft incident was reported, lights were switched off despite there being no power failure and that CCTV had been interfered with. She stated that the committee concluded that the Claimant was dishonest and had manipulated records.
25. RW1 testified that the termination letter dated 18<sup>th</sup> March 2025 cited dishonesty, negligence of duty, and making false statements as the reasons for termination.
26. With regard to the Claimant's terminal dues, RW1 testified that the Claimant is entitled to Kshs 816,813.84, comprising leave pay of Kshs 400,634, discharge salary of Kshs 66,021, salary in lieu of notice of Kshs 72,512, and gratuity of Kshs 641,724.21. She further testified that the net payable amount after deductions is Kshs 816,872.84, which has been processed and is yet to be paid to the Claimant.
27. She further testified that the Claimant's basic salary was Kshs 36,256.50 and that during interdiction he was paid half salary. She added that under the Respondent's HR policy,

withheld salary is not reimbursed if an employee is found guilty of the offence.

28. On cross-examination, RW1 conceded that the Claimant was not found to have directly stolen the products but was deemed to have participated by allowing the incident to occur. She confirmed that the Claimant did not sign the disciplinary minutes and that his terminal dues had been processed but not paid. She further stated that the Claimant was at home when the theft occurred and that the allegation of abdication of duty related to lighting, CCTV functionality and staff supervision.
29. On re-examination, RW1 maintained that the Claimant was negligent in condoning theft in the unit he was in charge of. She testified that the store doors were found open and that it was the Claimant's responsibility to ensure that CCTV cameras were functional and properly positioned. RW1 stated that the cameras were facing away from the stores and doors where they were supposed to be directed.
30. She further stated that there is no requirement for an employee to sign disciplinary minutes and that, as unit manager, the Claimant was expected to ensure operational oversight even outside normal working hours.

31. At the close of the Respondent's case, the Court directed the parties to file written submissions, which they did.

### **The Claimant's submissions**

32. In his submissions dated 5<sup>th</sup> January 2026, the Claimant identified the issues for determination to be:-

- i. Whether his employment was unlawfully and unfairly terminated,
- ii. Whether he is entitled to compensation for gratuity, unpaid leave days, one month's notice pay and unpaid salary.

33. The Claimant submitted that the charges leading to his dismissal related to the theft of 80 bags of rejected maize and 33 bags of dairy meal. He submitted that he responded to these allegations both in his show cause response and during the disciplinary hearing.

34. The Claimant further submitted that the disciplinary committee's findings of dishonesty, negligence and making false statements differed from the original theft allegations,

thereby denying him an adequate opportunity to defend himself.

35. It was his submission that there is in existence an active criminal case relating to the alleged theft, in which he was not charged which demonstrates that his dismissal was unfair.
36. The Claimant maintained that the Respondent failed to prove theft as a ground for termination of his employment and that although theft may have occurred, it happened after he had left the premises, which were under the supervision of security officers.
37. The Claimant submitted that he did not take keys home and that other individuals were charged but he was not.
38. The Claimant relied on the decision in ***Peter Wanyonyi Nzivo v Nguvu Construction & Another [2022] KEELRC 471 (KLR)*** to support his position that termination based on unsubstantiated allegations of theft amounts to unfair and unprocedural termination.
39. On the reliefs he sought, the Claimant submitted that his termination was unfair and that he is entitled to unpaid salary for four months during interdiction, twelve months'

compensation, gratuity under clause 9 of his contract and payment for 186 accrued leave days.

40. The Claimant therefore prayed for orders as sought in the Memorandum of Claim.

### ***Respondent's Submissions***

41. In its submissions dated 5<sup>th</sup> February 2026, the Respondent framed the issues for determination to be:-

- i. Whether the termination of the Claimant's contract of employment was in line with fair procedure,
- ii. Whether the Respondent had justifiable cause to terminate the Claimant's contract of employment,
- iii. Whether the Claimant is entitled to the reliefs sought.

42. On the first issue, the Respondent submitted that it complied with Section 41 of the Employment Act, 2007 by hearing and considering the Claimant's representations before making the decision to terminate his employment.

43. Relying on the case of ***Anthony Mkala Chitavi v Malindi Water & Sewerage Co. Ltd, Industrial Court Cause No. 66 of 2012***, the Respondent submitted that the Claimant was interdicted from duty on 17<sup>th</sup> October 2024 when he was

informed that management had received reports of theft of rejected maize and dairy meal from ADC Feedmill and Driers and further, that he was being placed on interdiction to pave the way for investigations.

