

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

APPEAL NO. E211 OF 2025

CATHERINE MUTHONI NDEGWA APPELLANT

VERSUS

GALAXY PHARMACEUTICALS LIMITED..... RESPONDENT

**[Being an appeal from the judgment of Ho. Gathogo Sogomo delivered on 3 October
2025 in Mombasa CMELRC No. E135 of 2021]**

JUDGMENT

The appeal originates from the judgment delivered on 3 October 2025 in Mombasa CMELRC No. E135 of 2021. The appellant seeks a review of the trial court's decision, including the award of terminal dues, compensation, and costs of the suit.

The appeal is based on five grounds that the learned trial magistrate erred in law and fact by failing to award terminal dues, including compensation, despite finding that there was an unfair termination of employment. There was an error in that the discharge voucher signed by the appellant barred the respondent from making further payments, as the employer intended. The learned magistrate failed to consider that the discharge voucher was signed on a without prejudice basis, hence misapprehending the law.

The appellant made her claim before the trial court that on 4 January 2013, she was employed by the respondent as a medical representative earning a salary of Ksh. 65,267 per month. She was promoted to senior medical representative with additional benefits. However, there was a non-statutory deduction of Ksh. 23,000 per month, disguised as employment security. On 1 July 2020, the appellant received a letter dated 28 July 2020 for transfer to a different division of the respondent. No reasons were given. On 29 October 2020, the appellant received a letter from her supervisor instructing her not to report to work until further notice. On 17 November 2020, the appellant was suspended from duty and then dismissed without any justification. She tried dialogue without success. Her salary and other dues amounted to Ksh. 1,466,684, which the respondent refused to pay. There was unfair termination of employment, and the appellant claimed the following dues:

- a) Pay for 17 days worked in November 2020, Ksh. 19,213.
- b) Notice pay Ksh. 65,267.
- c) Illegal bond deduction Ksh. 23,000.
- d) Fuel allowance from July 2019 to November 2020, Ksh. 576,000.
- e) 12 months' compensation Ksh. 783,204.
- f) Costs of the suit.

In reply, the respondent admitted that the applicant was an employee, but her performance was below targets, and her conduct towards her immediate supervisors was also written and

amounted to gross misconduct. Despite several warnings, she failed to take heed. She signed a letter dated 28 July 2020 promising to change her conduct, but continued being insubordinate, which is gross misconduct under the Employment Act (the Act). The application was transferred from the Simba Division to the Pharma Life Division in Mombasa, but she continued to perform below the set targets, as noted in an email dated 9 November 2020. The payment of the fuel allowance of Ksh. 15,000 was based on meeting sales targets, and the suspension from 29 June 2019 was warranted. The security bond was a term of the employment contract, which the applicant signed voluntarily. The applicant's transfer, effected by a letter dated 28 July 2018, was occasioned by insubordination. The transfer was also within the employer's prerogative to improve a conducive workplace environment. Despite the transfer, the applicant remained insubordinate and failed to meet her work targets. She was therefore issued a one-month termination notice dated 17 November 2020, as permitted under the Act. She was paid her terminal dues and discharged the respondent. The claims made should be dismissed.

The learned magistrate heard the parties and held that there was an unlawful and unfair termination of employment and that the employer failed to adhere to the provisions of section 41 of the Act. However, the appellant executed a discharge voucher and was paid Ksh. 24,924 in terminal dues. The discharge was voluntary and hence released the respondent from any liability. Although the termination of employment was unlawful, there was no liability upon the discharge voucher. The suit was dismissed.

Determination

As this is a first appeal, the court may review the record, reassess the findings, and reach a conclusion. However, consider that the trial court had the chance to hear and see the witnesses.

The learned magistrate well addressed the claim, finding that there was an unlawful termination of employment contrary to section 41 of the Act. However, due to the discharge voucher signed by the appellant and the payment of Ksh. 24,924 in terminal dues, which discharged the respondent from further liability.

