Tala v Kenafric Industries Limited (Appeal E157 of 2025)
[2026] KEELRC 746 (KLR) (13 March 2026) (Judgment)

Neutral citation: [2026] KEELRC 746 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL E157 OF 2025

JW KELI, J

MARCH 13, 2026

BETWEEN

PAULINE TALA ..... APPELLANT

AND

KENAFRIC INDUSTRIES LIMITED ..... RESPONDENT

(Being an Appeal from the Judgment and Decree of the Hon. W. Mbulikah (PM) delivered on 25th April 2025 in Nairobi MCELRC No. E1369 of 2021)

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. W. Mbulikah (PM) delivered on 25th April 2025 in Nairobi MCELRC No. E1369 of 2021 between the parties filed a Memorandum of Appeal dated the 23rd May 2025 seeking the following orders: -

    a. An Order to issue setting aside the entire Judgment and consequential Decree of Hon. Wangari Mbulikah (PM) dated and delivered on the 25th February 2025.

    b. An Order to substitute the entire Judgment and Consequential Decree of Hon. Wangari Mbulikah (PM) dated 25th of February 2025 with an Order that the Judgment be entered in favor of the Claimant against the Respondent as sought in the Memorandum of Claim.

    c. An Order that the Appellant's Cost of the Proceedings both in the trial Court and before this Honorable Court be borne by the Respondent.

Grounds Of The Appeal

2. The Honourable Magistrate erred in both law and fact in dismissing the Appellant's Claim.

3. The Honourable Magistrate erred in both fact and law in not allowing the Claimant's claim as filed.

4. The Honourable Magistrate erred in both law and fact in failing to analyze and consider the Claimant's filed submissions thus compromising on the Claimant's rights to be heard under Article 50 of *the Constitution* and hence arrived at an erroneous finding in law.

5. The Honourable Magistrate erred in both law and fact in invoking common law maxims of equity in a case where there are clear statutory procedural and substantive Employment laws governing termination of the Claimant hence arrived at an erroneous finding in law.

6. The Honourable Magistrate erred in both law and fact in shifting the burden of proof in as far as establishing the validity of the reasons for termination and/or justifying the grounds for termination to the Claimant in express violation of Section 43(1) and 47(5) of the *Employment Act*, 2007 thus arrived at an erroneous decision in law.

7. The Honourable Magistrate erred in both fact and law in failing to award the relief sought by the Appellant hence arrived at an erroneous decision in law.

8. The Honourable Magistrate erred in her exercise of discretion to condemn the Appellant to pay costs without giving any reasons or justification for such an Order.

Background To The Appeal

9. The Claimant/Appellant filed a claim against the Respondent vide a memorandum of claim dated the 21st of July 2021 seeking the following orders: -

    a. A declaration that the claimants' termination from employment by way of summary dismissal was unfair, unlawful null and void.

    b. A declaration that the claimant is entitled to payment of terminal dues and entitlements as particularized in paragraph 21 of the Memorandum of claim in the sum of Kes. 1,651,514.40 together with interest at courts rates.

    c. Cost of the suit.

    (pages 4-8 of Appellant's ROA dated 29th September 2025).

10. The Claimant filed her list of witnesses dated 21st July 2021; witness statement of even date; and list of documents of even date with the bundle of documents attached (pages 10-23 of ROA). The Claimant later filed an additional list of documents dated 21st March 2022 (pages 26-28 of ROA).

11. The Respondent entered appearance and filed a statement of response dated 24th September 2021 (pages 30-33 of ROA). In support of their response, the Respondent also filed a list of witnesses dated 8th June 2022; witness statement of JULIUS ANGOLI dated 14th December 2021; and a list and bundle of documents dated 8th June 2022 with the bundle of documents attached (pages 34-56 of ROA).

