

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET

CAUSE NO. E017 OF 2025

**KENYA NATIONAL PRIVATE
SECURITY WORKERS
UNION.....CLAIMANT**

VERSUS

**G4S KENYA LIMITED.....
RESPONDENT**

JUDGMENT

1. The Claimant is a trade union registered under the Labour Relations Act to represent employees in the private security sector.
2. The Respondent is a limited liability company registered under the laws of Kenya operating a private security firm and employs security guards. The Claimant is therefore the proper union entitled to represent the employees of the Respondent in labour matters.

3. The Claimant and the Respondent have a valid recognition agreement and have negotiated several collective bargaining agreements (CBA)s.
4. The Claimant instituted the suit herein on behalf of **David Oyugi Ngocha**, a former employee of the Respondent who the Claimant states was its member paying union dues directly to the union, herein after referred to as the Grievant.
5. The Claimant in its Memorandum of Claim dated 2nd April 2025 avers that the Grievant was employed by the Respondent on 3rd September 2001 as a Courier on casual basis and was later confirmed as a permanent employee vide a letter dated 19th February 2003. The Grievant worked for the Respondent until 19th February 2024 when he was summarily dismissed.
6. It is the Claimant's case that on 3rd February, 2024, the Respondent's Auditor, Mr. Kimeu visited the Respondent's Eldoret Branch and later informed the Grievant that he had made some fictitious payments which were not adding up. It is contended for the Grievant that for all the requests for cash, he had to raise a petty cash sundry which would be confirmed by

Courier manager, Ms. Catherine and approved by the Branch Operations Manager, Mr. William Nyandong who kept the cash.

7. The Claimant states that the Grievant was not called during the said audit to defend himself. That on 8th February 2024, he was suspended from work with half pay pending investigations into the matter in question. He was invited for a disciplinary hearing on 15th February 2024, a week after his suspension.
8. The Claimant asserts that on the date of the disciplinary hearing, the Grievant was not given time to defend himself, that the evidence the Grievant had brought with him to the hearing was not considered and the meeting was hurriedly concluded without giving him a fair hearing.
9. The Claimant seeks the following reliefs on behalf of the Grievant:
 - i. Order that the Grievant be reinstated without loss of benefits. In the alternative.
 - a. Notice pay.....Kshs.
14,026
 - b. 19 days worked in February 2024.....Kshs 8,883

| | | |
|---|------------|--------------|
| c. Leave | 2024..... | Kshs |
| | 9,818 | |
| d. 19 days house allowance for February 2024. | | Kshs |
| | 2,333 | |
| e. Gratuity..... | | Kshs |
| | 176,727.60 | |
| f. 12 months compensation for | | |
| unfair termination..... | | Kshs |
| | 168,312 | |
| Total..... | | Kshs 380,099 |

- ii. Grant any other relief deemed fit and just to meet the ends of justice
- iii. Costs of the claim be awarded to the Claimant

10. In response to the Memorandum of Claim, the Respondent filed a Statement of Response dated 11th June 2025 in which it denied the allegations made in the Memorandum of Claim. According to the Respondent: -

- (i) Sometimes in January 2024, the Respondent received a whistle-blower report of petty cash misuse at the Eldoret Branch alleging that irregular requisitions and payments were being made on account of bus fare and delivery fees. The Respondent instructed Lawrence Kimeu to conduct investigations into the report.
- (ii) The investigations revealed that the Grievant had on various dates between November 2023 and January 2024 raised sundry payments indicating that he had travelled to Burnt Forest for urgent deliveries and paid himself bus fare totaling to Kshs 8,350 even though he never made any such travels.
- (iii) By a letter dated 8th February 2024, the Grievant was suspended pending completion of the investigations and on 12th February 2024, he was issued with a notice of disciplinary hearing.

11. The Respondent contended that the Grievant attended the disciplinary hearing on 15th February 2024 and was accompanied by his representative of choice, David Orata.

That the Grievant made representations on the allegations against him. It is averred that upon hearing the Grievant, the disciplinary panel considered the Grievant's representations and recommended his summary dismissal.

