

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. E130 OF 2024

(Before Hon. Lady Justice Monica Mbarũ)

SALMA NGINA ABDALLA..... CLAIMANT

VERSUS

TRANSPARES (K) LIMITED.....RESPONDENT

JUDGMENT

The Respondent employed the Claimant through a written contract as an accountant earning Ksh. 56,099 per month.

The claim is that, on 23rd November 2024, the Respondent issued the Claimant with a notice of summary dismissal, effective from 14th November 2024. The termination of employment resulted from a series of events intended to humiliate and embarrass the Claimant.

On 11th October 2024, the human resource department invited the Claimant to the office where she was subsequently arrested. She was also served with a notice to show cause dated 23 October 2023, alleging that she had stolen Ksh. 451,706. She was instructed to respond within 72 hours, which was both insufficient and unfair.

The claim is that a disciplinary hearing was scheduled for 13th November 2024 but was adjourned to allow the Claimant more time to prepare her case. She also requested to be supplied with the necessary documents to support the allegations, which was not done.

On 31st October 2024, a notice to show cause was issued and a disciplinary hearing scheduled for 1st November 2024. The requested documents were not supplied. During the disciplinary hearing, the Respondent failed to ensure rights under article 50 of the Constitution.

On 21st November 2024, the Claimant requested the minutes of the disciplinary hearing, but they were not provided. Instead, notice of summary dismissal was issued. This resulted in unfair termination of employment, and the Claimant is seeking the following:

- a) Salary for October and November 2024 Ksh. 112,193.
- b) House allowance for October and November 2024 Ksh. 7,317 per month.
- c) Damages for unfair termination of employment at 12 months Ksh. 673,188.
- d) Certificate of service.
- e) General damages for unfair labour practices.
- f) Unpaid leave days for 21 days.
- g) Severance pay.

h) 3 months' notice pay Ksh. 168,297.

The Claimant testified in support of her case that the Respondent employed her as an assistant accountant on 10th March 2010. She was issued with a written contract with duties to issue receipts, collect debts, prepare receipts, and reconcile them from different clients. She undertook her duties diligently and had no disciplinary record.

The Claimant testified that on 4th October 2024, the Respondent called her to a meeting and alleged that the weighbridge accounts had a discrepancy. The Claimant had no prior knowledge of such matter. She requested a summary of the account for the alleged loss of Ksh. 5.4 million, but none was supplied to her. There was no proof of such a loss of Ksh. 5.4 million.

The Claimant wanted to see the details of the alleged loss to address it. Instead, the Respondent called the police, and she was arrested and taken to Mikindani Police Station. The Respondent demanded that she sign a statement accepting the loss before being released from custody. She was later released on bond.

On 6th October 2024, the Claimant reported to work but was not granted access.

On 11th October 2024, the Claimant was summoned to work by the human resource manager. She was taken to the boardroom and, instead of stating the reasons, called the police and was arrested. The Respondent wanted the

Claimant to change her statement written on 4th October 2024, but she refused. She was released on bail.

The Claimant testified that she was invited to a disciplinary hearing but protested the fact she was not supplied with any documents or evidence regarding alleged loss of funds. She was not allowed to bring her representative to the hearing. There were no bank statements submitted to support the allegations.

The Claimant testified that while the disciplinary hearing was ongoing, her position was advertised. This indicated there was no intention to provide her with justice, and a decision to terminate her employment had been made. The termination of employment was in violation of constitutional rights and was not justified. The remedies sought should be granted.

In cross-examination, the Claimant admitted that the Respondent consists of several affiliates. For all the companies, her role was to ensure banking of all funds received, reconcile accounts, and collect debts. Before the disciplinary hearing on 24th October 2024, he had no chance to do the reconciliations. The reconciliations would assist the financial controller to approve finances.

The Claimant admitted that she was invited to a meeting to address variances in the cash statement of Ksh. 692,270. The Claimant confirmed that she spent such an amount on medication for her daughter. She used the money because she had

no funds at the time and planned to return and account for it. She was supervised by Christine Kambua, who called and questioned her about the missing funds. During the disciplinary hearing, the issue of the missing sum of Ksh. 692,270 was discussed. The Claimant confirmed that she collected the amount in cash and used it for her daughter's treatment, which she disclosed in her records filed in court. She noted she had no option but to pay for her daughter's medical bills. Instead, the Respondent accused her of stealing Ksh. 5.4 million, which is not true.

