



Kabura (As the Administrator of the Estate of Ishak AF) v Board of Trustees National Social Security Fund (Civil Appeal 451 of 2019) [2025] KECA 733 (KLR) (2 May 2025) (Judgment)

Neutral citation: [2025] KECA 733 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 451 OF 2019
DK MUSINGA, F TUIYOT'T & GV ODUNGA, JJA
MAY 2, 2025**

BETWEEN

KHADIJA KABURA (AS THE ADMINISTRATOR OF THE ESTATE OF ISHAK AF) APPELLANT

AND

BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY FUND RESPONDENT

(Being an appeal from the judgment of the Employment and Labour Relations Court at Nairobi (Abuodha, J.) delivered on the 28th June 2019 in ELRC Cause No. 485 of 2010)

JUDGMENT

1. This is an appeal from the judgment of the Employment and Labour Relations Court at Nairobi (Abuodha, J.) delivered on the 28th June 2019 in Cause No. 485 of 2010.
2. The background to this appeal is that Ishak A. F. Chanzu, (hereinafter referred to “the Claimant”), was employed by the respondent, the Board of Trustees of the National Social Security Fund (NSSF), on 2nd September 1991 as an Assistant Accountant. He rose through the ranks and by 2009 he was serving as the acting Finance Manager. By a letter dated 22nd December 2009, the respondent summarily dismissed the Claimant from employment on grounds of misconduct and/or negligence and offered to pay him one month's salary in lieu of notice.
3. Vide a Memorandum of Claim dated 23rd April 2010, the Claimant asserted that his dismissal was unlawful, arguing that, as acting Finance Manager, his employment could only be terminated by a resolution of the respondent's Board. He contended that his termination violated section 33(3) of the *National Social Security Fund Act* and Regulation 2 of the respondent's Staff Terms and Conditions of Service. Additionally, he claimed that his dismissal was unlawful as he was not afforded a fair hearing before the termination as per the requirements of the law under section 41(2) of the *Employment Act*.



4. He therefore sought various terminal benefits and damages, including one month's salary in lieu of notice amounting to Kshs.248,801; payment for 103 untaken leave days totaling Kshs.425,050; acting allowance for nine months, from November 2008 to March 2009 and from October 2009 to December 2009 amounting to Kshs.327,836; and compensation for expected salary and emoluments for the period from January 2020 to November 2020, totaling Kshs.32,592,931.
5. For clarity purposes, the Claimant is now deceased and this appeal is being prosecuted by Ms. Khadija Kabura, the administrator of the deceased's estate.
6. The respondent replied to the claim vide a replying affidavit instead of a memorandum of response. The trial court nonetheless overlooked this and accepted the replying affidavit as proper response to the claim. The gist of the response was that the Claimant was properly dismissed for carelessly and improperly performing his duties. The primary reason cited was his handling of a cheque worth Kshs.41,564,852, payable to the Paymaster General for onward delivery to the Kenya Revenue Authority. It was averred that on 7th August 2009 the Claimant allegedly requested and took possession of the cheque from the Head of the Salaries section, Mr. Jimmy Manyariki. He then misplaced it while traveling to the city center using public transport, despite being entitled to use the respondent's official vehicles. The respondent contended that the Claimant was not responsible for physical delivery of cheques to banks and was supposed to delegate such tasks.
7. Regarding the procedure followed in terminating the Claimant's employment, it was stated that on 2nd September 2009 the Managing Trustee of the respondent issued a letter to the Claimant outlining the complaint against him and directing him to show cause why disciplinary action should not be taken against him. The Claimant submitted his response on 9th September 2009, but upon review, the respondent's Board found it unsatisfactory. It was therefore asserted that the decision to dismiss him was made by the Board, thereby rendering the Claimant's claim that his termination was not effected by the Board unfounded and baseless.
8. In addition, the respondent contended that the Claimant had previously been suspended from employment for negligence on grounds that he had authorized Discount Securities Ltd. to trade in the respondent's shares without securing corresponding share certificates, thereby exposing the respondent to a potential financial loss of Kshs.1.4 billion. Although he was reinstated, the reinstatement was without prejudice to the investigations which were ongoing at the time, and which were being conducted by the Ethics and Anti- Corruption Commission (EACC).
9. Regarding accrued leave, the respondent contended that the claimant had been informed of unutilized leave days and that the respondent's policy prevented leave accumulation beyond 60 days unless in exceptional circumstances.
10. In a further affidavit sworn by the respondent's Legal Manager, the respondent reiterated that it was not the Claimant's responsibility to physically deliver cheques to third parties, as this task had been assigned to Mr. Daniel Opepo, who was available and not engaged elsewhere when the Claimant took the cheque in question for delivery. The respondent further denied that the Claimant had any authorization from the Managing Trustee to personally handle and deliver cheques for banking.
11. During the hearing before the trial court, the Claimant testified as PW1, stating that as acting Finance Manager, his responsibilities included overseeing financial management, coordinating cash flow, and preparing financial statements. He confirmed receiving a letter from the Managing Trustee on 2nd September 2009 regarding the lost cheque. He recounted that he had taken the cheque to deposit it at Kenya Commercial Bank (KCB), Kencom Branch, into KRA's account, but upon arrival at the bank he realized that it was missing. He immediately returned to the office but was unable to locate it. On



