

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT NAKURU

CAUSE NO. E030 OF 2024
*(Before Hon. Lady Justice Anna Ngibuini
Mwaure)*

**KENYA PLANTATION & AGRICULTURAL
WORKERS UNION.....**
.....CLAIMANT

VERSUS

SOLIO RANCH LIMITED
RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed a Memorandum of claim dated 12th April 2024 seeking the following orders:-

1.A declaration that the dismissal of the grievant is unlawful, wrongful, and unfair in the circumstances.

2. (i) An order compelling the Respondent to reinstate the grievant without loss of benefits.

(ii) An order compelling the Respondent to pay the grievant's monthly salary for the entire time he has been out of service.

3.If prayer (2) above fails, an order directing the Respondent to pay the grievant as follows:

- a. Gratuity/service as provided for in the Employment contract;***
- b. In lieu of notice of termination;***
- c. Compensation equivalent to twelve (12) months' salary***
- d. Damages for unlawful, wrongful, and unfair dismissal;***
- e. Costs of the cause***
- f. Certificate of service***
- 4. Interest on 2(ii) or 3 hereinabove at court rates***
- 5. Any other relief this Honourable court may deem fit and just to grant.***

Claimant's case

2. The Claimant, a duly registered trade union, representing workers within the agricultural sector, avers that it had a valid recognition agreement with the Respondent, leading to a Collective Bargaining Agreement(CBA).
3. The Claimant avers that the grievant, Samwel Mwiraria, was employed by the Respondent on 4th May 1984 as a general worker, primarily serving as a carpenter.
4. The Claimant avers that in May 2022, while the grievant was in his course of duty, the Respondent

summarily and without lawful cause terminated his employment, handing him a sum of Kshs.3,000/= and ordering him to vacate the ranch.

5. The Claimant contends that such conduct amounted to unlawful, unfair, and illegal dismissal contrary to the Employment Act and the governing CBA.
6. Upon reporting the dispute, the Claimant avers that it sought to convene joint meetings through formal correspondence to appeal the termination, but the Respondent failed, refused, and/or neglected to respond, thereby frustrating the grievance procedure.
7. The Claimant avers that it escalated the dispute to the Ministry of Labour, which appointed a conciliator who, after hearing both parties, recommended that the Respondent pay the grievant terminal benefits, including one month's salary in lieu of notice, service pay for 38 years, twelve months' gross pay as compensation for unfair termination, and a certificate of service.
8. Despite a formal demand letter sent on 22nd November 2023, the Respondent failed to comply. At the time of dismissal, the grievant earned Kshs.12,000/= per month and had diligently served the Respondent for over 38 years.

9. The Claimant maintains that the termination was unlawful, wrongful, and unfair, and that it is inequitable for the grievant to be sent away without his rightful benefits after such long and faithful service.

Respondent's Memorandum of Defence

10. In opposition to the Memorandum of claim, the Respondent filed a Memorandum of Defence dated 2nd July 2025.

11. The Respondent avers that the grievant, Samwel Mwiraria, was lawfully and fairly summarily dismissed on 2nd May 2022 after nearly four decades of service due to repeated absenteeism, gross misconduct, and consistently poor performance despite numerous warnings and disciplinary proceedings.

12. The Respondent emphasizes that the dismissal was both substantively and procedurally fair under the Employment Act, 2007, and carried out in strict adherence to company policies.

13. The Respondent further denies the existence of any valid recognition agreement or collective bargaining agreement with the Claimant, and maintains that the grievant is not entitled to notice pay, gratuity, or

reinstatement, as his social security dues were duly remitted to the NSSF and reinstatement is barred by law.

14. The Respondent therefore urges the court to dismiss the claim in its entirety with costs, characterizing it as unfounded, devoid of merit, and unsupported by evidence.

Claimant's evidence in court

15. CW1, the grievant, Samwel Mwiraria, adopted his written witness statement dated 15th April 2024 as his evidence in chief. He avers that he is a farmer and has been employed by the Respondent since 1984 and has worked for 38 years.

