

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E778 OF 2023

CHARLES GITONGA MUGAMBI.....
CLAIMANT

VERSUS

ARICHEM LIMITED.....
.....RESPONDENT

JUDGMENT

Introduction

1. This suit was lodged vide a Statement of Claim dated 25th September, 2023, wherein the Claimant seeks the following reliefs against the Respondents: -
 - i. A declaration and finding that the decision to suspend the Claimant indefinitely from employment was unfair and unlawful.
 - ii. A declaration and finding that the Claimant suffered unfair and unlawful termination by the Respondents.
 - iii. A declaration and finding that the Respondent is in breach of the provisions of Section 18 (4) of the Employment Act by failing to pay the Claimant his wages and terminal dues on dismissal.
 - iv. A declaration and finding that the Respondent is in breach of the provisions of Section 18 (5)(b) of the Employment Act by failing to deliver to a labour officer

in the district in which the employee was working a written report specifying the circumstances leading to, and the reasons for the dismissal, stating the period of notice and the amount of wages in lieu thereof to which the employee would but for the dismissal, have been entitled; and the amount of wages and other allowances earned by the Claimant since the date of dismissal.

- v. General Damages for breach of contract, punitive damages, exemplary damages, aggravated damages, and damages for breach of legitimate expectation, breach of legitimate expectation, and breach of the Claimant's rights to fair labour practice and fair administrative action as provided for under Articles 41 and 47 of the Constitution, assessed at Kshs 5,000,000
- vi. The Respondent be ordered to pay the Claimant Kshs 92,000/- being 1 Months' Salary in lieu of Notice.
- vii. The Respondent be ordered to pay the Claimant half of his salary for May 2023 and his salary for June, assessed at Kshs. 138,000/-
- viii. The payment of Kshs. 1,104,000, equivalent to 12 months' pay for the unlawful and unprocedural termination of his employment.
- ix. The Payment of the Claimant's terminal dues to be assessed at the hearing (pension fund, benevolent fund, and KEWISCO Shares contributions) and his leave entitlement for the years worked.
- x. An Order do issue directing the Respondent to furnish the Claimant with a Certificate of Service.

- xii. Costs of the Claim and interest on all the amounts from time due until payment in full.
2. The Respondent filed a Response to the Statement of Claim dated 4th December 2023, denying the Claimant's claim.
3. The Claimant's case was first heard on 13th May, 2025, when one Irene Kinya (CW1) testified in support of the Claimant's case, and produced the transcripts of video clips she prepared of the documents annexed as Claimant's Exhibits 4-8.
4. CW2, Charles Gitonga Mugambi, the Claimant herein, also testified in support of his case on even date. He adopted his witness statement and produced his list and bundle of documents as exhibits in that matter, which were marked as Exhibit 1-15.
5. The Respondent's case was heard on 10th November, 2025, when one Edwin Muthuri (RW1) and Japheth Kirimi (RW2) testified in support of the Respondent's case. They adopted their witness statements, and RW2 produced the Respondents' list and bundle of documents as exhibits in the matter, which were admitted as the Respondents' exhibits No. 1-12.

6. Submissions were filed for both parties, which have been duly considered.

The Claimant's Case

7. The Claimant states that he was employed by the Respondent as a Logistics Officer from 4th September 2017 until 2nd June 2023, earning a basic monthly salary of Kshs.92,000 at the time of termination. He avers that he served diligently and faithfully until his employment was unlawfully and unfairly terminated on 2nd June 2023, on allegations of behavioural misconduct, including sharing confidential company information with another staff member.
8. The Claimant further states that in April 2023, the Respondent's Managing Director, Dr. Kirimi Arithi, summoned him to explain allegations that he was in a special relationship with a colleague, Phoebe Andabwa. He avers that Dr. Kirimi alleged that intelligence reports indicated that, in February 2023, the Claimant was seen at Quiver Lounge, Kitengela, in the company of Phoebe Andabwa and another colleague, Edwin Muthuri.
9. The Claimant denied the allegations and maintains that he had no special relationship with Phoebe Andabwa. He further denied ever being at Quiver Lounge, Kitengela, together with Phoebe Andabwa and Edwin Muthuri as alleged by the Respondent's Managing Director.

10. The Claimant avers that despite denying the allegations, Dr. Kirimi Arithi disregarded his explanation and condemned him unheard by refusing to accept his response. The Claimant contends that Dr. Kirimi exerted undue pressure on him to change his account by threatening that his employment would be jeopardized if he failed to comply with the demands made against him.