The Claimant also admitted that she chose not to call a witness at the disciplinary hearing and decided to call her legal representative, but the Respondent refused. She declined to sign the minutes because they were misleading and contained errors.

The Claimant testified that while working for the Respondent she was in the Sacco. In 2024, she took a loan of Ksh. 700,000. At the end of her employment, she had not repaid the loan. She was accused of defaulting. She did not write to the Sacco about the termination of her employment or how she planned to pay the balance of Ksh. 692,076.44.

The Claimant admitted that after the Sacco loan fell into arrears, her guarantors were issued with notice on 11th November 2024. This was before the termination of employment notice, which was issued on 23rd November 2024.

In response, the Respondent admitted that the Claimant was employed as an account assistant in March 2010 earning Ksh. 30,000 per month. The pay was increased to Ksh. 56,099.80 per month.

On 15th May 2024, the Respondent financial controller, Christine Kambua, noticed a discrepancy in the KRA Etims sales versus the accounting system sales and banking while doing bank reconciliation for April 2024. Ms Kambua requested the Claimant to reconcile the same, and by the end of August 2024, she had not done it.

The Group Financial Controller undertook the task of reconciliation covering January to September 2024 and, on 3rd October 2024, confirmed a cash loss of Ksh. 692,272 as at 30 September 2024. This was the variance between the cash sales and the amount banked at NCBA.

On 4th October 2024, an urgent meeting was called by the Respondent directors, including the group's financial controller, financial controllers, and the weighbridge clerks, including the Claimant. The Claimant admitted having collected cash payments from the weighbridge and using it for her daughter's medication, having requested assistance from the Respondent's director, which was declined.

The response is that the Claimant was arrested and taken to the Mikindani Police Station.

A further audit and reconciliation was carried out for the period from January 2020 to 3rd October 2024, and a total of Ksh. 5,461,709 was found missing from the weighbridge collections.

On 11th October 2024, the Claimant was arrested and charged in court in criminal case No. 1791 of 2024 for the offence of stealing by a servant. The Claimant did not report back to work after her first arrest.

The Respondent received a letter dated 16th October 2024 from the Labour Office regarding the Claimant's employment status. On 23rd October 2024, the Respondent replied with details of what had transpired concerning the Claimant. The Respondent noted that the Claimant had failed to report for work.

On 30th October 2024, the Respondent invited the Claimant to the office for a meeting on 1st November 2024. She asked that the same be postponed on the basis that she was upcountry.

On 31st October 2024, the Respondent issued the Claimant with a show cause notice for gross misconduct. On 2nd November 2024, the Claimant responded, denied the allegations, and requested documents and a postponement of the disciplinary hearing until the criminal proceedings were concluded.

On 5th November 2024, the Respondent invited the Claimant to a disciplinary hearing on 8th November 2024. The matter had been discussed with the labour

officer, who advised the parties to proceed with the disciplinary hearing. The Respondent thus issued the Claimant with a hearing notice.

On 8th November 2024, the Claimant attended a meeting and the disciplinary hearing was postponed. She was provided with the necessary documents, including an analysis of the weighbridge cash received and what was banked. The hearing was rescheduled to 13th November 2024.

On 12th November 2024, the Claimant wrote to the Respondent, indicating that the documents supplied did not demonstrate her guilt.

On 13th November 2024, the disciplinary hearing was held, and, after deliberation, on 16th November 2024, the Respondent terminated the Respondent's employment by summary dismissal. On 21st November 2024, the Claimant was invited to a meeting regarding the verdict of the disciplinary hearing to be held on 22nd November 2024. On 21st December 2024, the Claimant demanded the minutes of the hearing, which were supplied.

On 22nd November 2024, the Claimant was issued with a notice of summary dismissal on the grounds of gross misconduct. She was required to clear her outstanding loans with the Sacco but has since failed to do so.

The allegations that there were unfair labour practices and unfair termination of employment are not correct. The police arrested the Claimant based on the case

of theft by a servant. The Claimant admitted that she used part of the cash collections for personal use. There was due process and the claims should be dismissed with costs.