12. The Claimant/Appellant's case was heard on the 11th of March 2024 where the claimant testified in the case, relied on her filed witness statement as her evidence in chief, and produced her documents as exhibits. The Claimant was cross-examined by counsel for the Respondent, Ms. Juma (pages 143-145 of ROA).

13. The Respondent's case was heard the same day with JULIUS ANGOLI testifying on behalf of the Respondent as DW1. He relied on his filed witness statement as his evidence in chief, and produced the Respondent's documents as exhibits. The witness was cross-examined by counsel for the Claimant, Mr. Amalemba (pages 145-148 of ROA).

14. The court gave directions on filing of written submissions after the hearing, and both parties complied.

15. The Trial Magistrate Court delivered its judgment on the 25th of April 2025, dismissing the Claimant/ Appellant's claim in its entirety, with costs awarded to the Respondent (judgment at pages 151-155 of ROA).

Determination

16. The appeal was canvassed through written submissions. Both parties filed.

Issues for determination

17. In her submissions dated 15th December 2025, the Appellant identified the following issues for determination:

    i. Whether the Appellant's termination from employment was unfair;

    ii. What remedies were available to the Appellant; and

    iii. What orders is the Court entitled to make.

18. On their part, the Respondent identified the following issues for determination in their submissions dated 20th January 2026:

    i. Whether the trial court erred in law and in fact by declaring that the Appellant was lawfully terminated

    ii. Whether trial court erred in law and in fact by declaring that the Appellant is entitled to the reliefs sought

    iii. Who bears the costs of this suit.

19. The court discerned the parties were agreeable on the issues for determination in the appeal to be –

    a. Whether the Appellant's termination from employment was unfair;

    b. What remedies were available to the Appellant;

Whether the Appellant's termination from employment was unfair

Appellant's submissions

20. Section 45 of the *Employment Act*, 2007 reiterates that for any termination to be considered fair, the reasons informing that termination must be valid. In essence, termination of an employee should be premised on a valid reason; otherwise, the termination is deemed unfair. Section 45 of the *Employment Act*, 2007 states thus;- "(1) No employer shall terminate the employment of an employee unfairly. (2) A termination of employment by an employer is unfair if the employer fails to prove-a) That the reason for the termination is invalid. (b) that the reason for termination is a fair reason- (i) related to the employee's conduct, capacity, or compatibility or (ii) based on the operational requirements of the employer; and (c) that the employment was terminated in accordance with fair procedure." Section 43 on the other hand provides; - "(1) In any claim arising out of termination of a contract, the emplover shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45. (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer

to terminate the services of the employee. Section 47(5) of the *Employment Act*, 2007 provides that; - "(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer." In the case of Young (EA) Limited- Versus-Samuel Gikumba Mbiuki (2020) eKLR, the Hon. Mr. Justice Onesmus Makau while interrogating the foregoing provisions relating to both substantive and procedural fairness held thus;- "Flowing from the above mandatory provision of the law, termination of an employee's contract of service does not pass the test of fairness unless the employer establishes by evidence that it was done on the basis of valid and fair reason(s) and upon following a fair procedure. In Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR the Court of Appeal held: "There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissalfor breach of employment contract and unfair termination involving breach ofstatutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45): prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination." In the present suit, the respondent as the employer must prove that the reasons for termination were based on a valid reason and that the reasons constituted justifiable grounds for termination of employment under the provisions of section 43 as read together with section 47 of the *Employment Act* as highlighted above. The Appellant was terminated vide a summary dismissal letter dated 30th of October 2020 where the following reasons were cited in her termination letter marked as exhibit 8 on page 22 of the record of Appeal which reads as follows;- "In the two occasions you were given an opportunity to exonerate yourselffrom what you accused of giving your response to the show cause letter and appearing in the mentioned hearing. You were unable to explain why you progressively wrongly reported accumulation of rework at your value stream and consequently the impact of accumulated rework. As a Value Stream Leader you failed to perform this critical duty that was assigned to you" At paragraph 18 of the Memorandum of Claim on page 6 of the Memorandum of Appeal, the Appellant highlights particulars of invalidity of the reasons for termination. She was not furnished with particulars of entries which were said to be inaccurate, she was not informed of the date and time when she presented inaccurate data, that having presented her reporting or rework data submitted to the Respondent in her response to the show cause letter and during the disciplinary hearing she was not informed which of the data presented was inaccurate or wrong. There was no demonstration of what constituted accurate quantities of the rework for comparison purposes and as such the validity of the reason for termination was not established by the Respondent at the time of the termination. The Appellant went ahead and presented evidence challenging the validity of the reasons for her dismissal. Having presented the above evidence, it was therefore incumbent upon the Respondent as the employer to prove and justify that the reasons for termination of the Appellant's employment was valid in line with the provisions of section 43 and 47 of the *Employment Act*, 2007 aforecited. Instead, the learned Magistrate at paragraph 3 at page 153 of the Record of Appeal held as follows;- "As stated under section 45 of the *Employment Act*, the right procedure for termination of employment should be followed for a termination to be deemed fair. The Claimant was issued with a show cause notice and invited to a hearing where she failed to give the correct 'info' thus leading to her termination" The learned Magistrate went further to hold that the Appellant had failed to redeem herself at both instances and cited maxims of equity. The Court castigated the Appellant that she was not entitled to the relief sought as she was not clean. . In simply holding that the Appellant failed to give the correct information without establishing whether the Respondent as the employer had proved and/or justified the reasons for termination, the learned Magistrate wrongly shifted the burden ofjustifying the validity of the reasons for termination to the employee contrary to the express provisions of section 43 and 47

of the *Employment Act*, 2007. We submit that the Learned Magistrate fundamentally erred in invoking maxims of equity as cited in the case of Andymac Palace Limited Vs Equity Bank (K) Limited (2018) eKLR, in a case where there were clear guiding statutory provisions. Her sole reliance on the maxim of equity unnecessarily shifted the burden to prove the validity of the reasons for termination on an employee contrary to established express provisions of the law as provided under section 43 and 47(5) of the *Employment Act*. The Learned Magistrate did not make any attempt to evaluate the evidence tendered by the employer to establish whether indeed the Respondent had discharged its Burden as to the validity of the reasons for termination which rendered her entire findings as erroneous, contrary to the law and established principles. On that score alone, her decision is a suitable candidate for setting aside through the instant appeal. The Learned Magistrate erroneously shifted the burden to the Employee contrary to express provisions of section 43 and 47(5) of the *Employment Act*, 2007. In both the pleadings and the evidence adduced before the trial Court, the Appellant confirmed that in response to the show cause letter she presented google worksheets detailing her recording of the reworks at the Value Stream. She explained that re-work constitutes the Bubble gum waste that accumulates after production of bubble gum. She has further went ahead and explained the process where she states that once the accumulation of rework is done the same is reported to the Cost in Charge and if there are any variances, inconsistencies and errors noted in the recordings the same would be raised by the Cost in Charge. The Appellant stated in evidence that during the disciplinary hearing she explained that the entries in the google worksheet submitted were an accurate representation of the recorded re-work and nothing to the contrary was demonstrated. She was not informed which of her presented data entries were inaccurate or misleading. It is on this account that the Appellant submitted before the trial Court that the reasons for termination were not valid and were not proved by the Respondent. Given the Appellant's explanation and testimony before the Court, by dint of Section 47 (5) of the *Employment Act*, 2007, once an employee demonstrates and laments that the reasons for termination were invalid, the burden of proof shifts to the employer, the Respondent herein to demonstrate that the reasons for termination were indeed valid. The Respondent's Witness Julius Angoli stated that he is the Human Resource Manager of the Respondent. During Cross examination he confirmed that he does not work from the Production floor. As a person who is absent from the production floor he could neither confirm whether the Appellant reported wrong accumulation of re-work. Further, he could not point out from the google worksheet presented by the Appellant at page 23 of the Record of Appeal which of the reported rework were inaccurate. On being questioned whether he had any records/reports which can be used to confirm that the Appellant reporting were inaccurate, the said witness confirmed that the respondent had not produced any records for comparison purposes. To be specific at page 147 of the Record of Appeal the proceedings show that the said witness stated that there was "No Report, No contrary report was made" To this extent, the said Witness did not produce any report to counter the one presented by the Appellant as evidence. He further did no point out with specificity what part of the google sheet data presented by the Appellant were false, misleading or inaccurate. To this extent the learned Magistrate fundamentally erred in failing to evaluate the evidence as to the validity of the reasons for termination. Secondly the Appellant testified under paragraph 13 and 14 of the Witness Statement that once records of the rework are taken, they are presented to the Respondent's Cost in Charge at the end of the week so that the costings are done based on data presented. She went on to testify that upon handing over the data she was not informed which of the data is inaccurate. Further she stated that the cost in charge never mentioned any variances in the data handed over and if at all there were any inconsistencies or errors noted in the recording, the same would be raised by the Cost in Charge. The Cost in Charge at the Respondent company was never called as a Witness to rebut the Appellant's testimony in this regard. It therefore follows that the Respondent did not discharge its burden of justifying the validity for the reasons for termination and as such the findings by the Magistrate were not based on the facts and evidence presented before the trial Court.