16. In his testimony, CW1 stated that his employment with the Respondent was terminated in March 2023 without being issued a show cause letter or being subjected to a disciplinary hearing. He confirmed that he received only a termination letter stating that his services were no longer required, and that he was paid Kshs.3,000/= as bus fare, without any terminal dues.

17. In cross-examination, CW1 acknowledged that the retirement age is generally 60 years, admitted paying union dues but produced no documentary proof of union membership beyond a union card,

and confirmed receipt of warning letters dated 28th March and 22nd April 2022 relating to absenteeism and lateness. He further admitted that the warning letters referred to prior verbal warnings, though he disputed having received them, and explained that he often informed the company when he would be late. CW1 stated that he worked as a carpenter performing general chores, received his termination letter on 2nd May 2022, and that his supervisor, Tom, had been dismissed shortly before him.

18. In re-examination, CW1 reiterated that the warning letters referred to verbal warnings, which he did not contest out of fear, and added that there was no clear retirement policy in the company, though his supervisor encouraged employees to work harder.

Respondent's evidence in court

19. RW1, Kelvin Carr Hartley, Respondent's Managing Director and a General Manager, South Laikipia, adopted his written witness statement dated 3rd July 2025 together with the bundle of documents dated 8th July 2025 marked as exhibits 1 to 4 as his evidence in chief.

20. RW1 testified that there was no CBA between the Claimant and the Respondent. He acknowledged that negotiations may have been contemplated, but

no agreement was ever concluded. He further stated that the grievant was terminated on 2nd May 2022 and left employment immediately. RW1 confirmed that the Respondent was remitting statutory contributions to the National Hospital Insurance Fund and the National Social Security Fund.

21. RW1 stated that the termination was occasioned by absenteeism, lateness, and leaving work early. He indicated that the Claimant had been issued with warning letters. He identified the Claimant's supervisor as one Mr. Tom Nyaribo, who resigned in February 2022. RW1 himself left the Respondent in August 2022, and clarified that neither he nor Mr. Nyaribo were terminated.

22. In cross-examination, RW1 stated that he commenced employment with the Respondent in January 2022. He admitted that he did not find any documentary evidence of verbal warnings issued to the Claimant, but had been informed that such warnings were given by Mr. Nyaribo. RW1 confirmed that he personally issued a written warning letter to the Claimant and had no personal grudge against him. He acknowledged that although he recorded

that a disciplinary meeting had been conducted, he did not personally convene it, and opined that the Human Resource Manager, Mr. Nyaribo, ought not to have presided over it.

23. RW1 conceded that there was no evidence of a show-cause process following the issuance of the warning letter. He stated that the Claimant was terminated on 22nd May 2022 for gross misconduct and underperformance. While the company had a policy for measuring performance, RW1 admitted that no such evidence was presented in court. He further conceded that there was no documentation of disciplinary proceedings, though the Claimant was paid for days worked and accrued leave, albeit without supporting evidence.

24. In re-examination, RW1 stated that performance evaluations were conducted monthly and recorded in performance reports. He explained that supervisors verbally communicated performance outcomes to employees, even if not formally documented. He maintained that verbal warnings were recorded and referenced in the written warning letters, and the Claimant did not contest such references. RW1 reiterated that the Claimant failed to notify his supervisor of absences and that

systems were in place to monitor performance when he joined the Respondent.

25. Parties were directed to put in their respective written submissions.

Claimant's submissions

26. The Claimant submitted that the grievant's termination was both substantively and procedurally unfair. Substantively, under **Section 43(1) of the Employment Act**, the employer must prove valid reasons for termination, and failure renders dismissal unfair within Section 45 of the Employment Act. The Claimant submitted that the Respondent alleged poor performance but produced no evaluation policy or evidence, contrary to the principles in **National Bank of Kenya v Mutonya [2019] KECA 404 (KLR)** and **Mukala v Ol Tukai Lodge Ltd [2013] KEIC 634 (KLR)**, which require employers to demonstrate performance measurement systems and remedial steps. Procedurally, the Claimant submitted that **section 41 of the Employment Act** mandates a fair hearing, notice to show cause, and representation, which were denied to the grievant. The Claimant relied on authorities such as **Peter Onyango Nyabongo v Citadelle Security Limited**