44. The Respondent asserted that upon conclusion of investigations, the Claimant was issued with a show cause letter dated 7<sup>th</sup> January 2025 detailing issues raised in the investigative audit report which required the Claimant to explain the lapses identified in the audit report and to give reasons why disciplinary action should not be taken against him. It is submitted that the audit report was attached to the letter to enable the Claimant to understand the findings in detail and to prepare an adequate response.
45. The Respondent submitted that although the show cause letter did not specify a timeline for response, the Claimant's response was dated and received on 16<sup>th</sup> January 2025, ten days after issuance of the show cause letter, demonstrating that the Claimant was afforded ample time to prepare his defence and respond to the audit queries.
46. The Respondent further submitted that the Claimant was invited to a disciplinary hearing vide a letter dated 31<sup>st</sup> January 2025 requiring him to attend a disciplinary interview

scheduled for 6<sup>th</sup> February 2025 which letter informed him of his right to attend the hearing with a witness and to adduce further evidence in support of his case.

47. It is submitted that following the disciplinary hearing, the Respondent communicated its decision through a letter dated 18<sup>th</sup> March 2025 informing the Claimant that his employment had been terminated and setting out the reasons for the termination.
48. The Respondent submitted that the Claimant's employment was procedurally terminated and met the requirements of fair procedure as stated in the case of ***Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR*** and ***Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR***.
49. On the second issue, the Respondent while citing the case of ***Galgalo Jarso Jillo v Agricultural Finance Corporation [2021] eKLR***, submitted that the Claimant testified that he was employed as Senior Complex Manager and conceded during cross-examination that he was the overall manager in charge of all operations within the Feedmill & Driers Unit and that as such he had overall supervisory responsibility for all functions, personnel and activities within the unit.

50. In this regard, the Respondent submitted that the audit report prepared following the theft of 80 bags of rejected maize and 35 bags of dairy meal revealed gaps directly attributable to the Claimant's negligent performance of his duties to wit; lack of functional security lights at night leading to total darkness, CCTV cameras pointing away from strategic points, a tilted gate camera that could not capture vehicle number plates, a corridor camera that could not capture movement or the electricity main switch, and failure to lock doors separating processed maize, factory plant and finished products areas.
51. The Respondent submitted that the allegations of negligence were clearly set out in the notice to show cause, thereby affording the Claimant sufficient notice of the charges he faced.
52. The Respondent further submitted that dishonesty, as cited in the termination letter, was established during the disciplinary proceedings as the disciplinary committee observed that the Claimant and eight other employees denied that any theft had occurred at the unit. The Respondent submitted that from the charge sheets filed by the Claimant in his list of documents, one David Wafula

Wanyonyi was charged with theft of 34 bags of dairy meal and 83 bags of dried rejected maize, while Damacline Kwamboka Kakan was charged with handling stolen property belonging to the Agricultural Development Corporation.

53. The Respondent thus submitted that these charge sheets confirmed that a theft incident occurred at its premises, thereby justifying disciplinary action against the Claimant and other employees. In support of this position, the Respondent cited the case of **Methu v Judicial Service Commission [2021] KEELRC 1420 (KLR)**.
54. The Respondent submitted that, as the officer responsible for overseeing effective operations within the unit, the Claimant bore responsibility for the lapses identified in the audit report and the observations made by the disciplinary committee.
55. The Respondent asserted that had the Claimant taken measures to address the gaps, the theft would have been averted. The Respondent thus contended that the Claimant, being present at the unit daily ought to have noticed and corrected the misaligned CCTV cameras and ensured strict adherence to internal controls. That his failure to address these irregularities supported the finding that he negligently

performed his duties thereby occasioning loss to the Respondent.

56. On costs, the Respondent submitted that it had demonstrated valid reasons for terminating the Claimant's employment and that it complied with due process. It therefore urged the Court not to award costs against it, relying on ***Endmor Steel Millers Limited v Ongwae [2025] KEELRC 762 (KLR)***.
57. In conclusion, the Respondent urged the Court to find that it had established valid, fair and justifiable reasons for terminating the Claimant's employment and that the termination was in accordance with Sections 41, 43, and 45 of the Employment Act.
58. The Respondent prayed for the dismissal of the Claimant's suit with costs.

### **Analysis and Determination**

59. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are: -

- i. Whether the termination of the Claimant's employment was justified.
- ii. Whether the procedure followed was in accordance with the Employment Act.
- iii. Whether the reliefs sought are merited.