At the end of the day, the court was only left with the Appellant google worksheet presented as exhibit 9 of her evidence which she reiterated were accurate reporting of rework. The Respondent did not establish which of the data on rework presented by the Appellant was either erroneously reported or inaccurate and which aspect of the reported rework was inaccurate. There is nothing before the Court to impeach the records and data presented to the respondent by the Appellant. During Re-examination of the Respondent's witness, he appeared to have castigated the Appellant for not submitting daily reports in the google worksheets and that the google sheets do not provide daily reports. As per the show cause letter, the Appellant was not accused of failing to make daily reports. The Appellant was accused of presenting inaccurate date on accumulation of rework from July to September. There was no accusation levelled against the Appellant on failure to report daily. The Respondent could not therefore alter the nature of their case and allegations against the Appellant midway through a trial before the Court when none of the said allegations were raised against the Appellant in the Show Cause letters and in the Summary dismissal letter issued to the Appellant. In totality, we SUBMIT that the Respondent failed to prove the reason for termination was valid and justifiable through evidence. The evidence of the Human Resource Manager Julius Angoli was at best hearsay evidence as he was not present in the Production floor and was not the Appellant's supervisor and could not therefore confirm which of the data presented by the Appellant was erroneous. We Submit that the Court fundamentally erred in its findings which were not based on the evidence before the Court. We rely in the decision of the Hon. Justice Onesmus Makau in the case of Wanyera v Central Isiolo Investment Limited (Appeal E002 of 2023) [2024] KEELRC 596 (KLR) (8 March 2024) (Judgment) where the learned Judge held as follows; - "I am satisfied from the evidence on record that the Respondent did not prove that the Appellant syphoned fuelfrom the tank. There is no cogent proofthat the said acts were actually committed by the Appellant as there was no independent investigation done by the Respondent to ascertain that indeed there was fuel syphoning by the Appellant. Neither eye witness nor the author of the email from Vivo Energy Kenya was called to give evidence during the trial and as such, the alleged syphoning of fuel remains hearsay. Terminating an employee's employment on allegation of misconduct is a serious matter and that is why, the *Employment Act* has placed the burden of proof on the employer to demonstrate that the reason for termination is factual. The employer is not given the liberty to fire an employee at will or based on mere allegations" In line with the foregoing decision, We submit that in the absence of evidence to proof that the reasons for termination were valid, they remain unproven allegations which cannot form. The basis of terminating the services of an employee. The Court of Appeal in the case of Philip Amwayi Wokinda -Versus- Rift Valley Railways Limited (2018) eKLR, in analysis of evidence stated thus; - "We appreciate section 143 of the *Evidence Act* Cap 80 Laws of Kenya makes provision that there is no obligation on a party to call a superfluity of witnesses. We also appreciate that in terms of this provisions, it is sufficient to demonstrate that witnesses called were those that were material and necessary to satisfy the burden of proof for the claim laid or in defence of any claim laid against a party. In order to justify the contents of both the show cause and dismissal letters, it was necessary for the respondent to tender evidence that would place the appellant at the scene and pin responsibility against him first, for the irregular receipt of the consignment; and, second, for the improper arrangement of the same thereby rendering it impossible for the quantity to be ascertained and the determination of the revenue payable. In our view, such testimony could only have come from the mentioned persons namely a Mr. Omondi who was allegedly present when the consignment was received; and the Freight clerk a Mr. Ojok who ascertained the quantity. Mr. Omondi would have shed light on whether the appellant was present at the time when the consignment was received and caused it to be improperly arranged as asserted by the respondent. As already observed, no reason was given as to why these two witness were not called to testify and yet they had featured prominently in the whole transaction. There is therefore nothing to bar us from acceding to the appellant's request that the respondent's conduct in failing to tender the testimony of these two crucial witnesses is sufficient