11. The Claimant further states that he was subsequently suspended from work through a “complementary slip” dated 25th April 2022, which indicated that he was being suspended for allegedly giving false information to management. He avers that he was instructed not to report back to work until he was prepared to comply with Dr. Kirimi’s demands by admitting to being in a special relationship with Phoebe Andabwa.

12. The Claimant states that Dr. Kirimi thereafter persistently called and threatened him with termination of employment unless he admitted to the alleged relationship or alternatively resigned from employment. The Claimant further states that senior members of Dr. Kirimi’s community were enlisted to pressure him into complying with the Respondent’s directives, failing which he risked losing his job.

13. The Claimant contends that it became apparent that his employment was being threatened for refusing to participate in what he describes as a scheme orchestrated by Dr. Kirimi to fabricate evidence against Phoebe Andabwa in order to

shield himself from sexual harassment allegations that had allegedly been made against him.

14. The Claimant further avers that while on suspension, he was contacted by Fridah Kirimi, a director of the Respondent company and wife to Dr. Kirimi Arithi, who instructed him to either resign from employment or comply with Dr. Kirimi's demands. He avers that Fridah questioned his prolonged absence from work, to which he explained that he had not absconded duty but had been suspended and instructed only to return to work if he was prepared to admit to having a relationship with Phoebe Andabwa. The Claimant maintained that he was unwilling to lie and was awaiting further directions from the company.

15. The Claimant states that Fridah dismissed his explanation as irrelevant and inquired whether he was willing to resign, asserting that the company could not continue retaining him on the payroll while absent from work. The Claimant reiterated that he was awaiting communication from the company through Dr. Kirimi. He further states that Fridah pressured him to "tell the truth" about the alleged relationship with Phoebe, insisting that everyone in the office knew about it and that it was his word against the entire office.

16. The Claimant maintains that despite repeatedly denying the existence of any relationship with Phoebe Andabwa and

attempting to explain his position, Fridah refused to accept his explanation.

17.The Claimant states that he was pressured by Fridah to resign, failing which he would be immediately removed from the payroll. He avers that, despite being frustrated and unfairly treated by the Company, he had no special relationship with Phoebe and opted to await the Company's directions.

18.The Claimant contends that his suspension was unlawful, unfair, and procedurally improper as it failed to comply with established legal principles and applicable law. He avers further that the suspension was arbitrarily imposed without proper authority or adherence to procedures, and was founded on errors of fact and law, overlooked material facts, and erroneous conclusions drawn from the evidence.

19.The Claimant further states that the indefinite suspension was contrary to the legal principle that suspension is only an interim measure pending investigations, and that it amounted to an abuse of authority. He argues that the suspension lacked a legal basis, was disproportionate, and was improperly used as a disciplinary punishment rather than a neutral administrative measure.

20.The Claimant states that the decision to place him on half pay without lawful justification was unlawful and asserts that the

Respondent presumed him guilty before any disciplinary process was concluded.

21. The Claimant further avers that, despite being indefinitely suspended and instructed not to resume duty unless he admitted to having a special relationship with Phoebe, and despite pressure from the Respondent to resign, he was subsequently unlawfully and unfairly summarily dismissed on 22nd June 2023 through a termination letter backdated to 2nd June 2023.

22. The Claimant states that the Respondent based his dismissal on the grounds that the Company had allegedly discovered that he disclosed confidential information shared with him by the Company to another staff member, and that the prevailing circumstances were unsuitable for him to continue working with the Company.

23. The Claimant further contends that the decision to terminate his employment was unreasonable, asserting that no reasonable employer acting fairly in similar circumstances would have dismissed him. He therefore maintains that his dismissal amounted to unlawful and unfair termination, and that the Respondent's actions were arbitrary, oppressive, and unconstitutional.

24. The Claimant avers that the Respondent failed to accord him substantive and procedural fairness as required under the Employment Act No. 11 of 2007. In particular, the Claimant contends that the Respondent failed to issue him a notice to

show cause prior to his suspension, failed to explain the reasons for the contemplated disciplinary action in a language he understood, and denied him an opportunity to respond to the allegations made against him.

25. The Claimant further states that the Respondent did not provide him with any concrete evidence of the alleged misconduct or afford him a fair opportunity to defend himself. He also avers that he was denied the right to be heard at a disciplinary hearing in the presence of a representative or witness of his choice.

26. The Claimant contends that the Respondent failed to properly investigate the allegations against him or obtain corroborative evidence, failed to issue a proper notice of intended termination and fair hearing, and failed to provide further instructions or guidelines in the suspension slip, thereby rendering the suspension indefinite.

