



Wafula v Arn Security Consultants & Training Services Ltd (Employment and Labour Relations Cause E356 of 2024) [2026] KEMC 32 (KLR) (24 February 2026) (Judgment)

Neutral citation: [2026] KEMC 32 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
EMPLOYMENT AND LABOUR RELATIONS CAUSE E356 OF 2024
PA NDEGE, SPM
FEBRUARY 24, 2026**

BETWEEN

TITUS WAFULA CLAIMANT

AND

**ARN SECURITY CONSULTANTS & TRAINING SERVICES
LTD RESPONDENT**

JUDGMENT

1. The Claimant filed a Memorandum of Claim dated 04/11/2024 seeking the following orders: -
 - a. A declaration that the termination of the Claimant's contract of employment amounted to wrongful/ unfair termination of employment,
 - b. Compensation for underpayments to the tune of Kshs. 53,966.25
 - c. Refund of all deductions made by the Respondent in the name of the National Social Security Fund from the year 2019 to 2024 and not remitted to the said authority,
 - d. An award for compensation for wrongful/unfair termination equivalent to 12 months' salary,
 - e. An order for payment of 1 month's salary in lieu of notice of termination of the employment contract,
 - f. An order for payment of 1 month's salary in lieu of notice of termination of the employment contract,
 - g. An order compelling the Respondent to unconditionally issue the Claimant with a Certificate of Service in terms of section 51 of the [Employment Act](#), and
 - h. Costs of the claim and interest thereon.



2. The Respondent filed a Memorandum of Response dated 01/02/2015 denying the allegations set out in the Claim. With regards to the prayers sought by the Claimant, the Respondent averred that: -
 - a. The Claimant is not entitled to the declaration sought because the Claimant's employment was terminated for a valid reason and the procedure adopted by the Respondent was in accordance with the law.
 - b. The Claimant is not entitled to the claim for underpayment, as he earned wages above the prescribed minimum.
 - c. The Claimant is not entitled to a refund of NSSF deductions, as the said contributions were remitted to NSSF even before the Claimant filed this action. In any case, such deductions are not refundable, as NSSF has its own recovery mechanisms,
 - d. The Claimant is not entitled to compensation for the alleged unfair or unlawful termination, as his dismissal was in compliance with the law,
 - e. The Claimant is not entitled to salary in lieu of notice, as the Respondent was justified in summarily dismissing the Claimant for gross misconduct,
 - f. The Claimant's Certificate of Service is available for his collection at the Nakuru County Labour Office where it was submitted long before the Claimant filed this suit, and the Claimant is not entitled to costs.
3. The matter proceeded to trial where the Claimant testified as the sole witness for his case. He adopted the contents of his witness statement dated 04/11/2014 which essentially highlighted the fact that he was employed by the Respondent as a day watchman and stationed within Nakuru City as from 08/11/2017 to 07/08/2014 and at the time of his termination, he was deployed to guard Naivas Supermarket.
4. With respect to his termination, he stated that he was accused of stealing goods belonging to an employee at Naivas Supermarket named Charles. That though a disciplinary hearing was convened, he was never given an opportunity to face the accuser and that there was no evidence presented to substantiate the allegations of theft. He stated that there was no official complaint by the said individual and therefore, he was not granted a fair hearing.
5. With regards to underpayments, he stated that he was paid a basic salary of Kshs. 13,043/- whereas as per the Regulation of Wages (General) (Amendment) Order, 2022, his basic salary ought to have been Kshs. 15, 201/56 thus resulting in an underpayment of Kshs. 53,966/52. In support of this assertion, he produced copies of his payslips as CEXH. NO. 4A and 4B.
6. He also stated that from his NSSF member statement produced as CEXH. No. 3, though the respondent deducted varying amounts, the highest being Kshs. 1,056/- for the month of January 2024, the same was not remitted to the relevant authority. He thus sought a refund of the same.
7. As for the Respondent, it presented a total of 4 witnesses. RW1, Victoria Mueni Kisolo, is its Human Resources Manager who also adopted her witness statement dated 08/08/2025. She confirmed that the Claimant was indeed employed by the Respondent and that he was terminated on grounds of theft. She confirmed that the Claimant did not appeal against the dismissal. That the Claimant made a complaint at the labour office, but failed to attend the conciliatory meeting at the office. That his basic pay was Kshs. 13,043/-, but denied that that amounted to underpayments.