to give rise to an inference that, had they been called their evidence would have been adverse to the respondent's interests. In the light of what we have stated, it is our findings that whereas the respondent failed to discharge its burden under section 43 of the Act, the appellant discharged the burden of proof that was shifted to him under section 47(5) of the Act." We associate ourselves entirely with the aforesaid decision of the Court of Appeal. Your Honor we submit that the Respondent did not discharge its burden under section 43 and 47 of the *Employment Act*, 2007. We submit that the validity of the reasons for termination were not proved and as such the termination of the Appellant based on the said allegations was substantially unfair and we invite the court to hold as such.

21. We further rely on the decision in the case of Peter Wangai -Versus- Egerton University (2019) eKLR. the Employment & Labour Relations Court held as follows; Where there is no genuine reasons leading to termination of employment, to proceed and dismiss the employee such amounts to unfairness as there is no valid or fair reason existing to justify the same. Even where all procedural requirements are followed, such does not negate the lack of a substantive reasons leading to termination of employment. A fair process in addressing any allegations against an employee does not sanitise the invalidity and unfairness of the reasons. Procedural safeguard are just the last element to section 45(2). Procedural fairness should only arise where there is a substantive reason to justify termination of employment and not the other way round. A sham trial process does not sanitize an unfair termination of employment. In this case, the allegations made against the claimant were without basis, they lacked material evidence and the findings by the Council to Dismiss the claimant from service for gross misconduct was at variance with the findings and defences made. Such resulted in unfair termination of employment and contrary to section 43 and 45 of the *Employment Act*, 2007."