27. The Claimant also maintains that the Respondent failed to establish any valid or lawful reasons for termination, arguing that the reasons cited in the termination letter were unrelated to his conduct, capacity, or obligations under the contract of employment.

28. The Claimant further avers that the Respondent failed to pay his half basic salary for May 2023, his salary for June 2023, and his terminal dues upon termination. He contends that the termination letter was founded on allegations and reasons

that had neither been properly identified nor established through any lawful disciplinary process.

29. The Claimant states that he was indefinitely suspended without pay and without the commencement of any proper disciplinary proceedings. He avers that the Respondent exerted undue pressure on him to admit to a special relationship with Phoebe and attempted to coerce him to resign from his employment.

30. It is the Claimant's case that the Respondent employed an entirely unprocedural and unfair process in both the suspension and termination of his employment, and that the decision to terminate his employment was actuated by malice. The Claimant further states that the Respondent resorted to intimidation and blackmail.

31. The Claimant also faults the Respondent for failing to issue him with a Certificate of Service and maintains that the Respondent's actions violated his legitimate expectations and infringed his constitutional rights to fair labour practices and fair administrative action under Articles 41 and 47 of the Constitution of Kenya.

32. On cross-examination, the Claimant confirmed that he was paid one month's salary in lieu of notice, and that he was also paid terminal dues on 24th November, 2023.

33. It is the Claimant's prayer that his claim be allowed as prayed.

The Respondent's Case

34. It is the Respondent's case that the Claimant was appointed to their service vide a letter dated 18th September 2017, following a request and recommendation from Ntemwene Methodist Church, Nkubu in Meru County. It denies allegations of unfair termination, maintaining that the Claimant was lawfully and procedurally dismissed in accordance with the terms of the appointment letter dated 18th September 2017.

35. The Respondent avers that management summoned the Claimant to address concerns arising from a meeting held in February 2023 at Quiver Lounge, Kitengela, involving the Claimant and colleagues Phoebe Andabwa and Edwin Muthuri over alcoholic drinks. It avers that management was particularly concerned because of a prior warning issued to Phoebe in 2020 regarding alleged special relationships with young male staff members.

36. The Respondent further avers that the Claimant's colleague, Edwin Muthuri, confirmed that towards the end of February 2023, following an invitation from the Claimant, he joined the Claimant and Phoebe at Quiver Lounge Kitengela at around 9:00 p.m. and left at about 11:00 p.m., leaving them still at the premises.

37. The Respondent further avers that upon inquiry, the Claimant refuted the allegations and became unruly, and that he has a

history of indiscipline evidenced by a warning letter dated 28th May 2021. The Respondent further avers that the Claimant refused to provide any explanation regarding the said meeting.

38. The Respondent avers that the Claimant's suspension was lawful, justified, and procedurally proper, having been occasioned by his provision of false information and dishonesty, contrary to Clause 9(A) and (B) of his letter of appointment dated 18th September 2017. It states that under Clause 9(A), the Claimant was required to demonstrate loyalty and sincerity of character beyond reproach towards the Company.

39. It further states that under Clause 9(B), the Claimant was required to conduct himself at all times, both in his private and public affairs, in a manner that would not bring the Company into disrepute. It states that he was further expected to exercise tact and discretion in his dealings with members of the public, public officials, and fellow staff members, and to avoid any impropriety or intolerance, however provoked.

40. The Respondent avers that the Claimant was properly advised to engage in an honest discussion regarding the Quiver Lounge incident and his alleged relationship with Phoebe. It avers that its Finance Director, Fridah Kirimi, sought clarification from the Claimant on when he would

resume work, noting it had become impracticable to retain him without clarity on his return, and encouraged him to attend the office for discussions.

41. The Respondent maintains that the Claimant was lawfully terminated on 2nd June 2023 for breach of Clauses 8(B) and (E) of his employment contract relating to dishonesty and unauthorized disclosure of confidential information. It avers that the termination arose from the Claimant's disclosure of sensitive information to Phoebe Andabwa, thereby compromising internal investigations.

42. The Respondent acknowledges payment of one month's salary in lieu of notice on 28th August 2023 and settlement of terminal dues amounting to KES 307,049 on 23rd November 2023.

43. RW1, who is an employee of the Respondent, told the court that his contract does not forbid him from going to Quiver after working hours, and neither does it stop him from going out with co-workers.

44. RW1 further states that he heard the audio clip and does not dispute the discussion or anything in the recorded conversation, though he did not know that the conversation was being recorded.