In evidence, the Respondent called Anne Nerima Wafula, the financial controller,

who testified that she is in charge of financials at the Respondent. The claim fell under her department and was supervised by Christine Kambua.

Wafula testified that in October 2024, she reconciled the weighbridge collections and noted variances. Further investigations established that the Claimant failed to reconcile the KRA cash sales and banking. She asked Christine Kambua to follow up with the Claimant, leading to the discovery of cash losses. The Claimant was invited to a meeting with the directors and admitted that she had used part of the cash collections to pay her daughter's medical bills. This was without approval. The investigators' report on the financials revealed cash losses. 5.3 million. Due to the theft and loss of cash under the Claimant, the matter was reported to the police.

Wafula testified that she is the chairperson of the SACCO. The Claimant had taken a loan, and at the end of her employment, she had not fully repaid. She caused a notice to be issued to the guarantors for the recovery of the same. The Sacco loan is still unpaid.

The Respondent also responded to Salim Hassan Soha, the human resources manager. He testified that he did not work with the Claimant since he joined the Respondent on 15 September 2025, and thus relied on the records to confirm that the Claimant was taken through due process.

At the close of the hearing, parties filed written submissions. These are analysed with findings.

Determination

It is common cause that the Claimant was employed by the Respondent as an accounts assistant. Through a notice dated 16th November 2024 and served on 22nd November 2024, the Respondent terminated her employment by summary dismissal for gross misconduct. The reason given was that of theft by a servant.

The Respondent has given a detailed account of events leading to the termination of employment. Of interest is that, following the financial controller's finding of discrepancies in the cash collections and banking by the Claimant, the Respondent invited the Claimant to a meeting to address the same on 15th May 2024. The Claimant was engaged in this matter until August 2024, without reconciliation. A meeting was held with the directors, at which the Claimant admitted that she had taken Ksh. 692,272 for personal use and treatment of her daughter since her request to the directors had been declined.

The Claimant admitted to these facts in her evidence in court. That due to her personal challenges and being unable to pay for her daughter's treatment, she took cash payments of Ksh. 692,272. This was without the employer's approval or consent. The request for money for personal use had already been declined.

Section 44 of the Employment Act allows summary dismissal of the employee where there is a breach of the employment contract and gross misconduct. The safeguard to the employee is under section 41(2), which requires the employer to issue the employee with notice and allow attendance for representations before another employee of choice.

Where the employee has indeed admitted to taking the employer's money or property without consent or approval, such conduct is defined under section 44(4) as theft. The admission then leaves the employer with the prerogative to determine the sanction.

In this case, the Respondent opted to report to the police. The Claimant was arrested for theft by a servant and charged with a **criminal case No. 1791 of 2024**. The Claimant did not report back to work after the arrest on 11th October 2024. She opted to seek assistance from the Labour Office. She was guided, and the Respondent was allowed to proceed with the disciplinary hearing.

Indeed, the ongoing criminal proceedings under Criminal Case No. 1791 of 2024 were not a bar to the Respondent addressing the internal disciplinary

measures commenced against the Claimant. The standpoint that such procedures should have stopped pending the criminal proceedings is not a legitimate or reasonable request. An employer is justified in addressing workplace misconduct, despite ongoing criminal proceedings, as held in **Attorney General V Andrew Maina Githinji [2016] eKLR**. Criminal proceedings carry a different threshold of proof, whereas internal disciplinary proceedings over alleged misconduct or gross misconduct should proceed on the premise of sections 35 and 41 or 44 of the Employment Act. This position is affirmed by the court in **James Mugeria Igati v Public Service Commission of Kenya [2014] eKLR**, which held that there is nothing in the law to suggest that a disciplinary process is in any way tied to a criminal process that may arise from the same facts. This position is reiterated in **Nzau v Attorney General [2023] KEELRC 919 (KLR)** and **Wanyama v Mumias Sugar Company Limited ((Under Receivership)) [2025] KEELRC 293 (KLR)** that criminal proceedings are distinct from internal disciplinary processes and pendency of the criminal case was not a reason for the employer to refuse to take the employee(s) through the internal disciplinary procedures addressed under sections 41 and 44 of the Employment Act.