12. The Respondent asserts that vide a letter dated 19th February 2024, it notified the Grievant of his summary dismissal. It further states that the Grievant's terminal dues were computed to include salary for days worked up to 19th February 2024, house allowance for the days worked, accrued but untaken leave days (23 days for 2023 and 3 days for 2024), and accrued overtime. The Respondent avers that the total amount was remitted to Nyati Sacco to offset a loan held by the Grievant, and that following this remittance, no balance remained payable to the Grievant.
13. On the claim for reinstatement, the Respondent averred that the Grievant was lawfully dismissed and is therefore not entitled to reinstatement. With regard to the claim for gratuity, the Respondent contended that the Grievant, having been summarily dismissed, is not entitled to gratuity pursuant to the

provisions of the Regulation of Wages (Protective Security Services) Order. On the prayer for compensation for unfair termination, the Respondent maintained that the Grievant was lawfully dismissed and is thus not entitled to the relief sought.

14. The Respondent prayed that the Claimant's suit be dismissed with costs.

The Evidence

15. At the hearing, the Grievant testified as CW1 and stated that he was employed by the Respondent on 3rd September 2001 as a casual courier, and that his employment was subsequently confirmed to permanent terms on 19th February 2003. He averred that at the time of his dismissal, his last salary was Kshs 26,500. That he was dismissed on 21st February 2024 without being paid his salary for that month.
16. The Grievant further contended that he was suspended on 8th February 2024 following allegations arising from an audit conducted on 3rd February 2024. According to him, the audit was triggered by an anonymous letter alleging misuse of petty cash. He stated that the auditor informed him that fictitious

sundry entries had been identified in the petty cash records as having been recorded by him. He explained that approval of payments was the responsibility of the Branch Manager, and that his duties were limited to receiving parcels, delivery, and inward and outward sorting.

17. The Grievant testified that he was suspended for two weeks and was thereafter invited to attend a disciplinary hearing. It was his testimony that he was not accorded adequate time to defend himself. He further stated that when confronted by the auditor regarding the alleged fictitious sundries, he explained that all payments had been approved by the Branch Manager. He added that the disciplinary panel declined to consider his evidence on this issue.
18. The Grievant urged the Court to grant the reliefs sought in his claim.
19. On cross-examination, the Grievant stated that his salary for February and March 2024 had not been paid. However, when referred to the document at page 34 in the Respondent's bundle of documents, he acknowledged that it indicated

payment of Kshs 8,596.58 for days worked. He also conceded that he was paid for 26 leave days for 2023 and 3 leave days for 2024, as well as house allowance and overtime. He further admitted that, as indicated in his loan application form at page 35 in the Respondent's bundle of documents, any sums due to him upon termination of employment was to be utilised to offset outstanding loan balances. He confirmed that he signed the loan application form but stated that the money was remitted to the SACCO without his knowledge.

20. The Grievant further testified that he was assigned the duty of preparing sundry payment entries for courier-related expenses by the Courier Manager. He stated that he had performed this role for several years and was conversant with the applicable processes and procedures. He clarified that his role was limited to preparing documentation and that he neither approved payments nor handled cash. He further stated that the reason for each payment was indicated in the sundry records and that the Branch Manager would confirm each entry. He noted that while indicating the waybill number was sometimes treated as

optional, he understood it to be a requirement. He admitted that the document at page 1 of the Respondent's bundle did not contain any waybill numbers.

21. The Grievant referred to his statement recorded on 26th January 2024, in which he indicated that he would disburse cash to drivers under the direction of the Branch Manager. He explained that such actions were not always reflected in the Eldoret sundry records on occasions when the drivers were from Nairobi. He stated that he would be instructed on what to record, indicate his name and accompany the driver under the direction of the Branch Manager. He further testified that although he wrote his statement in the presence of the Branch Manager, he did not indicate that he had been instructed by the Branch Manager to include his name. He maintained that he was not accorded a fair hearing, as he was not given an opportunity to retrieve documents showing that parcels had been delivered on various dates. He stated that the representative availed at the hearing to represent him was

appointed by the Respondent. He conceded that he did not lodge an appeal against the summary dismissal.