45. RW2 confirmed that he issued the Claimant a suspension through a complimentary slip and that it was effective

immediately. He further confirmed that he did not specify when, or whether, the Claimant was to return to work. He states that the suspension did not indicate whether investigations were ongoing.

46. It is RW2's evidence that he has control over employees after working hours, on the basis that conduct that brings the company to disrepute is forbidden.

47. The witness further confirmed that the Respondent company had no rule or policy that barred employees from going to social places such as a pub. He told the court that the Respondent did not have a policy that forbade the Claimant from having a relationship with Phoebe or fraternizing with other workers.

48. RW2 confirmed that the Claimant meeting and drinking with Phoebe and Muthuri did not bring disrepute to the Respondent. He confirmed that the Claimant was neither invited for a hearing nor heard in response to the issues against him.

Analysis and Determination

49. Having considered the pleadings, the evidence on record, and the submissions by both parties, the following issues arise for determination:

- i. Whether the Claimant's suspension was unfair.
- ii. Whether the termination of his employment was fair and lawful.

- iii. Whether the Claimant's Constitutional Rights were violated
- iv. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant's suspension was unfair

50. The Claimant's position is that his suspension was unlawful, unfair, and procedurally improper as it failed to comply with established legal principles and applicable law. He asserts that the indefinite suspension was contrary to the legal principle that suspension is only an interim measure pending investigations, and that it amounted to an abuse of authority. He argues that the suspension lacked legal basis, was disproportionate, and was improperly used as a disciplinary punishment rather than a neutral administrative measure.

51. The Black's Law Dictionary, 7th Edition, defines suspension as to temporarily keep a person from performing a function, occupying an office, holding a job, or exercising a right or privilege.

52. Suspension is not expressly regulated under the Employment Act, but courts have settled that suspension must be guided by terms and conditions of employment or an employer's policy, and should not be whimsical.

53. Further, the employer's guidelines, procedures, or rules should provide the extent of the power to suspend, conditions of the suspension, period of the suspension, and whether suspension is with or without pay.

54. In ***Prof. Ezekiel Kiprop & 8 Others v. University of Eldoret, (2015) eKLR***, the court held that there must exist a statutory or contractual authority which empowers an employer to suspend an employee, and in the absence of such authority, unilateral suspension amounts to an unfair labour practice.

55. The Respondent herein issued the Claimant an indefinite suspension with no timelines or investigation framework. RW2 admitted that the suspension slip did not indicate the duration of the suspension, whether or not there was an ongoing investigation process, and that he was not informed of the conditions for his return to work.

56. Further, the Claimant was placed on half pay without justification, a position that RW2 confirmed in cross-examination.

57. In light of the foregoing, I find the Claimant's suspension procedurally unfair, indefinite, arbitrary, and therefore unlawful.

Whether the termination of his employment was fair and lawful.

58. Termination of an employment contract is unfair, where the employer fails to adhere to the tenets of fair process espoused under Section 41 of the Employment Act, 2007, as well as the Rules of Natural Justice enshrined in Article 47 of the Constitution.

59. Further, even where fair process is adhered to, the law demands that an employer prove that the reason(s) for terminating an employee's services are valid, fair, and justified as clearly set out under Sections 43, 45, and 47(5) of the Employment Act, 2007.

60. On procedural fairness, Section 41 of the Employment Act, 2007 specifically states: -

“(1) 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.”

61. The Claimant's contention is that the Respondent failed to accord him substantive and procedural fairness as required under the Employment Act No. 11 of 2007. In particular, he contends that the Respondent failed to issue him a notice to show cause prior to his suspension, failed to explain the reasons for the contemplated disciplinary action in a language he understood, and denied him an opportunity to respond to the allegations made against him.

62. It is the Claimant's further assertion that the Respondent did not provide him with any concrete evidence of the alleged misconduct or afford him a fair opportunity to defend himself. He also avers that he was denied the right to be heard at a disciplinary hearing in the presence of a representative or witness of his choice.

63. On its part, the Respondent admitted that the Claimant was not issued a show cause letter nor invited to a disciplinary hearing. RW2 further confirmed that the Claimant was not allowed an opportunity to make representation prior to the termination of his services.

64. In ***Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd [2013] eKLR***, the Court had this to say on procedural fairness:

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee.

Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and

to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible.

Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

65. By the Respondent's witness's own admission, there was a clear violation of Section 41, rendering the termination procedurally unfair, and so I hold.

66. On substantive fairness, the Claimant contends that the Respondent failed to establish any valid or lawful reasons for terminating her employment, arguing that the reasons cited in the termination letter were unrelated to his conduct, capacity, or obligations under the contract of employment.