the advice of KCB, he issued a stop order and reported the loss to the police. He further testified that despite responding to the show cause letter, he was subsequently dismissed without being granted an oral hearing. He contended that his termination was unlawful as it was carried out without Board approval and that his benefits were erroneously computed based on his basic salary rather than his gross pay.

12. During cross-examination, the Claimant acknowledged knowing Mr. Opepo from the salaries department but maintained that there was no designated officer responsible for banking cheques. He asserted that any Head of Department could collect a cheque from the cash office and deposit it, reaffirming that he had authority to handle cheques. He denied using public transport on the day in question, insisting that he drove to the bank in his private car.
13. The respondent, through its witness, Ms. Regina Mwaah, the acting Employee Relations Officer, testified that the Claimant had no authority to collect and bank the cheque. She stated that according to the respondent's banking procedures, the cheque should have been collected by the Head of Payroll, recorded in a dispatch register, and delivered by an assigned officer using an official vehicle. She asserted that the Claimant did not follow these procedures and refuted his claim of using a private vehicle, stating that he had, in fact, traveled by public transport. She further testified that the disciplinary committee found the Claimant's response to the show cause letter unsatisfactory, and that the Board questioned why a senior officer of his rank had taken it upon himself to deliver the cheque when designated staff were available for the task.

Additionally, she clarified that the Claimant was not summarily dismissed, but his services were formally terminated.
14. After the full hearing the trial court rendered its decision on 28th June 2019. The court made reference to the provisions of section 43(2) of the *Employment Act*, which provides that the reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.
15. The court noted that the Claimant did not deny handling the cheque in question, and upon reviewing the evidence found his explanation for its loss unconvincing. It observed that the Claimant failed to clarify whether his car had been vandalized or whether he was accompanied by others on his trip to the bank. Additionally, the court questioned why a senior officer of his rank would personally take responsibility for banking the cheque instead of delegating the task to a junior officer designated for such duties. Although the cheque was eventually replaced, the Claimant's conduct raised doubts about his integrity, leading the court to find it plausible that he may have orchestrated the cheque's disappearance. Consequently, the court was satisfied that there were valid grounds for the termination of his employment.
16. On procedural fairness, the court observed that the Claimant had been issued a show cause letter, to which he responded in detail. While he was not granted an oral hearing, the court held that such hearings are not mandatory when an employee is given a fair opportunity to respond in writing, particularly in cases where the issue is straightforward. Given that the Claimant had provided a comprehensive written response, the court found that an oral hearing was unnecessary, as there was nothing further to clarify. It therefore concluded that the absence of an oral hearing did not prejudice the Claimant.
17. In the end, the court found the claim unmerited and dismissed it. However, it declined to award costs, considering that the Claimant had passed away by the time the decision was delivered.



