

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT NAKURU  
APPEAL NUMBER E050 OF 2024**

**BETWEEN**

REDSHANK LIMITED .....APPELLANT

**AND**

COLLINS ONUNDO OWUOR ..... RESPONDENT

[ An Appeal from the Judgment of the Hon. Court delivered on 11th June 2024 by the Hon. Aloyce P. Ndege at Nakuru Chief Magistrate’s Court CMELRC No. E069 of 2022, between the Parties herein]

*Rika J  
Court Assistant: Emmanuel Kiprono*

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*Wachira Wanjiru & Company Advocates for the Appellant*

*Spelline Odande & Company Advocates for the Respondent*  
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**JUDGMENT**

1. The Respondent is a former general worker of the Appellant.
2. He initiated the Claim at the Trial Court for unfair and unlawful termination, against the Appellant.
3. The Trial Court found in his favour, and granted him equivalent of 12 months’ salary in compensation for unfair termination at Kshs. 89,460, and leave pay at Kshs. 3,211 – total Kshs. 92,671. He was granted the prayer for certificate of service and costs.

4. The Appellant lodged this Appeal against the said Judgment, through a Memorandum of Appeal dated 8th July 2024.
5. The Memorandum lists 4 Grounds of Appeal, shown below: -
  - a. The Trial Court disregarded evidence tendered by the Appellant on minutes of the disciplinary hearing.
  - b. The Trial Court erred in finding that the Respondent was not given an opportunity to defend himself.
  - c. The Trial Court erred in disregarding the evidence of the Appellant on the manner and procedure adopted prior to termination of the Respondent's employment.
  - d. The Trial Court erred by awarding the Respondent compensation and leave pay.
6. The Appellant proposes: -
  - a. The Appeal is allowed.
  - b. Judgment of the Trial Court is set aside.
  - c. Appellant is awarded costs of the Appeal.
7. Parties agreed that the Appeal is considered and determined on the strength of the Record of Appeal and Submissions. They confirmed filing

and exchange of Submissions at the last mention, on 26th February 2026.

**The Court Finds: -**

8. The 4 Grounds of Appeal challenge the Trial Court's findings on [i] procedure; [ii] justification; and [ii] remedies.

9. The Trial Court concluded at paragraph 24 of the Judgment that: -

“ In light of the foregoing, I am of the considered view that without affording the grievant a chance to air his representations during the disciplinary hearing, meant that the dismissal was not done in accordance with a fair procedure, required by Section 45 [2] [c] of the Employment Act.”

10. The Trial Court cited various decisions of Superior Courts in defining fair procedure.

11. There was however no evidence adduced by the Respondent, to establish, pursuant to Section 47[5] of the Employment Act, that procedure was unfair.

12. Notably, he was accompanied by his trade union representative Vincent Cheruyiot at the hearing. Vincent gave evidence confirming that he was present throughout the hearing, representing the Respondent. He

confirmed that the Respondent himself, was given a chance to defend himself.

13. The Trial Court seems to have disregarded this convincing evidence of the Respondent's trade union representative.
14. On cross-examination, the Respondent told the Trial Court that he was called to the hearing. He stated that he denied the charges. He suggested that the disciplinary panel refused to hear him, but that, " I spoke by force." He confirmed that Vincent was his representative, and signed the minutes.
15. If he was in any way limited from speaking, he broke the barrier, and "spoke by force." He was heard through his use of force.
16. The Court is persuaded that the Trial Court erred, in finding that procedure was unfair, under Sections 41 and 45 of the Employment Act.
17. On [ii] justification, the Trial Court states at paragraph 15 of the Judgment that: -

" With regard to Section 45 [2], I find that the Respondent herein, failed to prove the Claimant's misconduct, poor performance and non-obedience to company's regulations, since no attendance register had been availed in Court, to show that it was wrongly signed or not..."

18. The substantive issue in dispute, over which the Respondent was summarily dismissed, was that he signed the attendance register, in and out simultaneously, when he reported to work in the morning. He was supposed to sign in, or reporting to work, and out on departure in the evening.
19. The attendance register was therefore at the heart of justification. It was not exhibited before the Trial Court. There was no way the Trial Court would find that the Respondent signed in and out simultaneously without sight of the attendance register.
20. Human Resource Manager, Martha Nyambura Gitonga, told the Trial Court on cross-examination that she did not exhibit the attendance register before the Trial Court.
21. The Trial Court did not err, in finding that the Appellant had no valid reason, to summarily dismiss the Respondent. Termination was unfair for want of justification, under Sections 43 and 45 of the Employment Act.
22. On [iii] remedies, the award of compensation equivalent of 12 months' salary, at Kshs. 89,460 was fair. There is no ground for the Court to interfere with the award, termination having been unfair, for want of valid reason.
23. The Respondent had worked for 7 years, and did not cause or contribute, to the circumstances, leading to summary dismissal. He was not paid anything in terminal benefits, after 7 years' toil, save for 1-month salary

in lieu of notice at Kshs. 7,455, and annual leave at Kshs. 2,007 -total Kshs. 9, 512. The award of Kshs. 89,460 in compensation was reasonable.

24. On annual leave, the Trial Court found that the Appellant partially paid an amount of 2,007. The amount of Kshs. 3,211 was awarded as the difference due to the Respondent. The Court does not have reason to interfere with the award of annual leave.
25. In the end, the Court would disagree with the Trial Court on procedural fairness; uphold the finding on validity of reason; and, uphold the remedies in their entirety.

**IT IS ORDERED: -**

- a. The Appeal is partly allowed on the finding that procedure was unfair.*
- b. The rest of the findings and awards of the Trial Court are sustained.*
- c. No order on the costs of the Appeal.*

Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 30th day of April 2026.

James Rika  
Judge