22. On re-examination, the Grievant stated that although Mr. Orata was present, he would have preferred a representative of his own choice. He reiterated that the Branch Manager was responsible for handling cash, approvals and payments. He further stated that he had been informed by Nyati SACCO that the monies allegedly disbursed by the Respondent to offset his loan were never remitted as claimed.
23. The Respondent called Mr. Lawrence Kimeu, its Team Leader in Data Entry and Billing, who testified as RW1. He adopted his witness statement dated 12th June 2025 as his evidence in chief and relied on the documents filed by the Respondent in its defence.
24. RW1 testified that he conducted an audit following a whistleblower report concerning alleged misuse of petty cash at the Eldoret Branch. He stated that in the course of the audit, he found that the Grievant had interacted with the petty cash. He explained that, at the branch, cash is banked and later

withdrawn by the Branch Manager, who designated two individuals to handle disbursements, one for courier operations and the other for security (CSS and CIT). He stated that the Grievant had been assigned, among other duties, to make payments to staff undertaking deliveries or providing operational support. He testified that the Grievant would make such payments and prepare sundry forms indicating the recipients and amounts paid which were then compiled weekly and submitted to the Manager. RW1 maintained that under the Respondent's system, all payments must be supported by corresponding waybill numbers. He stated that he requested the Grievant to record a statement, which he did, and concluded that there had been misuse of funds as the Grievant was unable to account for certain amounts. He denied that the Grievant was not given an opportunity to present documents, stating that the Grievant was given three days to produce supporting documents but failed to do so. He further stated that he prepared his report without the Grievant having submitted the waybills.

25. RW1 stated that the applicable procedure requires that, for any expenditure to be properly accounted for, the waybill number, amount, date and purpose must be clearly indicated.
26. On cross-examination, RW1 stated that he had been dispatched to Eldoret to investigate alleged misuse of petty cash following an anonymous tip. He stated that the tip did not identify any specific individuals and that he had to ascertain the roles of staff members. He stated that the Grievant received funds from the Branch Manager and was responsible for handling sundry payments for courier-related expenses on a weekly basis. He stated that during the audit, he established that the Manager would sign documents even where the details were unclear.
27. At the close of the hearing, the court directed parties to file written submissions. The Claimant's submissions are dated 10th November 2025 while the Respondent's submissions are dated 8th December 2025.
28. By and large, the parties' submissions reiterated the evidence on record and I need not reproduce the same in this judgment.

Determination

29. I have considered the pleadings, the evidence and submissions of the parties. The issues that arise for my determination are: -
- i. Whether the Grievant's summary dismissal was substantively justified
 - ii. Whether the Grievant was accorded procedural fairness
 - iii. Whether the Grievant is entitled to the reliefs sought.

Whether the Grievant's summary dismissal was substantively justified

30. It is trite law that before an employer terminates an employee's employment, the employer must demonstrate the existence of valid and fair reasons for such termination.
31. The Respondent asserted that it summarily dismissed the Grievant from employment upon establishing that he had engaged in the misuse of petty cash by making fictitious claims for transport expenses when no such travel had occurred.
32. In the Claimant's summary dismissal letter dated 19th February, 2024, the reasons for dismissal are stated as follow:

- You breached the company code of Ethics/Conduct
- You were dishonest in the course of your duties
- You were negligent in regards to the performance of your duties

33. The Claimant denied these allegations and asserted that for all the requests for cash, he had to raise a petty cash sundry which would be confirmed by Courier Manager, Ms. Catherine and approved by the Branch Operations Manager, Mr. William Nyandong who kept the cash. The Claimant maintains that he merely followed the established procedure for petty cash disbursements, which required approvals from both the Courier Manager and the Branch Operations Manager, who controlled the cash.

34. The Respondent contends that the Grievant acted independently in making fictitious claims for petty cash and that his summary dismissal was justified.

35. From the evidence on record, it is not disputed that the Grievant was involved in the preparation of sundry vouchers. However, the Respondent's own witness confirmed that

approvals were undertaken by the Branch Manager and that, in some instances, documents were approved even where details were unclear.