18. Being dissatisfied with the decision of the trial court, the Claimant through Ms. Khadija Kabura, the administrator of his estate, preferred this appeal. The grounds of appeal as per the Memorandum of Appeal dated 13th September 2019 are that the learned judge erred in law and in fact by relying on conjecture and extraneous, unsupported facts to cast doubt on Ishak Chanzu's integrity, suggesting, without evidence, that he may have orchestrated the cheque's disappearance; holding, without sufficient proof, that the reasons for the Claimant's termination satisfied section 43(2) of the Employment Act which requires an employer to genuinely believe in the existence of misconduct at the time of termination, without ensuring compliance with the procedural safeguards under sections 41(5) and (6); failing to find that the grounds for summary dismissal fell outside those envisaged under section 44 of the Act; holding that the Claimant was not entitled to a hearing and that his written response was a sufficient opportunity to defend himself, contrary to the express provisions of section 41 of the Employment Act, 2007; failing to appreciate that the respondent did not suffer any financial loss as a result of the missing cheque; and overlooking the fact that the Claimant's termination required approval from the respondent's Board, which was granted on 4th March 2010, making the purported termination as communicated in the letter dated 22nd October 2009 unprocedural and unfair.
19. At the hearing of this appeal, learned counsel Mr. Okoth appeared for the appellant. There was no appearance on behalf of the respondent despite service with a hearing notice. Both parties had filed their respective written submissions and Mr. Okoth elected to rely entirely on his client's written submissions without making any oral highlights.
20. We have perused the appellant's written submissions dated 4th October 2024. The appellant condensed the grounds of appeal into four main ones namely, whether the appellant's conduct warranted summary dismissal; whether the appellant's termination was procedural, fair and legal in the circumstances; whether the appellant was discriminated against in his termination; and who should pay costs of the appeal.
21. Regarding the first issue of whether the appellant's conduct warranted summary dismissal, he argues that the actions cited by the respondent did not constitute negligence or misconduct justifying such a decision. The appellant asserts that his actions fell squarely within his mandate as Head of Finance and were in accordance with the National Social Security Fund Expenditure Division Accounting Manual. He contends that specifically, the manual, at page 26 (c), explicitly permits cheques to be collected by departments that procured the relevant goods or services for onward transmission to the designated payees. Consequently, the appellant contends that the respondent is estopped, both by record and by its own conduct, from asserting that he acted beyond his authority in collecting and dispatching the cheque.
22. Regarding the claim of negligence, the appellant highlights the fundamental legal principles required to establish negligence to wit, the existence of a duty of care, a breach of that duty, and resultant harm. Whereas the appellant does not dispute that he owed a duty of care to the respondent, he contends that there was no conclusive evidence that he breached this duty. In addition, the appellant contends that the respondent did not provide evidence to show that he lost the cheque in question when he was travelling via public means. It is his submission that he used vehicle registration number KAY 899S, jointly owned by himself and the respondent, and that this evidence remained unchallenged; and that no policy or regulation was produced by the respondent to demonstrate that officers such as him were mandated to use company vehicles when carrying out official duties outside the office.
23. The appellant further contends that misplacing an item does not inherently amount to negligence, as errors are part of human nature. He states that he took immediate remedial actions by reporting the lost cheque to the police and ensuring that a stop payment instruction was issued within two hours of



- the incident. The respondent even acknowledged this swift action, stating that a replacement cheque was issued. Given that no financial loss or damage was incurred, the third element of negligence, actual harm, was not established.
24. In a nutshell, the appellant maintains that his dismissal was unjustified, as his actions did not amount to misconduct or negligence and that the respondent's allegations appeared to be a mere pretext for dismissal rather than a legitimate reason supported by evidence or law.
 25. On whether the appellant's termination was procedural, fair, and legal, the appellant relies on the provisions of sections 43 and 45 of the *Employment Act* which require an employer to prove valid reasons for termination and to conduct a fair hearing. He contends that he was denied an opportunity to defend himself, rendering the termination unfair. Reliance was placed on the case of *Kenya Ports Authority vs. Fadhil Juma Kisuwa* [2017] eKLR where the Court affirmed that procedural fairness requires the employer to explain the reasons for termination and allow the employee to respond.
 26. The appellant also cites *Kenya Revenue Authority vs. Reuwel Waithaka Gitahi & 2 others* [2019] eKLR, where the Court outlined four procedural requirements for termination to wit, explaining the grounds, stating the reasons, allowing representation, and considering the employee's response. It is contended that the respondent failed to meet these requirements, making the termination unlawful.
 27. In addition, the appellant contends that the Board of Trustees' minutes from 4th March 2010 showed that the decision to terminate his services was made without prior Board approval, thereby violating proper governance procedures.
 28. Regarding the issue whether the appellant was discriminated against in his termination, the appellant contends that he was treated unfairly compared to other employees, violating Article 27(1) of *the Constitution*, which guarantees equal treatment. He contends that the respondent failed to take any action against Mr. Jimmy Manyarkiy, who issued the cheque, suggesting discriminatory treatment.
 29. The appellant relies on the case of *Simon Gitau Gichuru vs. Package Insurance Brokers* (Supreme Court Petition 36 of 2019), where the Court held that discrimination occurs when an employee is treated unfavorably without justification. Reliance is also placed on the case of *National Social Security Fund vs. Grace K. Kazungu & Darlington Z. O. Kemoni* (Civil Appeal No. 117 of 2023), where the Court found there was discrimination because employees were treated differently without a reasonable basis.
 30. He also cites the provisions of Article 236 of *the Constitution* which protects public officers from unfair disciplinary actions. He contends that his termination violated this provision, justifying compensation. Based on inflation and precedent, he seeks an award of Kshs.20 million.
 31. Lastly, on who should pay costs of the appeal, he contends that it is trite law that costs should follow the event, meaning the losing party should compensate the winning party. He relies on, inter alia, the decision of *Haraf Traders Ltd vs. Narok County Government* [2022] eKLR for the proposition that successful parties should not bear the burden of legal expenses.
 32. On its part, the respondent, through its written submissions dated 29th January 2025 outlines four issues for this Court's determination, namely, whether the termination was lawful; whether there were fair and valid reasons for the termination; whether lawful procedure was followed in the appellant's termination; and whether the appellant was discriminated against.
 33. On the first issue, the respondent contends that although the appellant was negligent in his duties warranting summary dismissal, the respondent nonetheless terminated his employment in the normal way and gave him payment in lieu of notice as well as all dues owed to him. Citing the provisions of