67. The burden of proof on substantive fairness is now well settled. Section 47(5) of the Employment Act requires the employee to prove an unfair termination and the employer to prove the fairness thereof pursuant to Section 43, which further requires the employer to prove a valid and fair reason for the termination.

68. The Respondent's position is that the Claimant was dishonest and that he disclosed the company's confidential information.

It further contends that he failed to disclose information about misconduct at a social establishment.

69. RW1 confirmed on cross-examination that social outing was not prohibited, and the Respondent does not have a policy prohibiting social interaction, nor is there a rule against a relationship with Phoebe. Further, the Respondent did not lead evidence to prove that the outing brought the company into disrepute.

70. In ***Nicholas Muasya Kyula v Farmchem Ltd [2012] KEELRC 125 (KLR)***, it was held that an employer must prove valid and fair reason for termination of employment, and suspicion alone is not enough.

71. The Respondent, by the evidence before court, failed to prove actual misconduct, breach of confidentiality, or dishonesty on the part of the Claimant as to justify the termination of his employment.

72. The termination is therefore substantively unfair and unlawful, and so I hold.

Whether the Claimant's Constitutional Rights were violated

73. The Claimant contends that his constitutional rights were violated and that he was subjected to unfair labour practices. He specifically asserts that his rights under Articles 41 on fair labour practices and 47 on fair administrative action were violated.

74. It is now settled that employment disciplinary processes must meet constitutional fairness standards. Further in ***Mombasa Civil Service Union v County Government of Mombasa [2017]*** **eKLR**

It was held that labour disputes must comply with both statutory and constitutional safeguards.

75. Without a doubt, the failure by the Respondent to accord the Claimant a hearing prior to his termination violated Article 47 of the Constitution. Similarly, their indefinite suspension of the Claimant is a violation of Article 41. However, courts have cautioned in ***Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 Others [2014]*** **eKLR** that constitutional damages are not automatic where the Employment Act remedies suffice.

76. In the end, I return that though violations have been established, constitutional damages are not separately merited where statutory remedies are adequate, which is the case herein.

Whether the Claimant is entitled to the reliefs sought.

Terminal dues and Statutory payments

77. The Respondent admitted payment of one month's salary in lieu of notice and terminal dues amounting to Kshs.307,049. The Claimant also confirmed receipt of the dues during cross-examination.

78. There is therefore no further monetary liability proven on admitted payments, except contested statutory claims which require strict proof, and which were not proven.

79. The claims relating to the pension fund, the benevolent fund, and the KEWISCO shares were not specifically proved and are declined.

80. This claim thus fails.

Certificate of Service

81. Under Section 51 of the Employment Act, issuance of a certificate of service is mandatory. The prayer is allowed.

Damages

Compensation for unfair termination

82. Under Section 49 of the Employment Act, the court can allow up to 12 months' salary as compensation for unfair termination/wrongful dismissal. In ***Banking Insurance & Finance Union v Barclays Bank of Kenya [2019] eKLR***, it was held that compensation depends on the fairness of the process, contribution, and mitigation.

83. In this matter, the court notes that there was gross procedural violation, and the Claimant served the Respondent for about five years.

84. The court further notes that partial payment has already been made, which the Claimant admitted receipt of, and which

leads me to the conclusion that an award of 10 months' salary is sufficient compensation for the unfair termination.

Punitive, Exemplary, Aggravated

85.The Claims for punitive, exemplary, aggravated, and general constitutional damages are not separately awardable in the circumstances, as they duplicate employment remedies that have already been awarded herein.

86.These claims are thus deemed subsumed under statutory compensation already awarded.

Notice Pay

87.The Claimant told the court that he received pay in lieu of notice; the claim is thus not merited, and it fails.

Costs of transcription

88.The Court awards the Claimant Kshs.20,000 being transcription expenses, which were proved in evidence.

89.In whole, the Claimant's claim succeeds and orders granted as herein below: -

- a) A declaration that the Claimant was unfairly and unlawfully terminated.
- b) The Respondent shall issue the Claimant a Certificate of Service within 14 days of this Judgment.
- c) An order that the Respondent pay the Claimant:
 - i. 10 months' salary as compensation for unfair termination at Kshs.920,000/-
 - ii. Costs of transcription at Kshs.20,000/-

- iii. Costs of the suit and interest from the date of this Judgment until payment in full.

90. Judgment accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 14TH DAY OF MAY, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Kimathi present for the Claimant

Mr. Mureithi present for the Respondent

Ms. Esther S- C/A