By failing to report back to work after the arrest and being charged in a criminal case, the Claimant compromised her employment. She cannot turn back and assert that her constitutional and legal rights were violated. The report to the

labour officer informed the Claimant of that. The employer was at liberty to commence disciplinary proceedings against her.

Thus, it is imperative to distinguish between internal disciplinary procedures applicable to employees suspected of misconduct and those applicable to employees suspected of gross misconduct. Sections 41 and 44 of the Employment Act require notice to the employee, allowing him to attend and address in the presence of another employee of his choice. The motions of sections 41 and 44 of the Employment Act are couched in mandatory terms as held in **Kamau v Track & Trace Company Limited [2024] KEELRC 2846 (KLR)**, **Masichi v Brookside Dairy Limited [2025] KEELRC 3509 (KLR)**, and **Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited [2014] eKLR** that:

Section 41 of the Employment Act is couched in mandatory terms. Where an employer fails to follow these mandatory provisions, whatever outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing in the presence of their union representative.

Theft at work is an act that is defened under section 44 as gross misconduct. It is also a criminal act. The Respondent fulfilled its civic duty by reporting to the police.

The court finds no case of constitutional rights violations as alleged. Employment terminated for good cause, upon the Claimant's admission that she took the employer's cash and property for personal use without approval.

On the claims made, the salary for October and November 2024 is not payable for days the Claimant failed to report back to work. She can only be paid upon clearance for work until 11 October 2024. This is confirmed by the report to the Labour Office. Section 19 of the Act allows the employer to deduct from the wages amounts for days the employee was absent from work without good cause.

This is compounded by the fact that the Claimant was invited to a meeting to address the matter on 1 November 2024, but claimed to have travelled upcountry and hence was not available. Absence from work without leave and the employer's permission is gross misconduct and is contrary to sections 28 and 44 of the Act.

The Claimant cannot seek payment for days not worked without leave or the employer's permission.

Regarding the house allowance claim, the Claimant was not a protected employee. Where house allowance was paid, and the only claims relate to October and November 2024, as outlined above, without work attendance, the employer is at liberty to effect salary deductions.

On the findings above, the summary dismissal is justified; compensation, general damages and notice pay are not available to the Claimant.

The claim for severance pay relates only to redundancy. This was a case of summary dismissal.

A certificate of service is due at the end of employment. Such should be issued pursuant to section 51 of the Act.

Before the conclusion, the case concerned the Sacco loan taken by the Claimant, secured by her employment, with guarantors. The employer is allowed, under sections 17 and 19 of the Act, to recover monies lawfully secured by them, and, at the end of employment, the employee has not fully repaid. Each Sacco also has its own modalities for recovering unpaid loans. Such modalities and recovery processes should be lawful and undertaken to secure guarantors against an employee whose employment terminates without full payment of the loan secured by employment. In this case, the Sacco should proceed and recover the unpaid loan amounts as lawfully necessary until payment in full. See **H Young & Co. (E.A) Ltd v Kobong (Appeal E10 of 2024) [2025] KEELRC; Riley Falcon Security Services v Adhiambo [2023] KEELRC 3087 (KLR);** and the case **G4S Kenya Limited v Khawanga (Employment and Labour Relations Appeal E046 of 2022) [2024] KEELRC.**

In **Javan Were Mbango v H. Young & Co. (EA) Ltd [2012] eKLR**, the court held that;

In making payments to any employee, an employer must ensure that all the statutory deductions due are removed from the gross pay. The employer is, therefore, entitled to make a deduction of any amount authorized by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award. This Court is guided by the provision of Section 19 of the Employment Act.

Employees who, out of their own free will, join employees at Sacco do so by their employment and authorize the employer to make deductions from their salaries to Sacco for their welfare and the collective good of all. An employee is, therefore, stopped from claiming that once their employment is terminated, they are owed all their savings without considering the collective agreement under their Sacco and/or cooperative society. Where an employee has enjoyed a loan facility from the collective kitty, he is equally obliged to make reasonable any dues, and his relationship with the collective is severed by virtue of the termination of his relationship with the principal.

In this case, the claim is found without merit and is hereby dismissed. Costs awarded to the Respondent.

Delivered in open court at Nairobi, this 23rd day of April 2026

**M. MBARŪ
JUDGE**

In the presence of:

Court Assistant: Catherine and Omar

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