section 43(1) and 45(1) and (2) of the *Employment Act*, the respondent contends that the termination of the appellant's employment was lawful. It is contended that the claimant was issued with due notice and provided an opportunity to respond before the decision was made.

34. On whether there were valid reasons for the appellant's termination of employment, the respondent asserts that the termination was grounded on fair and valid reasons, primarily concerning performance and misconduct. The appellant cites the decision of this Court in *Co-operative Bank of Kenya Limited Vs. Ojwang (Civil Appeal 278 of 2019)* [2024] KECA 1265 (KLR) for the proposition that it is immaterial whether the appellant was summarily dismissed or was terminated, so long as the process had valid reasons and was fair.
35. The respondent contends that the appellant's employment was terminated through a letter dated 22nd December 2009, issued by the Managing Trustee. The termination followed unsatisfactory explanations from the appellant regarding the disappearance of the cheque for Kshs.41,564,852.45. Additionally, the termination letter indicated that part of the reason for the dismissal was linked to a prior transaction involving NASSEFU SACCO, which the appellant was fully aware of and had been involved in. The respondent relies on this Court's decision in *Samuel Kalomit Murkomen Vs. Telkom Kenya Limited* [2017] KECA 664 (KLR), where the Court held, inter alia, that an employer may consider an employee's past disciplinary record when deciding on termination, provided that any past infractions are properly documented and communicated to the employee.
36. The respondent reiterates that the appellant was fully aware of the comprehensive system in place for the collection and delivery of cheques, a system designed to prevent cheque-related fraud and incidents of attempted cheque substitution. Despite this, the appellant chose to disregard these procedures, which compromised his integrity. As the acting Finance Manager, he was expected to uphold high standards of integrity, but his actions undermined his trustworthiness, ultimately leading to a breakdown in the employment relationship. In this regard, the respondent reiterates that there were fair and valid reasons to terminate the appellant's employment.
37. Regarding the issue of whether lawful procedure was followed in terminating the appellant's services, the respondent asserts that the termination process adhered to fair and lawful procedures. The appellant was given an opportunity to be heard through a letter dated 2nd September 2009 from the Managing Trustee, requesting an explanation for his conduct leading to the loss of the cheque. The appellant responded in detail in his letter dated 9th September 2009. However, his explanation was found to be unsatisfactory. The respondent maintains that contrary to the appellant's claim that he was not given a chance to be heard, he was indeed heard through his detailed response of 9th September 2009.
38. The respondent contends that the *Employment Act* does not explicitly require an oral hearing, as long as the employee is given an opportunity to present his or her case, citing this Court's decision in *Fredrick Oduor Lamba vs. Kenya Electricity Generating Company PLC (Civil Appeal E126 of 2021)*. Furthermore, the respondent argues that, as established in *Fredrick Oduor Lamba v. Kenya Electricity Generating Company PLC (supra)*, what constitutes fairness depends on the context of the decision, and this context must be considered in all aspects of the process.
39. In sum, the respondent contends that the appellant was asked to explain the circumstances surrounding the loss of the cheque, which he did thoroughly in his response letter. As such, there was nothing further to elaborate during an oral hearing, and therefore the appellant was not prejudiced in any way.