[2015] KEELRC 1299 (KLR), and **Patrick Abuya v Institute of Certified Public Accountants of Kenya (ICPAK) & another**

[2015] KEELRC 154 (KLR), which affirm that failure to comply with section 41 alone makes dismissal unlawful. The Claimant further relied on **Kenfreight (E.A) Limited v Benson K. Nguti**

[2016] KECA 409 (KLR), which held that termination is unfair if either the reason or procedure is invalid. Supporting principles of burden of proof under **section 107 of the Evidence Act**, as reiterated in **Susan Mumbi v Kefala**

Grebedhin (Nairobi HCCC No.332 of 1993) and **Kipkebe Limited v Peterson Ondieki Tai**

[2016] KEHC 5422 (KLR), show the Respondent failed to substantiate allegations.

27. The Claimant relied on cases such as **Mrisha v Civicon Limited [2014] KEIC 86 (KLR)**, **Loice Otieno v Kenya Commercial Bank Ltd [2013] KEELRC 271 (KLR)**, **Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] KEELRC 905 (KLR)**, and **Titus Musau Ndivau & Another V Waridi Limited [2012] KEELRC 190 (KLR)** emphasize that dismissal without valid reasons and adherence to

due process amounts to unfair termination. The Claimant also invokes **Article 50 of the Constitution of Kenya**, which deals with fair hearing and **ILO Convention No. 158, Article 4**, which deals with termination only with a valid reason.

28. Collectively, the Claimant submitted that it has established that the grievant's dismissal was unjustified, unlawful, and procedurally defective, entitling him to the relief sought.

Respondent's submissions

29. The Respondent came up with four central issues. Firstly, on *locus standi*, the Respondent submitted that the Claimant lacked standing to file the claim because there was no recognition agreement or collective bargaining agreement between the parties, and no evidence was produced to show the grievant was a union member. Reliance is placed on **Section 22 of the Employment and Labour Relations Court Act** on representation before the Court, and sections 107-109 of the Evidence Act on the burden of proof, supported by the case of **Modern Soap Factory v Kenya Shoe and Leather Workers Union [2020] KECA 4 (KLR)** and **Kenya Union of Commercial, Food and**

Allied Workers v Kiambu [2023] KEELRC 2939 (KLR), which held that union membership must be proved before representation can be valid.

30. Secondly, on valid reasons for dismissal, the Respondent submitted that the grievant's persistent lateness and absenteeism amounted to gross misconduct under ***section 44(3) and 44(4) (a) of the Employment Act***, which permits summary dismissal where an employee fundamentally breaches obligations or absents himself without lawful cause. The Respondent cited the following cases including ***British American Tobacco (K) Ltd v Kenyan Union of Commercial Food and Allied Workers (Kucfaw) [2019] KECA 698 (KLR)***, and in return cited the case of ***British Home Stores Ltd v Burchell (1980) ICR 303 EAT*** which provide the employer who believe misconduct occurred must have reasonable grounds. ***Mas Intimates Kenya (EPZ) Ltd v Ochieng [2025] KEELRC 3708 (KLR)*** where the court stated that absconding work amounts to gross misconduct, and ***Agnes Kavata Mbiti v Housing Finance Company Limited [2017] KEELRC 287 (KLR)*** which held that that workplace policies must be read with section 44 of the Employment Act to define misconduct.

31. Thirdly, on procedural fairness, the Respondent submitted that due process was followed under **section 41 of the Employment Act**, though records were unavailable due to the Human Resource manager's departure. The witness testified that verbal warnings, warning letters, a show-cause letter, and a disciplinary hearing were conducted. The Respondent placed reliance on **Oyombe v Eco Bank Ltd [2022] KECA 540 (KLR)**, which outlined four procedural fairness elements: explanation of grounds, reasons for termination, right to representation, and consideration of the employee's defence.

32. Fourthly, on burden of proof and reliefs, the Respondent cited **section 47(5) of the Employment Act**, which provides that the employee must prove unfair termination, and **Isindu v Lavington Security Guards Ltd [2017] KECA 225 (KLR)**, which held that the employee must first prove unfair dismissal before the employer defends.