Respondent's submissions

22. The Respondent submits that the Judgement delivered on the 25th April, 2025 was sound since the termination of the Appellant's employment fully complied with the mandatory provisions of Section 45 of the *Employment Act*, 2007 (hereinafter "the Act"). Section 45 expressly prohibits unfair termination and places the burden upon the employer to demonstrate that the termination was substantively justified and procedurally fair. In particular, Section 45(2) provides that a termination is unfair if the employer fails to prove that: a) the reason for termination was valid; b) the reason was fair and related to the employee's conduct, capacity, compatibility, or based on the operational requirements of the employer; and c) the termination was carried out in accordance with a fair procedure. Further, Section 45(5) obliges the Court, in determining whether termination was just and equitable, to consider, inter alia, the procedure adopted, the employee's conduct and capability, compliance with statutory requirements (including Sections 41 and 51), the employer's previous practice in similar circumstances, and the existence of any prior warnings. The principles underpinning Section 45 were succinctly articulated in Walter Anuro v Teachers Service Commission [2013] eKLR, where the Court held that for a termination to pass the test of fairness, it must satisfy both substantive justification and procedural fairness. Substantive justification concerns the existence of a valid reason for termination, while procedural fairness addresses the process adopted by the employer in effecting the termination. The Respondent further relies on Alphonse Machanga Mwachanya v Operation 680 Limited [2013] eKLR, wherein the Court expounded the mandatory procedural safeguards under Section 41 of the Act, namely that: a) the employer must explain to the employee, in a language the employee understands, the reasons for which termination is contemplated; b) the employee must be allowed the presence of a fellow employee or shop-floor representative of their choice; c) the employer must hear and consider the employee's representations; and d) where applicable, the employer must comply with its internal disciplinary procedures. In addition, the Respondent invites the Honourable Court to be guided by Sections 44(4)(c) and 43(1) of the Act. Section 44(4)(c) provides that, an employer may summarily dismiss an employee who wilfully neglects to perform work which it is their

duty to perform, or who carelessly and improperly performs such work. Section 43(1) places upon the employer the obligation to prove the reasons for termination, failing which the termination is deemed unfair within the meaning of Section 45. The Appellant alleges that her employment was terminated on 30th October 2019 without any justifiable reason and contends that the termination was unfair and unlawful. She further avers that the Respondent failed to pay her salary and terminal dues. The Respondent's case, as testified by its Human Resource Manager, Mr. Julius Angoli (RW1), demonstrates otherwise. RW1 testified that the Appellant was first issued with a Notice to Show Cause dated 10th May 2019, arising from her improper performance of duties, particularly the unexplained accumulation of rework within her value stream. The Appellant neither escalated the issue nor provided any contemporaneous explanation for the rework backlog. In her response dated 14th May 2019, the Appellant generally denied the allegations but failed to raise any impediments that prevented her from communicating the existence or cause of the rework. Notably, on 10th October 2019, and without coercion or undue influence, the Appellant voluntarily undertook to bear the cost of the rework and to ensure its relocation an admission that underscores her culpability. Subsequently, on 15th October 2019, the Respondent issued a second Notice to Show Cause, citing carelessness and improper performance of duties. The notice was specific and detailed, expressly outlining the accumulation of rework from July to September at the BBG value stream, the Appellant's inaccurate reporting, and the misrepresentation of quantities, which concealed the true impact of the rework. In her response dated 18th October 2019, the Appellant acknowledged the accumulation of rework but attempted to shift blame to the maintenance contractor. However, she failed to adduce any documentary evidence demonstrating that she had raised or escalated the alleged maintenance issues. This explanation was clearly an afterthought. The Appellant further gave contradictory accounts, alleging that she had been instructed not to record rework, then later that she had been instructed to record it, and eventually committed to personally bearing the rework costs. These inconsistencies confirm a failure to discharge her contractual obligations diligently. On 22nd October 2019, the Appellant was invited to and attended a disciplinary hearing in the presence of her supervisor and a colleague of her choice. During the proceedings, the following was established: a) the Appellant persistently shifted blame to third parties; b) she failed to prove the existence of any formal directive relieving her of her duty to record rework; c) she admitted that she never communicated the alleged directive to her supervisor; d) the Google document she produced was confirmed by her supervisor, Mr. Solomon, to be inadequate due to failure to record data daily; and e) both the Appellant and her colleague confirmed that she voluntarily paid for the rework mishap, evidencing careless performance of duty. From the foregoing, it is evident that the Appellant's failure to record rework on a daily basis and to properly account for it occasioned operational confusion and financial loss. Her voluntary assumption of the rework costs is a tacit admission of negligence and improper performance.The Respondent submits that the Appellant is improperly seeking equitable relief while approaching the Court with unclean hands. In Andymac Palace Limited v Equity Bank (K) Limited [2018] eKLR, the 5 | P a g e Court reaffirmed the equitable maxim that one who seeks equity must do equity and must come to court with clean hands. The Court, relying on Francis Munyoki Kilonzo & Another v Vincent Mutua Mutiso [2013] eKLR, held that a court of equity will not assist a party to extricate themselves from circumstances created by their own wrongdoing. Similarly, in Swaleh David v Premier Cookies Limited [2021] eKLR, Justice Onesmus N. Makau reiterated that under Section 45 of the Act, termination is only unfair where the employer fails to prove both a valid reason and adherence to fair procedure. A valid reason must relate to the employee's conduct, capacity, or compatibility, and procedural fairness must comply with Section 41.On substantive justification, the Summary Dismissal Letter dated 30th October 2019 clearly set out that the Appellant repeatedly failed to accurately report the accumulation of rework in her value stream, thereby concealing its actual impact. As a Value Stream Leader, this was a core responsibility, and her neglect and careless performance squarely fall