40. On the issue of discrimination, the respondent contends that this issue was never pleaded by the appellant in his Memorandum of Claim and as such, this Court need not make any determination on it.
41. As this is a first appeal, it is our duty to analyze and re-assess the evidence on record and reach our own conclusions in the matter. See *Selle vs Associated Motor Boat Co.* [1968] EA 123.
42. We have considered the record of appeal, the submissions filed, and the law. The only live issue for our determination is whether there were valid reasons to terminate the appellant's employment, and whether due procedure was followed.
43. It is evident from the respondent's letter dated 22nd December 2009 that the employment relationship between the appellant and the respondent came to an end through termination of his services. Termination of employment is governed under the provisions of section 35 of the *Employment Act*. There must be notice issued to the employee, and even where such notice is issued, reason(s) leading to termination of employment must be given in terms of section 43 of the *Employment Act*, and such reason(s) must be genuine, fair and valid in accordance with section 45 of the Act. Where no such reason(s) are given, the termination of employment is inherently unfair in accordance with section 45 of the Act. In other words, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness.
44. In *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] KECA 404 (KLR), this Court reiterated the provisions of section 43 (1) of the *Employment Act* which provides that in any claim arising out of termination of a contract, the employer shall be required to prove the reasons or reasons for termination, and where he fails to do so, the termination shall be deemed to be unfair within the meaning of section 45.
45. Similarly, in *Overdrive Consultants (K) Ltd vs. Mazhar Sumra* [2020] KECA 293 (KLR), this Court held thus:
- “For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination. Under section 45(2) of the Act, termination of employment contract by the employer is unfair if the employer fails to prove that there were valid reasons for doing so and that the procedure for termination was followed.”
46. Further in *Naima Khamis v Oxford University Press (E.A) Ltd* [2017] KECA 480 (KLR), this Court was authoritative that:
- “On the first issue, that is whether the termination was lawful, we wish to take note of the provisions of section 43(1) of the *Employment Act*, which provides that in any claim arising out of termination of a contract, the employer is required to justify the reason or reasons for the termination, and where the employer fails to do so, the termination is deemed to have been unfair. Also, section 45(2)(c) requires a termination be done according to a fair procedure. From the foregoing, termination of employment may be substantively and/or procedurally unfair. A termination is also deemed substantively unfair where the employer fails to give valid reasons to support the termination. On the other hand, procedural unfairness arises where the employer fails to follow the laid down procedure as per contract, or fails to accord the employee an opportunity to be heard as by law required.”



47. In addressing the question whether there were valid grounds for terminating the appellant's employment, it is notable that the termination was preceded by a letter from the respondent's Managing Trustee dated 2nd September 2009. The letter requested the appellant to provide further clarification regarding the circumstances surrounding the misplacement of Cheque No. 92768, issued in favour of the Paymaster General for Kshs.41,564,852.45. The appellant duly responded by way of a letter dated 9th September 2009. However, according to the termination letter dated 22nd December 2009, the appellant's conduct as acting Finance Manager in relation to the said cheque was deemed careless. His explanation was found unsatisfactory, leading to the termination of his employment.
48. We have carefully examined the evidence presented before the trial court. At no point did the appellant deny having had possession of the cheque prior to its alleged misplacement. We fully concur with the trial court's finding that the appellant's explanation regarding how the cheque came to be lost while under his custody was unconvincing. In this regard, the appellant claimed to have travelled to the bank using his private car, whereas the respondent asserted that he travelled by public transport. This contradiction raises a critical question: if the appellant indeed used his private car, as he alleged, how did the bag containing the cheque get split open, resulting in the cheque's disappearance?
49. The trial court, in our view, correctly noted that the appellant never claimed to have been accompanied by others in his vehicle, nor did he allege any incident of vandalism to his car that would warrant a report to the police. In the absence of such assertions, the logical conclusion is that the appellant travelled to the bank using public transport.
50. Secondly, the respondent's witness testified that, according to the standard procedure for handling cheques, the cheque in question was to be collected by the Head of Payroll and duly recorded in the dispatch register. She further stated that the appellant neither had authority to collect the cheque, nor was it his responsibility to deliver it, that task fell upon a junior officer within his department. Upon reviewing the trial court proceedings, we are not satisfied that the appellant sufficiently challenged this evidence during cross-examination, particularly the claim that he lacked authority to collect the cheque.
51. Accordingly, and in line with the trial court's findings, while we acknowledge that the appellant took steps to prevent the encashment of the cheque and reported the matter to the police, his conduct nonetheless raised serious questions about his integrity. By disregarding established procedures for the handling of cheques, the appellant undermined the trust and integrity essential to his role within the organization. In the circumstances, we are satisfied that there were valid and justifiable grounds for the termination of his employment.
52. On whether the appellant was supposed to be given an opportunity to explain and/or defend himself at an oral hearing, the trial court held that oral hearing is not mandatory where an employee has been issued with a show cause letter and elaborately responded to the charges raised. See *Kenya Ports Authority vs. Fadhil Juma Kisuwa* [2017] KECA 652 (KLR) .
53. In *Postal Corporation of Kenya vs. Andrew K. Tanui* [2019] KECA 489 (KLR) this Court held thus:

“Admittedly, there has been considerable debate as to what amounts to a fair hearing or procedure in disciplinary proceedings. Indeed, the appellant has cited the Kenya Revenue Authority case where this Court held that the fairness of a hearing is not determined solely by its oral nature, and that a hearing may be conducted through an exchange of letters as happened in that case. It also held that whether an oral hearing is necessary will depend



on the subject matter and circumstances of the particular case and upon the nature of the decision to be made...”

54. Similarly, in *Fredrick Oduor Lamba v Kenya Electricity Generating Company PLC*. [2023] KECA 118 (KLR), this Court held thus:

“This Court in *Jacob Oriando Ochenda v Kenya Hospital Association t/a Nairobi Hospital* [2019] eKLR cited with approval the opinion of the English Court of Appeal in *R v Immigration Appeal Tribunal ex-parte Jones* [1988] WLR 477, 481 where it was held:

“The hearing does not necessarily have to be an oral hearing in all cases. There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedure. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed and there is no rule that fairness always requires an oral hearing.....whether an oral hearing is necessary will depend upon the subject matter and circumstances of the particular case and upon the nature of the decision to be made...”

Whether or not a person was given a fair hearing of his case depends on the circumstances and the type of the decision to be made. The standards of fairness are not immutable. They may change in their application to decisions of a particular type. The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependant on the context of the decision, and this is to be taken into account in all its aspects. (See *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 at 560). Accordingly, the courts look at all the circumstances of the case to determine how the demands of fairness should be met. (See also *McInnes v Onslow-Fane* [1978] 3 All ER 211). In addition, the foregoing implies that the range of procedural protection will vary, depending on the context, with greater protections in some contexts rather than others.”

55. We have reviewed the appellant’s response dated 9th September 2009 and are satisfied that he not only understood the issues raised but also provided a detailed and comprehensive reply to each of them. In our view, this written response adequately addressed the matters at hand, leaving no need for further clarification through an oral hearing. Accordingly, we concur with the trial court’s finding that an oral hearing was unnecessary. Having been given an opportunity to explain himself, an opportunity which he utilized fully, the appellant cannot validly claim to have suffered any prejudice as a result of not being accorded an oral hearing.
56. We find that the appellant’s termination of employment met the requirements of both substantive and procedural fairness. He was paid all his dues in accordance with the terms and conditions of his employment. As such, he was not entitled to the compensation sought in the Memorandum of Claim.
57. Before we pen off, the appellant has alleged that he was discriminated against in his termination. Upon reviewing the Memorandum of Claim, we agree with the respondent that the issue of discrimination was not pleaded. It is a well-established principle of law that parties are bound by their pleadings, and any evidence that does not support, or is inconsistent with the pleadings is of no probative value and must be disregarded. See *Independent Electoral and Boundaries Commission & Another vs Stephen Mutinda Mule & 3 others* (2014) eKLR .
58. The said issue having not been pleaded, this Court cannot be invited to make a determination on it on appeal.
59. The upshot is that this appeal is without merit and is accordingly dismissed. We direct that each party bears own costs.



DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MAY 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

F. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