*Whether the termination of the Claimant's employment was justified*

60. Sections 43 and 45 of the Employment Act place the burden on the employer to prove the reasons for termination and to demonstrate that such reasons were valid and fair. The test is whether the employer genuinely believed the reasons to exist and whether a reasonable employer would have relied on those reasons in the circumstances.
61. The Respondent's case is that the Claimant, as Senior Complex Manager, bore overall responsibility for operations at the Feedmill & Driers Unit and that serious lapses in security, stock control and supervision under his watch facilitated the loss of 83 bags of rejected maize and 34 bags of dairy meal. The audit report cited deficiencies including

non-functional security lights, misaligned CCTV cameras, unlocked doors and poor supervision.

62. The Claimant does not dispute that the theft occurred but maintains that he was not on duty at the time and was not directly implicated. He further contends that other individuals were charged in court while he was not and that the stores clerk and night shift personnel were responsible for the area where the 83 bags of rejected maize and 34 bags of dairy meal was stored.
63. The evidence on record show that the Claimant held a senior managerial position with overall supervisory responsibility. During cross examination, the Claimant confirmed that he was in charge of all operations within the unit. Generally, for persons holding such positions, accountability extends beyond physical presence at the time of an incident and includes ensuring that effective systems, controls and oversight mechanisms are in place.
64. The audit report at page 15 of the Respondent's bundle reveal that there were significant control failures within the unit where the Claimant was in charge including security lighting being switched off, CCTV cameras not covering

critical areas and internal access controls being compromised.

65. While no evidence was adduced to show that the Claimant personally stole or directly participated in the theft, the Respondent's case was grounded on negligence of duty, dishonesty and failure to enforce operational controls. The letter of termination does not accuse the Claimant of theft. Further, RW1 stated that the Claimant was not found to have directly stolen the products but was deemed to have allowed the incident to occur.
66. It is clear that the theft incident occurred within the Claimant's area of responsibility. A reasonable employer would, in the circumstances conclude that the Claimant had failed in his managerial and supervisory duties.
67. Accordingly, the Court finds that the Respondent had valid and justifiable reasons to terminate the Claimant's employment within the meaning of Sections 43 and 45 of the Employment Act.

*Whether the procedure followed was in accordance with the Employment Act*

68. The Claimant contends that his termination was unprocedural and that he was not accorded a fair hearing. The Respondent, on the other hand, maintains that it complied with the requirements of Section 41 of the Employment Act.
69. Section 41 of the Employment Act requires an employer to explain to an employee, in a language the employee understands, the reasons for which termination is contemplated, allow the employee reasonable opportunity to make representations, and to permit the employee to be accompanied by a fellow employee or shop floor union representative to the disciplinary hearing.
70. The evidence on record shows that the Claimant was interdicted by a letter dated 17<sup>th</sup> October 2024 to pave way for investigations into the reported theft. Upon conclusion of investigations, he was issued with a show cause letter dated 7<sup>th</sup> January 2025 outlining the allegations against him and attaching the audit report. The Claimant responded to the show cause letter on 16<sup>th</sup> January 2025 and was thereafter invited to attend a disciplinary hearing scheduled for 6<sup>th</sup> February 2025 through a letter dated 31<sup>st</sup> January 2025. He attended the disciplinary hearing and presented his case.

Thereafter, the Respondent communicated its decision through a termination letter dated 18<sup>th</sup> March 2025 setting out the reasons for termination of the Claimant.

71. From the foregoing, the Court is satisfied that the Respondent complied with the procedural requirements set out in Section 41 of the Employment Act. The Claimant was informed of the allegations, given an opportunity to respond, invited to a disciplinary hearing and notified of the outcome.
72. The Court therefore finds that the termination met the threshold of procedural fairness.

*Whether the reliefs sought are merited*

73. Having found that the termination of the Claimant's employment was both procedurally fair and substantively justified, the Court finds that the Claimant is not entitled to compensation for unfair termination.
74. With respect to terminal dues, the Respondent admitted that the Claimant was entitled to Kshs 1,150,892.10 which amount had been processed but not yet paid. The Respondent is therefore ordered to remit the full amount of the Claimant's undisputed terminal dues within 30 days from the date of this judgment, in accordance with the

Respondent's computation and subject to statutory deductions. If this is not done the said sum shall attract interest at court rates from date of judgment.

75. The Claimant is also entitled to a certificate of service pursuant to Section 51 of the Employment Act, which the Respondent is directed to issue to him if the same has not yet been done.
76. The Claim for unfair termination and payment of terminal dues is thus dismissed with the exception of the terminal dues admitted by the Respondent and the issuance of certificate of service.
77. In view of the circumstances of the case, the Court orders that each party shall bear its own cost

**DATED, SIGNED AND DELIVERED VIRTUALLY ON  
THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026**

**MAUREEN ONYANGO  
JUDGE**