within Section 44(4)(c) of the Act. On procedural fairness, the Appellant was duly issued with Notices to Show Cause, afforded an opportunity to respond, and invited to a disciplinary hearing held on 22nd October 2019, where she was accompanied by a colleague of her choice. Her explanations were considered before the Respondent made the decision to summarily dismiss her for gross misconduct, in strict compliance with Section 41 of the Act.

23. The Respondent further relies on Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] eKLR, where the Court of Appeal emphasized that while courts must safeguard employee rights, employers are equally entitled to justice and lawful protection where disciplinary action is taken with scrupulous adherence to due process. The Appellant admitted that the Google sheets were not updated daily, a fact corroborated by her supervisor, Mr. Solomon Vusaka, during the disciplinary proceedings. This poor record-keeping directly undermined accountability and operational efficiency. The failure to capture daily rework constituted a critical breakdown in the production chain, rendering it impossible for the Respondent to properly assess responsibility and financial impact. This dereliction of duty lies at the heart of the dispute before the Court. It is respectfully submitted that the trial court did not, at any point, improperly shift the burden or blame to the Appellant, as alleged. On the contrary, the learned trial court undertook a careful and objective evaluation of the pleadings, the oral and documentary evidence tendered by both parties, the testimony of the witnesses, and the applicable statutory framework under the *Employment Act*, 2007. The court meticulously weighed the conduct of the Appellant against the Respondent's obligations in law, considered the circumstances surrounding the termination, and tested the Respondent's actions against the threshold of substantive justification and procedural fairness. Having done so, the court reached its findings on the basis of the totality of the evidence and the merits of the case, and not on conjecture, bias, or misplaced attribution of fault. The resultant judgment was therefore sound, balanced, and firmly grounded in law and fact, and does not warrant interference by this Honourable Court. In light of the foregoing, the Respondent submits that it had valid, fair, and lawful grounds to discipline and summarily dismiss the Appellant. The termination was substantively justified, procedurally fair, and fully compliant with the *Employment Act*, 2007. Accordingly, the Respondent prays that the Appellant's claim be dismissed with costs.

Decision

24. This being a first appellate court, it was held in Selle v Associated Motor Boat Co. [1968] EA 123 that:- "The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

25. The fact of employment and termination of the services of the appellant by the respondent was not in dispute. The dispute was over the validity of the reason for the termination. The appellant alleged there were no justifiable reasons to terminate her services. It was not in dispute that the appellant's job was as an assistant value stream leader responsible for recording the progress of re-work accumulation. The appellant stated that the accumulated gum waste is usually captured on a daily basis after each production process in the production report. She alleged that the show cause letter was general and did not specify the details of the particular dates when the alleged faults were reported.

26. The trial court on the reason held-'According to the submission issued by the Respondent, the claimant was issued with a show cause letter dated 10th May 2019, where the claimant was to correct the wrong progressive accumulation of waste. The Claimant responded on 14th May 2019 and, without coercion, committed to bear the cost of the rework and ensured that the rework lying on the value stream will be transferred to a different location.