36. According to the investigation report, the Grievant was a Courier Guard assigned the responsibilities of a courier cashier who paid and raised weekly accounting sundries for courier services. The report states that he was interviewed on the payments that were tagged against his name as his bus fare for urgent deliveries to Burnt Forest which appeared suspicious as they had no corresponding transactional waybills to confirm authenticity. That he stated that the amount was given to drivers as off-loading cost when they went to deliver at Burnt Forest. He stated that on some occasions he accompanied the drivers.
37. From the findings in respect of the Grievant, there is no evidence of breach of company Code of Ethics/Conduct, dishonesty in the course of duty or negligence in the performance of his duties. The evidence on record discloses

that the only reason the Grievant was dismissed was because he did not attach waybills to the payments he made.

38. The Grievant explained that all he did was pay drivers and record the same as bus fare for accounting purposes as he had been directed to do by his supervisor. The Investigation report does not indicate that RW1 bothered to confirm with the Grievant's supervisor if the averments by the Grievant were not true. Further, no effort was made by the Respondent to contact the drivers whom the Grievant stated he paid to confirm if the averments by the Grievant were untrue. The Respondent further did not check with the customer(s) at Burnt Forest, which the Respondent could easily have done, if the deliveries were made, before making recommendations for disciplinary action to be taken against the Grievant, who had served it from 2001 to 2024, a period of 23 years, with a clean record. There is further no averment in the report that the Grievant was asked to avail the waybills and failed to do so.
39. At the disciplinary hearing the only accusation against the Grievant, according to the minutes, was that he made entries

in the sundries register as bus fare instead of specifying that they were for offloading. There was no mention or a finding of negligence of duty or dishonesty. There was further no mention of breach of company code of Ethics/Conduct for which the Grievant was dismissed.

40. Fundamentally, there is no evidence that the Grievant was ever assigned the role of cashier by way of a letter specifying his duties and responsibilities in that regard. Specifically, there is no evidence that he was made aware of the requirement that there must be a waybill for every sundry entry or any other requirements that was expected of him.
41. The company Code of Ethics/Conduct referred to in the summary dismissal letter was not produced in court or referred to during the disciplinary process. Further, no mention is made of the specific provisions of the company Code of Ethics/Conduct that were allegedly breached by the Grievant.
42. The investigation report further did not set out the role of the Grievant vis a vis that of the Grievant's supervisors. It further did not state whether the supervisors who approved the sundry

entries by the Grievant and released money to him were held accountable for approving the payments made by the Grievant.

43. The Notice of Disciplinary Hearing states the offences to be:

Offence

Specific particulars of the nature of the offense: (date, place, activity, category, consequences if found guilty.)

- i. On different dates in November, December 2023 and January 2024 yours raised sundries Nos form 205043 to 215230 for different amounts totaling to Ksh8350 paying yourself return busfare to Burnt Forest allegedly on courier deliveries but you were never going for the deliveries.

You indicated that you were giving the money to the route drivers to do the deliveries on their way back to Nairobi

If found guilty of the above offences you shall be liable to disciplinary action including dismissal.

44. At the hearing the charges read to the Grievant were:

The accused who accounts for courier expenses has been accounting on a weekly basis some bus fare paid to himself for deliveries to Burnt forest which have no transactional waybills and authenticity could not be confirmed and on contradictory information from his self recorded statement, he said that such amount are given to the route drivers to help deliveries on their way back. The weekly accounting sundries are as listed below.

Sundry 215121 Kes 750, Sundry no 215143 Kes 700, Sundry no 205032 Kes 850, Sundry no 205106 Kes 500, Sundry no 205103 Kes 700, Sundry no 205043 Kes 600. Sundry no 205124 Kes 700, Sundry no 205236 Kes 500, Sundry no 205230 Kes 500, Sundry no 205143 Kes 500 (misappropriation of Kes 8,350 for 6 weeks sample)

45. The Grievant's response to the charges was

- I admit that some of the waybills were not indicated on the sundries.

- However, I can prove that there were deliveries that were made at Burnt Forest for Sunking Limited.
- At the Burnt Forest, we have Sunking and we always give him priorities.
- Burnt Forest is a bit far from Eldoret. We also have two vehicles that help us with deliveries.
- The probox was grounded and the Hilux was in Nairobi
- We had no vehicle to assist with the deliveries.
- The route vehicles sometimes also assist us with the deliveries

46. There is a difference in the sundry numbers in the Notice of Disciplinary Inquiry/Hearing and at the hearing. It is not clear which of the two the Grievant was required to respond to.