8. RW2, Ann Kimunya, is the Respondent's Branch Manager. She also adopted her witness statement dated 08/08/2025 and on cross-examination confirmed that she is the one who initiated the investigations. That the Claimant was accused of stealing goods belonging to one Charles who was a staff member at Naivas supermarket. That Charles did not make any complaint to them or the Respondent on the alleged theft and that he was not present at the disciplinary hearing. Further, that the matter was never referred to the police for investigations.
9. RW3, Everline Ogola, was a security guard who worked with the Claimant. She also adopted the contents of her statement dated 02/08/2024. In cross-examination, she confirmed that she is aware that the owner of the goods that were stolen was Charles. That that Charles did not however make any complaint to the Respondent.
10. RW4, Godfrey Ngila, is the complainant. He stated that he was the supervisor of the Claimant and that he left him with a box which belonged a staff at Naivas called Charles. That the Claimant however disappeared with the said box. That he attended the disciplinary meeting as the principal complainant.
11. Both parties relied on the documents that were filed herein and at the close of hearing they filed and exchanged their written submissions. The issues for determination herein are as framed by the learned counsel for the Respondent in its written submissions as follows:
 - a. Whether the termination of the Claimant's employment was fair and lawful
 - b. Whether the Claimant is entitled to prayers in the Claim.

Whether the termination of the Claimant's employment was fair and lawful

12. The threshold for fair termination of employment against which the Court determines claims for unfair termination is according to the provision of section 45(2) of the *Employment Act* to wit: -
 45. Unfair termination
 - (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 valid;
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employees 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.
13. Fairness as per section 45(2) (supra) has two components, substantive fairness in terms of existence of valid reasons related to the employee's conduct, capacity or compatibility; or (ii) based on the operational requirements of the employer. The prove of fair termination of employment as according to section 47(5) of the *Employment Act* to wit: -
 - (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.”



14. The second component is procedural fairness under section 41 of the *Employment Act*. It is therefore provided that a termination is fair only if the employer demonstrates a substantive justification for the dismissal and conducts the process in accordance with the fair procedure. In this case, I do find that the Respondent's reasons for dismissal were valid, and the procedure followed complied fully with the requirements of the *Employment Act*.
15. The facts disclosed herein are clear that on 27/07/2024, a box of fruits entrusted to RW4, the Claimant's supervisor, and placed under the Claimant's custody, went missing overnight. Investigations were launched and the same are documented in the Investigation Report dated 29/07/2024 (REXH. NO. 8). They revealed that the Claimant removed the contents. Initially, the Claimant denied knowledge, but in his written statement, he admitted taking the fruits, claiming that they were gifted to him by RW4.
16. The Claimant was invited to a disciplinary hearing scheduled for 05/08/2024. He was informed of the allegations, his right to representation, and the opportunity to present evidence in that invitation letter. During the hearing, he questioned RW4, who had entrusted him with the box and who reported the missing items. The Claimant eventually admitted the misconduct, and the minutes of the evidence, which he signed, confirm the position.
17. Thus the disciplinary process complied fully with the requirements of procedural fairness as set out in Section 41 of the *Employment Act*, 2007, which obliges an employer to investigate allegations, notify the employee of the allegations, and afford an opportunity to be heard. The Claimant faced the person who lodged the complaint, RW4, and had every opportunity to defend himself. As correctly submitted by the learned counsel for the Respondent, his assertion that Mr. Charles, the ultimate owner of the items, should have been present is legally irrelevant. Mr. Charles neither entrusted the items to the Claimant nor reported the matter to the Respondent. It was RW4 who possessed the primary evidence against the Claimant, and accordingly, the Respondent had no basis to involve Mr. Charles.
18. Contrary to the learned counsel for the Claimant's submissions, this was not a case of mere suspicion. Substantively, the dismissal was for gross misconduct, theft, which under Section 42 of the *Employment Act* justifies summary termination. Furthermore, the Claimant's previous record of 9 warnings further underscores the proportionality of the sanction.
19. In the face of admitted gross misconduct, the Claimant cannot validly assert that the absence of a police report invalidates the reasons for dismissal. This is because the misconduct was admitted. Moreover, this is not a criminal trial. In this regard, learned counsel for the Respondent cited the decision in JAMES MUGERA IGATI VRS PUBLIC SERVICE COMMISSION [2014] e KLR, where Rika J. held: -