> On 15th October, the Claimant was issued with a Notice to Show Cause on charges of carelessness and improper performance of duties and responsibilities. The claimant was later invited to a disciplinary hearing dated 22nd October 2019 and was summarily dismissed from employment on 30th of October 2019.
>
> As stated under section 45 of the *Employment Act*, the right procedure for termination of employment should be followed for a termination to be deemed fair. The claimant was issued with a show cause letter and invited to a hearing where she failed to give the correct info, thus leading to the termination of her employment."

27. The appellant was issued a letter of summary dismissal dated 30th October 2019 by the respondent which read as follows- 'RE SUMMARY DISMISSAL Reference is made to the show cause letter issued to you on 15th October 2019; your subsequent response to the same and the disciplinary bearing held on 22nd October 2019, where you were accused of carelessly and improperly performing work which was your duty to perform.

In the two occasions, you were given an opportunity in exonerate yourself from what you were accused of by giving your response to the show cause and appearing in the mentioned hearing. You were unable to explain why you progressively wrongly reported accumulation of rework at you value stream, and consequently the actual impact of the accumulated rework. As a Value Stream Leader, you failed to perform this critical duty that was assigned to you.

Consequently, the management has decided to summarily dismiss you on grounds of careless and improperly performing work which was your duty as per section is (4) c. of the *Employment Act*, 2007 with effect from 31st October 2019."(page 22 of ROA).

28. The Respondent presented the minutes of the internal proceedings from October 22, 2019, which led to the dismissal (pages 50 & 51 of ROA). At the disciplinary hearing, the appellant told the panel that they were instructed by one Andrew not to record rework in their stock. She stated that this was in August and that they did not discuss it with their supervisors. The appellant told the panel that she had captured the records the waste opening on Google Sheets. One Solomon, a production supervisor, stated there was a record for 10.7 tons. In addition, 6 tons of recyclable mass. That there was a poor recording of the rework because it was not captured daily. The appellant had committed to bear the cost of rework(page 43 of ROA). The appellant told the panel she committed to pay as she had no choice. The court found admission of the appellant to having not done her work of recording rework and failed to inform the supervisor of the alleged instruction by Andrew. The appellant, having admitted the omission and even offered to pay, cannot be heard to challenge the information in the charge sheet as insufficient on particulars of missing records. The court found consistency in the reasons for the termination in the show cause, hearing, and termination. I find the reason for the termination was supported by evidence on record. The test of reason is as per section 43 of the *Employment Act* to wit —'43(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee."The court is guided by decision in Mbogo V Shah [1968] EA Page 93 where De Lestang V.P (As He Then Was) Observed -

> "I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion." Applying the decision, I find the decision of the trial court on the validity of the reason for the termination was supported by the notices to show cause, the responses by the appellant, and the disciplinary proceedings, hence no basis to interfere.

Whether the appellant was entitled to relief sought

29. The court upheld the fairness of the termination thus the relief of notice and compensation are not available.

30. On overtime, the trial court held the same as time barred under section 90, now 89 of the *Employment Act*, to wit: 89. Limitations Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof." The trial court held that the claim for overtime filed 1 year and 9 months post-termination was time-barred. The court holds that overtime is a continuing injury claim and ought to be filed within 12 months of the cessation of the injury and in this case, termination. The employment was terminated on 30th October 2019. The claim was filed on the 13th August 2021 (stamp of court receipt on page 4 of ROA). The claim ought to have been filed on or before 29th October 2020. The claim was thus time-barred as held by the trial court(Mbogo v shah).

31. In the upshot the appeal is held to be without merit and is dismissed with costs to the respondent.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF MARCH , 2026.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Appellant – Amalemba

Respondent- Ndeda h/b Juma