47. The court also notes that most of the sundry numbers quoted in the Notice of Disciplinary Inquiry/Hearing and in the minutes of the hearing are different. The court further notes that the sundries quoted do not add up to the figure of Kshs. 8,350

which the Grievant was accused of misappropriating. The same add up to Kshs. 6,350.

48. Where an employee is to be dismissed for failing to comply with guidelines, those guidelines ought to be produced in court so that the court can establish if indeed they exist and the evidence support the breach. There must also be evidence that the employee was aware of those guidelines and of his roles in respect thereof.
49. Further, where there are disciplinary rules that an employee is subjected to, those disciplinary rules must be produced in court so that the court can confirm breach of the same. There must also be proof that the employee was aware about the same.
50. In the instant case, no the Grievant is accused of breach of Company Code of Ethics/Conduct which was never produced, dishonesty which according to the minutes of the hearing the Grievant was never charged with and was never proved, and negligence in the performance of his duties which duties were never specified and no proof was adduced that such (unspecified) duties were ever assigned to him.

51. In the circumstances, the Court finds that the evidence relied upon by the Respondent falls short of establishing breach of the company Code of Ethics/Conduct, dishonesty or gross misconduct on the part of the Grievant.
52. Accordingly, this Court finds that the Respondent has failed to discharge its burden of proving valid and fair reasons for the summary dismissal as required under the law.

Whether the Grievant was accorded procedural fairness

53. The requirements of procedural fairness include informing the employee of the charges, allowing adequate time to prepare a defence and affording the employee an opportunity to be heard in the presence of a representative of their choice.
54. The Respondent contends that the Grievant was issued with a notice of disciplinary hearing, informed of his rights and attended the hearing with a representative.
55. The Grievant on the other hand testified that he was not afforded adequate time to defend himself and that his evidence was disregarded. He further stated that he was not permitted to attend the disciplinary hearing with a representative of his

choice, as the Respondent unilaterally appointed Mr. David Orata to represent him.

56. The Respondent's witness maintained that the Grievant made his representations at the disciplinary hearing. He did not, however, deny that the Grievant was not given an opportunity to attend the hearing with a representative of his own choice. Section 41 of the Employment Act is categorical that an employee is entitled to be represented by a person of their own choice during disciplinary proceedings.
57. Compelling the Grievant to accept a representative whom he did not choose and imposing upon him one with whom he had not had an opportunity to discuss the case constitutes a serious breach of the principles of natural justice as set out in section 41 of the Employment Act which specifically provides that "... the employee shall be entitled to have another employee or a shop floor union representative **of his choice** present ..."
58. Further, the minutes of the disciplinary hearing do not indicate that the Grievant was given an opportunity to state his case or asked if he had any evidence to produce or any witness to call.

His evidence that he had documents (copies of the waybills) which he was not allowed to produce during investigations and during the hearing was not controverted.

59. It is further evident that the Grievant was not given an opportunity to show cause why disciplinary action should not be taken against him. The letter of suspension dated 8th February, 2024 does not give the grievant an opportunity to respond to the charges. Further, the charges in the letter of suspension are not the same as those that were presented to the Grievant at the hearing. The letter of suspension is reproduced below:

8th February, 2024

David Ngoha

Co No 22661

Courier Services

ELDORET

Dear David,

RE:SUSPENSION FROM DUTY WITH HALF PAY

Please refer to your discussion with the undersigned on 8th February 2024.

You have been working as a courier at G4S Eldoret. You have also been raising sundries for courier expenses.

It has been established that you misappropriated cash as follows;-You raised several sundry payments in November, December 2023 and January 2024 indicating that you paid yourself return busfare to Burnt Forest on Courier Deliveries but you were not going for the deliveries yourself

You also never indicated the transactional waybill numbers on the said sundry payment forms series No 205043 to 205236 for the months of November, December, 2023 and January 2024.

This letter thus serves to advise that you have been suspended from duty with half pay pending investigations into the matter. While on suspension you are expected to be reporting to your immediate Manager on a daily basis except on weekends and public holidays until your case is finalized.

Yours Faithfully,

For:G4s Kenya Limited

Signed

William Nyandong,

Operations Manager,

CAS Limited

60. Further, the letter of suspension is dated the same day as the letter informing the Grievant of the disciplinary hearing. The latter, which was received by the Grievant on 12th February, 2024, informed him that the hearing was on 15th February, 2024.
61. This confirms that the decision to subject the Grievant to a disciplinary hearing was made before he was given an opportunity to respond to the charges and further confirms the Grievant's averments that he was not given an opportunity to produce the Waybills which he was summarily dismissed for not attaching to the sundries. All the Waybills are attached to the Memorandum of Claim at Document No. 4.
62. Section 41 provides for an employee to be given an opportunity to respond to the charges against him before a decision is made to subject the employee to disciplinary process.
63. I therefore find that the disciplinary process fell short of the threshold of procedural fairness, and the summary dismissal

was accordingly unfair in terms of sections 41, 43 and 45(2) of the Employment Act.

Whether the Grievant is entitled to the reliefs sought

64. Having found that the summary dismissal of the Grievant was unfair, I now consider if he is entitled to any of the remedies sought. In the Memorandum of Claim, the Claimant sought the following reliefs on behalf of the Grievant: -

i. *Reinstatement*

Reinstatement is a discretionary remedy and is only granted in exceptional circumstances. Given the circumstances under which the Grievant's employment was terminated and the fact that an employee must prove exceptional circumstances to be entitled to the remedy, reinstatement is not appropriate in this case.

ii. *Notice pay*

Having found the summary dismissal of the Grievant unfair, he is entitled to pay in lieu of notice which I award him at one month's consolidated salary. According to the pay slip at page 24 of the

Respondent's bundle, the Grievant's basic salary was Kshs. 14,026. He was paid a house allowance of Kshs. 2,103. His consolidated pay upon which notice is based under section 49(1) of the Employment Act is Kshs. 16,129.90 which I award him.

iii. Leave dues for 2024

The Grievant claimed payment for leave days accrued in 2024. However, during cross-examination, he admitted that he had been paid for 3 days of leave in 2024. Accordingly, this prayer is declined.

iv. 19 days house allowance for February 2024

On cross-examination, the Grievant when referred to the document at page 34 in the Respondent's bundle of documents acknowledged having been paid Kshs 8,596.58 for days worked. The prayer is therefore declined.

v. Gratuity

The Regulation of Wages (Protective Security Services) Order 1998 (as amended from time to time) provides for gratuity at the rate of 18 days per year worked for employees who have completed 5 years of service. The Grievant having worked for the Respondent from January 2002 to February 2024 had completed 21 years of service at the time of termination of his employment. His basic salary was Kshs. 14,026 at the time of termination as per pay slip for January 2024 in the Claimant's bundle. 18 days salary for 21 years is therefore $14,026/26 \times 21 \times 18 =$ Kshs. 203,916 which I award the Grievant under this head.

i. *12 months' compensation for unfair dismissal*

Having found that the dismissal of the Grievant was unfair, and noting the Grievant's long service of 21 years without any disciplinary incidents and taking into account all other factors under section 49(4) of the Act, it is my view that the Grievant is entitled to maximum

compensation, which I award at (16,129.90x10=) Kshs.161,299 as compensation for unfair termination.

65. In conclusion judgment is entered for the Claimant in favour of the Grievant as against the Respondent in the following terms:

- | | |
|--|------------------|
| i. Notice pay | Kshs. 16,129.90 |
| ii. Gratuity | Kshs. 203,916.00 |
| iii. Compensation for unfair dismissal | Kshs. 193,558.80 |

Total **Kshs. 381,344.90**

66. The Claimant is awarded costs of Kshs. 50,000 in view of the fact that the Claimant was represented by a union official and is not subject to the Advocates Remuneration Order.

67. Interest shall accrue at court rates from date of judgment.

68. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 16TH DAY OF APRIL, 2026**

**MAUREEN ONYANGO
JUDGE**