There is nothing in the repealed *Employment Act* Cap 226 or the Public Service Commission Regulations 2005 that suggests the disciplinary process is tied to the criminal process... The two processes are independent; the standards of proof are different... There is no provision in the old or the new *Employment Act*, or the Public Service Commission Regulations, which make it necessary for employers to follow police investigations, or findings, or indeed Criminal Court decisions, in resolving employment disputes based on cross-cutting facts.
20. My finding on this issue is therefore that in light of the admitted misconduct, the clear documentary evidence and the proper disciplinary process followed, the Respondent's decision to terminate the Claimant's employment was fair, lawful and entirely justified.



Whether the Claimant is entitled to the prayers in the claim

21. On the Claimant's prayer for compensation for underpayments, I do agree with the learned counsel for the Respondent that the legal burden squarely rests upon the Claimant to demonstrate on a balance of probabilities, that the salary paid fell below the applicable statutory minimum. The evidence before this court is that the Claimant was paid consolidated monthly salary which as per his claim, does not amount to an underpayment. The relevant wages order has also not been attached and this court finds that the Claimant has failed on a balance of probabilities to demonstrate that he was underpaid.
22. On the claim for refund of NSSF deductions, I am again satisfied by the evidence adduced herein, mainly REXH Nos 13 and 14, which confirm that these deductions were remitted long before the institution of this suit. I therefore further do agree with the learned counsel for the Respondent's submissions that courts have consistently held that an order for the refund of statutory deductions to an employee registered with NSSF cannot be granted, as these schemes have established mechanisms for recovering any unremitted deductions. In the case of *Rosemary Khasiala Lung'atso Vrs Elin Hilwig* [2022] eKLR, the Court held as follows:

The Claim for unremitted NSSF and NHIF contributions fails as the Claimant did not adduce proof that the same was deducted from her salary and not remitted to NSSF and NHIF. Even if the same had been proved, NSSF and NHIF have mechanisms to recover the same from the Respondent. See *Hassanath Wanjiku v Vanela House of Coffee...*
23. Having demonstrated that the Respondent had valid and lawful grounds to terminate, and that due process was observed in accordance with the *Employment Act*, the prayer for compensation does not arise. Equally the prayer for salary in lieu of notice is untenable given that the Claimant was dismissed summarily on valid grounds and after due procedure was followed.
24. As for Certificate of Service, it is common ground herein that immediately upon dismissal, the Claimant elected to pursue resolution through the County Labour Office. This dispute was therefore subjected to the statutory conciliation framework. The Respondent has proved that it submitted the Certificate of Service to the labour office, which was at the time seized of this dispute. I thus do hereby agree that the prayer for Certificate of Service is overtaken by this event, and the Claimant is therefore at liberty to collect the same at the County Labour Office.
25. In light of the foregoing this court do hereby dismiss this Claim in its entirety. Each party to bear own costs.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 24TH DAY OF FEBRUARY, 2026

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Claimant's Counsel: Mutai

Respondent's Counsel: Matu

Claimant: n/a