Execution of a discharge voucher is allowed in employment. However, such a discharge voucher does not extinguish the employee's lawful dues. Section 35(4) of the Act allows the employee to dispute the lawfulness or the fairness of the termination of employment. Such rights are not diminished or extinguished by a discharge voucher.

(4) Nothing in this section affects the right—

(a) of an employee whose services have been terminated to dispute the lawfulness or fairness of the termination in accordance with the provisions of section 46; or

(b) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

In **Star Publications Ltd v Simiyu [2023] KECA 23 (KLR)** the court addressed various cases where the application of a discharge voucher has been relied upon. A discharge voucher, per se, cannot absolve an employer of a statutory obligation, nor can it preclude the court from enquiring into the fairness of a termination. A court will not automatically bar an

employee from seeking further redress where a discharge-from-liability agreement has been signed between the employer and the employee in disregard of the employee's lawful dues. See **Thomas De La Rue (K) Ltd v Omutelema [2013] KECA 492 (KLR)** and **Star Publications Ltd v Simiyu [2023] KECA 23 (KLR)**.

In this case, upon the trial court's finding of an unlawful termination of employment, the court was bound to assess each claim on its merits. The application of the discharge voucher without regard to section 35(4) of the Act was an error.

The appellant claimed that she was not accorded her right to a hearing under section 41 of the Act. Even in a case where she was alleged to be of gross misconduct and insubordinate, the due process of section 41 of the Act was mandatory as held in **Kenya Union of Commercial Food and Allied Workers vs Meru North Farmers Sacco Limited [2014] eKLR** and **Isindu v Lavington Security Guards Ltd [2017] KECA 225 (KLR)**.

Notice issued, but compensation to the applicant is due under sections 45 and 49 of the Act. She was earning Ksh. 65,267 and worked for the Respondent from 2013 to 2020, a period of 7 years. Compensation is hereby awarded at 7 months' gross wage, all at Ksh. 456,869.

The appellant claimed unauthorized deductions. This was explained to be a term of contract but the purpose is not stated. Every deduction from an employee's wages must be justified as required under sections 17, 18 and 19 of the Act.

The sum of Ksh. 23,000 is due.

There was a claim for unauthorized deductions of Ksh. 576,000 for fuel costs and other benefits. The respondent justified the deduction and suspension of fuel allowances on the grounds that the appellant was not meeting her set targets. Her sales continued to be low, hence the benefit of allowances was suspended. However, the failure to meet the requirements of section 41 of the Act resulted in an unfair termination of employment. Where the employer alleges that the employee is not performing her duties, before any sanction can issue, the due process under section 41 of the Act must be adhered to.

(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

In **National Bank of Kenya v Mutonya [2019] KECA 404 (KLR)**, the court held that before the employer can invoke the grounds of poor performance against the employee, it must demonstrate the efforts taken to assist the employee in improving her performance.

In **Kamau v Kevian Kenya Ltd [2023] KEELRC 627 (KLR)**, the court emphasised that where poor performance is shown to be the reason for termination, the employer is placed at a high level of proof. The employer must show that, in arriving at the decision to note an employee's poor performance, they had put in place an employment policy or practice for measuring good performance against poor performance.

None was demonstrated in this case to justify the deductions of fuel allowances and other benefits.

The sum of Ksh. 576,000 is due to the appellant.

The pay for 17 days is not contested at KSh. 19,213.

On costs, if the claims are successful, costs are due for the trial court and this appeal.

Accordingly, judgment in Mombasa CMELRC No. E135 of 2021 is hereby reviewed in the following terms:

- a) A declaration that there was an unlawful and unfair termination of employment.**
- b) Compensation Ksh. 456,869.**
- c) Unauthorised deductions Ksh. 576,000.**
- d) Pay for 17 days Ksh. 19,213.**
- e) Costs for the trial court and the appeal.**

Delivered in open court at Mombasa on this 19th day of March 2026.

M. MBARŪ

JUDGE