33. On remedies, the Respondent relied on **Kenya Broadcasting Corporation v Geoffrey Wakio [2019] KECA 65 (KLR)**, where the court held that the maximum 12 months' compensation must be

justified, and ***Oyombe v Eco Bank Ltd (Supra)***, where the court awarded two months' compensation where fair procedure was not proved but reasons were valid. The Respondent further cited ***Joash Alubale Jacob v Mega Pack Limited [2019] KEELRC 1770 (KLR)*** and ***Vincent Abuya Obunga v Mast Rental Services Limited [2019] KEELRC 2382 (KLR)***, where the courts held that no notice pay is required where dismissal is for gross misconduct under ***section 44 of the Employment Act***.

34. On reinstatement, the Respondent invoked ***section 49(4) of the Employment Act*** and ***Kenya Power & Lighting Co. Ltd v Wasike [2017] KECA 446 (KLR)***, which held that reinstatement must be exceptional and practical. Finally, on service pay, the Respondent relied on ***Section 35(6) of the Employment Act***, arguing that NSSF contributions were remitted, disentitling the grievant to service pay.

35. In conclusion, the Respondent submitted that the grievant was lawfully dismissed for gross misconduct and absenteeism, due process was followed, the Claimant lacked locus standi, and the

Claimant failed to prove unfair termination, urging dismissal of the claim with costs.

Analysis and determination

36. The court has considered the pleadings by both parties together with the submissions. The following are set out as the issues for determination:

- i. Whether the grievant was summarily dismissed by the Respondent in accordance with sections 41, 43, 44 and 45(2) of the Employment Act***
- ii. If (i) above is in the negative, whether the Claimant is entitled to the reliefs sought***
- iii. Who should bear the costs of the suit?***

37. The Respondent in his defence paragraph 3 claims that the Claimant has no valid collective bargaining agreement with the Respondent.

The court has confirmed that such a collective bargaining agreement exists and is duly executed by both parties herein dated 18th June, 2021. The union represented the Claimant during the conciliation meetings before the conciliator and the Respondent participated without questioning the legality of the representation of the Claimant. This defence therefore seems to be an afterthought and the court finds it is not proved. The court therefore

is satisfied the Claimant has a collective bargaining agreement with the Respondent.

38. As for the issue of whether this termination was legal for termination to take place, the employer should follow the due process, which comprises the substantive justification and procedural fairness as set out in sections **41, 45, and 45(2) of the Employment Act. Section 47(5) of the Employment Act** provides as follows:

“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.”

39. In ***Easy Coach v Njogu [2026] KECA 559 (KLR)***, the Court of Appeal cited the case of ***Isindu v Lavington Security Guards Ltd (supra)***, where the court stated as follows:

“There can be no doubt that the Act, which was enacted in 2007, places heavy legal

obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41, requiring notification and a hearing before termination. The Act also provides for most of the procedures to be followed, thus obviating reliance on the Evidence Act and the Civil Procedure Act/ Rules...” [Emphasis added].

40. In ***Oyombe v Eco Bank Limited (supra)***, the Court of Appeal stated as follows:

“What concerns us now is whether there was procedural fairness in the dismissal process. As pointed out earlier, it is evident that the learned Judge did not consider the

aspect of procedural fairness. In determining this issue, we must be guided by Section 41 of the Employment Act, which provides the minimum threshold of a fair procedure that an employer ought to comply with in summarily dismissing an employee. The said section provides for notification and hearing before termination on grounds of misconduct in the following way:-

“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.”

“Notwithstanding any other provision of this part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under Section 44 (3) or (4)

hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, chosen by the employee within subsection (1) make.”

Under this Section, four elements must thus be satisfied for the summary dismissal procedure to be said to be fair, being: -

- a) An explanation of the grounds of termination in a language understood by the employee;***
- b) The reason for which the employer is considering termination;***
- c) Entitlement of an employee to have a representative of his choice when the explanation of the grounds of terminations is being made;***
- d) Hearing and considering any representation made by the employee and the representative chosen by the employee.”***

41. In this instant case, the grievant was employed by the Respondent on 4th May 1984 and served until 26th May 2022, when his employment was terminated. Upon dismissal, he was handed Kshs.3,000/= and directed to leave. The dispute was

subsequently referred to conciliation, where findings indicated that the grievant had been unfairly terminated, having not been accorded a fair hearing as contemplated under **Sections 41, 43 and 45(2) of the Employment Act**. The Respondent, however, sought to justify the termination on grounds of absenteeism, asserting that the grievant had been issued several warnings. In light of these circumstances, the Claimant maintains that the termination was unlawful and that the grievant is entitled to compensation.

42. The Respondent averred the Claimant was dismissed for absenting himself from work and for underperformance. The Respondent may have had a good reason to terminate the Claimant but then it is still mandatory to give the employee an opportunity to be heard. The law on employment and in particular **Section 41 of the Employment Act** provide that the employee must be given an opportunity to be heard before dismissal and in the presence of a fellow employee of his choice or in the presence of a shop floor steward. There is no evidence therefore that the Claimant was heard before dismissal.

The Claimant was accused of poor performance but there is no evidence or proof that the Claimant was put through disciplinary hearing to prove his poor performance.

In the case of **JANE SAMBA MUKALA - VS- OLE TUKAI LODGE LIMITED NUMBER 823 OF 2010**

the court observed:

“Where poor performance is shown to be the reason for termination the employer is placed at a high level of proof as outlined in Section 8 of Employment Act 2007. The employer must show that in arriving at the decision of noting the poor performance of an employee, they had put in place an employment policy or practice on how to measure good performance as against poor performance.”

43. The court is satisfied that the Respondent summarily dismissed the grievant without according him a fair hearing, notwithstanding the issuance of warning letters. The Respondent was under a mandatory obligation to adhere to the requirements of procedural fairness as set out in **Section 41 of the Employment Act**, by affording the grievant an

opportunity to be heard and to defend himself against the allegations of absenteeism. While the Respondent may have had valid grounds to contemplate termination, its failure to provide the grievant with a fair hearing contravened the statutory safeguards under **Sections 41, 43 and 45(2) of the Employment Act**, thereby rendering the dismissal procedurally unfair and unlawful.

44. Since the court has found that the Claimant was unlawfully and unfairly summarily dismissed, the court will award the grievant the following reliefs in accordance with **section 49(1) of the Employment Act**. In **Co-operative Bank of Kenya Ltd v Banking Insurance & Finance Union [2016] KECA 97 (KLR)**, the Court of Appeal stated that section 49 of the Employment Act gives the remedies for wrongful dismissal and unfair termination. In the event of an unjustified summary dismissal or termination of contract of employment, the employer may be ordered to pay the employee the wages he would have earned had he been given the notice period prescribed by the Act or the contract of service or pay the employee's salary or wages up to a maximum of 12 months.

45. For unfair termination, the court is guided by **Section 49(1)(c) of the Employment Act** and will go ahead to award the full 10 months, which is calculated as follows:

$10 \times 12,000/= 120,000/=$.

46. The court will award one month salary in *lieu* of notice in accordance with **Section 36 of the Employment Act**, which amounts to Kshs.12,000/= since there is no evidence that Claimant was given notice.

47. The court finds no grounds to award the Claimant salary for the period not served. Service pay will be awarded however as provided in the Employment contract. The Respondent is to issue the Claimant with a certificate of service in accordance with Section 51 of the Employment Act.

48. Flowing from the foregoing, the court enters judgment in favour of the Claimant against the Respondent as follows:

a. One month's in salary in lieu of notice pay

.....Kshs.12,000/=

b. Service pay of 38 years

.....Kshs.228,000/=

c. Compensation for unfair termination

**equivalent to 10 months
salaryKshs.120,000/=
Total**

Kshs.360,000/=

**d.Certificate of service in accordance with
Section 51 of the Employment Act to be
given to the Claimant within 30 days
hereof.**

49. The Claimant will have the costs of the cause and interest at 14 % per annum from date of judgment till full payment.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 15th Day of
May, 2026.**

**ANNA NGIBUINI MWAURE
JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1**

of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE