



**Shitsama v Kenya Meat Commission (Cause 612 of 2019)
[2025] KEELRC 192 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 192 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 612 OF 2019
J RIKA, J
JANUARY 31, 2025**

BETWEEN

PATRICK SHITSAMA CLAIMANT

AND

KENYA MEAT COMMISSION RESPONDENT

JUDGMENT

Representation

Court Assistant: Bernard Kirui

Khaminwa & Khaminwa Advocates for the Claimant

Macharia Ng'aru & Wetangula Advocates for the Respondent

1. The Claimant filed his Statement of Claim, on 16th September 2019.
2. He states that he was employed by the Respondent as the Production Manager, on 14th July 2016.
3. He earned a monthly salary of Kshs. 240,000.
4. His problem with the Respondent came knocking at his office door, when the President of the Republic of Seychelles, visited the Respondent, on 4th April 2017, to view the day-to-day operations at the Respondent. The Republic of Seychelles was prospecting, if it could do meat business with the Respondent.
5. The Claimant states that there were internal challenges at the Respondent, which blighted the presidential visit, and immensely embarrassed the Respondent's Managing Director.



6. The Respondent shifted blame on the Claimant. On 6th April 2017, he received from the Managing Commissioner Joseph Leoramo, a letter to show cause why he should not be disciplined for the humiliating fiasco, requiring him to explain the failures of 4th April 2017.
7. He responded through a memo to the Managing Commissioner, outlining the circumstances which led to the failures. He also prepared another memo to the Chairman, Human Resource Committee detailing the same information.
8. He was called to a meeting of the Human Resource Committee on 7th April 2017, and afforded an opportunity to respond to the letter to show cause.
9. He received a letter of interdiction, dated 11th April 2017. Interdiction was to allow the Respondent investigate the incident. He was advised he would be receiving half his monthly salary during interdiction.
10. On 24th July 2017, he received a letter extending the period of interdiction by 2 months, ending 9th October 2017. The extension was to allow the Respondent complete its investigations, in accordance with Section 14.0 of the Respondent's Human Resource Manual.
11. On 14th September 2017, he received a notice to attend hearing, before the Human Resource Board Committee. He was advised that investigations were complete, and had recommended that there was sufficient ground, to terminate the Claimant's contract, on account of gross misconduct. He attended hearing on 21st September 2017, and on 28th September 2017, received a letter of summary dismissal.
12. He was required to clear, which he did. On 9th October 2017, he wrote to the Managing Commissioner, asking for certified copies of all the relevant disciplinary proceedings documents.
13. He received the documents and appealed the decision to summarily dismiss him, in accordance with Section 14.6 of the Human Resource Manual, on 30th October 2017. The appeal was addressed to the Respondent's Board of Directors.
14. The Respondent did not give the Claimant an opportunity to prosecute his appeal.
15. He sought the intervention of the Ombudsman and the relevant Cabinet Secretary. The Respondent went ahead and advertised vacancy in the local press, calling for candidates to fill his previous position. Aggrieved, he sought judicial review at High Court, Nairobi. The position was nevertheless filled. The judicial review application was overtaken by the events.
16. He moved to this Court, seeking orders against the Respondent for: -
 - a. Damages for unlawful, unfair termination of employment, stress and economic strain occasioned by termination.
 - b. Loss of earnings from the date of termination until retirement.
 - c. Service for the years worked, together with interest at court rate.
 - d. Any other terminal dues the court seems [sic] fair and just to award with interest.
 - e. Costs of the Claim.
17. The Respondent filed its Memorandum of Response, dated 23rd March 2023. It is conceded that the Claimant was employed by the Respondent as pleaded.



18. He was not diligent. He was cautioned on 28th November 2016 for failing to coordinate departmental functions and poor decision-making. On 6th April 2017, he was issued a letter to show cause for negligent acts during the presidential visit, dereliction of duty and gross misconduct.
19. The Respondent denies that it experienced internal challenges, which blighted the presidential visit. In another decision relating to the presidential visit, E&LRC at Nyeri, Cause Number 87 of 2018, between Nelson Muthama Wambua v. Kenya Meat Commission, the Court concluded that, failure to perform the slaughter operations during the presidential visit, was as a result of poor planning and execution of duties by Management, a role discharged by the Claimant.
20. It is conceded that the Respondent issued the Claimant a letter to show cause. He failed to schedule and synchronize the slaughter operations. He did not assign staff to cut the beef, at the time the presidential team visited. He deliberately interfered with operations, contrary to clause 14.4.19 of the Human Resource Policy. He responded to the letter to show cause. He was interdicted on half-monthly salary. Interdiction was extended by 2 months, to 9th October 2017, to allow the Respondent complete its investigations.
21. He was subsequently invited for disciplinary hearing, heard, and a decision to terminate his contract for gross misconduct, made. He was furnished with the relevant records of the disciplinary process through his Advocates.
22. It is denied that the Claimant is entitled to any of his prayers. The Respondent urges the Court to dismiss the Claim with costs.
23. The Claimant gave evidence on 18th October 2023, 6th March 2024 and closed his case on 3rd April 2024. Anthony Ademba, the Respondent's Chief Legal Officer, gave evidence on 19th July 2024, closing the hearing. The Claim was last mentioned on 6th November 2024, when the Claimant told the Court that he had filed his closing submissions, and the file transmitted to the Trial Judge, who has since been transferred from the trial station, for preparation of the Judgment.
24. The Court has not been able to trace the physical submissions filed by either Party, in its record.
25. The Claimant relied on his witness statement dated 10th September 2019, and documents marked exhibits 'A' to 'Q,' in his evidence-in-chief. He restated the facts as outlined in his Statement of Claim.
26. He told the Court that he is a food technologist, and a farmer, resident of Kilifi County. He and his family suffered as a result of the wrongful termination by the Respondent. He had to transfer his children from western Kenya to Kilifi after termination.
27. There were internal challenges at the Respondent's plant, at the time the Seychellois President visited. It was an old plant, set up in 1940s. Refrigeration was outdated. There was power failure at the plant, during the visit. The visit was hurried. Ammonia gas leaked. The Claimant was at the canning lines at the time. He was compelled to overstay there, to ensure the system was running. The Respondent only had 20 animals, against a capacity of 200 animals. There were financial problems. Slaughter of 20 animals, would only take 20 minutes, not enough for the guest to see the slaughter process in full operation. The Claimant was handicapped, without enough animals to slaughter, and power to run the exercise.
28. Cross-examined, the Claimant told the Court that he would use his own money, to operate the Respondent's business, but did not have documents to support this. He was not issued a warning letter. He received a letter dated 28th November 2016, referenced 'work misconduct.' Misconduct was not specified. He discussed the matter with the CEO and the Human Resource Manager.



29. The Respondent held a preparatory meeting, ahead of the presidential visit. The Claimant was assigned the duties of coordination and management of production. This was his normal line of work. It is not correct that he was to ensure everything was in place for the visit. He was the Production Manager. The duties for the visit were specified. The job description states that the Claimant was to ensure all was in place, on the material day.
30. Other officials had visited the plant, ahead of the presidential visit. They were drawn from the Ministry of Foreign Affairs, the Seychelles Embassy, and Security. The Claimant was the only Manager in attendance. Other Managers did not attend.
31. The Respondent had serious internal challenges, and needed overhaul. The CEO, not the Claimant, should have highlighted these concerns to the Authorities, ahead of the visit. There were many loud reports, many prepared by the Claimant, outlining the challenges. The issues were in public domain.
32. The Claimant admitted that he received a letter to show cause from the Respondent. It states that the Respondent, and the Country, were embarrassed, suffered reputational damage, and lost a business opportunity. There was failure to demonstrate slaughter process, because of power failure. The Claimant was required to respond to the letter, on the same day. He consulted the CEO and the Human Resource Manager about the short notice, and was allowed to respond the following day. He was in the team welcoming the President. He assigned duties to staff. He managed production. He did not neglect his role. He was interdicted. Interdiction was extended by 2 months. He was invited for hearing and heard. Investigators told him that there was plant-wide sabotage.
33. Redirected, the Claimant told the Court that the Respondent had financial constraints. The Claimant would use his own money, to rescue the situation. By the time of termination, he was owed Kshs. 45,000 by the Respondent. The warning letter issued to him by the Respondent, was a general letter. The Managing Commissioner [CEO], had the overall responsibility over the presidential visit. The Claimant did not receive any rebuttal from the Respondent, after he had given his response. He attended a meeting, where several Commissioners were present. He explained himself, and was advised he would be interdicted. He was interdicted for 4 months, which was extended for 2 months. He was called for hearing on 21st September 2017. The Managing Commissioner was present. It was not a fair hearing. The Managing Commissioner would make a sacrificial lamb of the Claimant. The hearing concluded on 28th September 2017. He was dismissed. He requested for the minutes, with the view to lodge an appeal. The minutes were not supplied to him. He asked for assistance from the Ombudsman. He was advised that the documents had been forwarded to his Advocates, but only saw them in Court. The Claimant appealed in accordance with the Human Resource Manual, but received no reply. He went back to Ombudsman. The Respondent explained that it was processing his appeal.
34. The Chief Legal Officer, Anthony Ademba, relied on his witness statement and documents, exhibits 1-37. He confirmed that the Claimant was employed by the Respondent as pleaded. He was part of the team to welcome the President of Seychelles at the Respondent's plant. He was in charge of production. He failed to demonstrate the slaughter process to the visiting President.
35. The Claimant was issued a letter to show cause and latter, letter of interdiction. Interdiction was extended to allow for further investigations. He was heard on 21st September 2017, and recommended for dismissal, on account of gross misconduct. The Board adopted the recommendation on 22nd September 2017. He did not support his claim for refund of personal money, used for official business. The Respondent is guided by procurement law. Individual Managers do not purchase goods for the Respondent, using their own money.



36. Cross-examined, Ademba told the Court that Anne Kamau preceded him in the Legal Office. She signed the minutes of the meeting held on 7th April 2017. The ones of 27th September 2017, were signed by Legal Officer Kisoso. Kamau was absent. Kisoso was not an impostor. Ademba did not know if Kisoso was on the Roll of Advocates.
37. There was a letter dated 28th November 2016, issued to the Claimant. It related to his performance. He asked for facilitation. The letter appreciated there was some improvement in his department. There were discussions preceding the letter. Ademba told the Court that Cause No. 87 of 2018 filed at Nyeri E&LRC, Nicholas Muthama Wambua v. Kenya Meat Commission, did not relate to the Claimant. The pleadings in that Cause, were not disclosed in the proceedings herein. His role, assigned in meetings before the visit, was production. The Managing Commissioner, and the Livestock Manager were involved. The Livestock Veterinary was under the Livestock Manager and did not have to attend the preparatory meetings.
38. It was not proper, for the Claimant to complain that there were insufficient animals for slaughter. There were sufficient numbers for demonstration. It was not irregular for the Managing Commissioner to attend the disciplinary hearing. He was a Board member. The Committee had 3 members. At no point did the Respondent refuse to supply the Claimant with documents for the purpose of lodging his appeal. He was free to get the documents from the Head Office. The Respondent did not act only upon the intervention of the Ombudsman. The Human Resource Manual allowed him to appeal.
39. Redirected, Ademba told the Court that the Livestock Manager, is a Veterinary Doctor. The Claimant was the Production Manager, and coordinated slaughter of the animals.
40. The issues are whether the Claimant's contract was terminated fairly, in accordance with Sections 41 and 45 of the Employment Act; whether it was based on valid reason[s] under Sections 43 and 45 of the Employment Act; and whether he is entitled to the prayers sought.

The Court Finds: -

41. The Claimant was employed by the Respondent State Corporation, as the Production Manager, with effect from 1st August 2016.
42. Following an embarrassing failure in showcasing to the visiting Seychelles President, the slaughter process at the Respondent's plant on 4th April 2017, the Respondent blamed its Production Manager primarily, and initiated disciplinary process against him.
43. He was issued a letter to show cause, dated 6th April 2017; he replied on 7th April 2017; he was interdicted on 11th April 2017; interdiction was extended by 2 months, effective from 19th August 2017; he was invited to disciplinary hearing, through a letter dated 14th September 2017; and was heard on 21st September 2017.
44. He was summarily dismissed on account of gross misconduct, through a letter dated 28th September 2017. His salary as at the time of dismissal, was Kshs. 240,000 monthly.
45. He lodged an appeal to the Respondent's Board of Commissioners, in a letter dated 30th October 2017, which is indicated to have been received by the Respondent, on even date.
46. Procedural Fairness: The primary disciplinary hearing, seems to the Court to have met the standards of fairness, prescribed under Sections 41 and 45 of the Employment Act.



47. The hearing was preceded by investigations, interdiction and invitation to attend the disciplinary hearing. The process was not rushed, and investigations took about 6 months, before the Claimant was called to the disciplinary hearing.
48. He was aware about the charges well before the hearing. He was not unaware about his procedural rights. The Court does not find any merit about the Claimant's complaint, on the attendance of the Managing Commissioner at the disciplinary hearing. The Managing Commissioner was one, among other Commissioners, members of the Board, allowed by the Respondent's Human Resource Instruments, to oversee the disciplinary process. The Managing Commissioner did not have any special vote at the sitting, and nothing was shown to have been done, or said by him at the hearing, betraying a prejudicial mind.
49. Procedure up to the date of dismissal, does not appear to the Court, to have been fundamentally flawed.
50. There were glaring flaws with the procedure on appeal.
51. The Claimant submitted his appeal on 30th November 2017. He asked for certain relevant records, including the letter of appeal; request for disciplinary documents; confidential report of the HRA Committee; an outline of the presidential visit; the letters relating to show cause; and memo written by the Managing Commissioner on 5th April 2017, highlighting events surrounding the presidential visit on the previous day, 4th April 2017.
52. The Respondent exhibited nothing before the Court, to show that the records were supplied to the Claimant as requested. Instead, the Claimant was left to seek the aid of the Ombudsman and the relevant Cabinet Secretary, to access the documents.
53. Learned Counsel Ademba, told the Court that at no time did the Respondent refuse to supply the Claimant with the disciplinary records. But there is no letter exhibited by the Respondent, forwarding the documents to the Claimant. There is no response to the Claimant's letter requesting for the documents.
54. While Ademba conceded that the Human Resource Manual allowed the Claimant to appeal the decision summarily dismissing him, there is a record of the appeal lodged, but no record of hearing of that appeal. The Respondent appears to have received the Claimant's appeal, and slept on it.
55. Where the disciplinary procedure allows for an appeal, such an appeal must be heard and disposed of fairly, in the manner prescribed by the human resource instrument and the *Fair Administrative Action Act*, 2015. Section 4 of this Act, requires the administrator to give notice of a right to review or appeal against the decision. The provision preserves the right to be heard at the primary proceedings, and on appeal. An Employer or Administrator, cannot just receive an appeal, and not have a record of its hearing, and outcome, with specific reasons given to the appellant, concerning the outcome.
56. The Claimant testified that there was no response to his appeal, and the Chief Legal Officer Ademba, was not able to show that indeed there was a response.
57. To this extent, procedure did not satisfy the demands of fair hearing under Sections 41 and 45 of the *Employment Act*, read with Section 4 of the *Fair Administrative Action Act*, 2015, and the Respondent's Human Resource Manual.
58. Validity of reason[s]: It is not disputed that the Claimant was the Production Manager. Production, including slaughtering of animals during the presidential visit, fell under the Claimant.



59. It was of no help to the Claimant, to draw in the Managing Director, the Livestock Manager and the Veterinary Doctor, in attempting to explain the production failures, on 4th April 2017. It was of no help to the Claimant's cause, to attribute production failure to internal challenges, such as finances, power supply, and inadequate cattle for slaughter.
60. The Court was persuaded by the evidence of Counsel Ademba, that there were sufficient animals to demonstrate the slaughter process. The Claimant himself told the Court that he had at least 20 animals. His concern was that it would only take 20 minutes to demonstrate the process to the Seychelles President. The Court does not think that the visiting President was there to witness 200 animals, being slaughtered for hours. What was needed was a demonstration, even if it involved 5 animals, for 5 minutes.
61. The Claimant adopted an attitude that resulted in national shame, and loss of a business opportunity to the Respondent, a public entity. He chose to blame everyone and everything, except himself.
62. There were preparatory meetings convened. One such meeting was held on 31st March 2017, chaired by the Managing Commissioner. Other Managers including the Claimant were present. It was agreed at the meeting that the Claimant, would take charge of all production processes and ensure that everything is in place, prior to the material day.
63. The Claimant did not raise any issues at these preparatory meetings, about internal challenges, that would impede his discharge of his assigned role. He was present earlier on, when 2 teams from the Office of the President [Kenya], Ministry of Foreign Affairs, and Protocol, visited the Respondent's Plant. There was sufficient time preceding the presidential visit, for the Claimant to advise the teams and the Managing Commissioner, about the red flags he called internal challenges, which would besmirch the presidential visit. Small issues such as power interruption and insufficiency of animals, ought to have been foreseen by the Production Manager, and contingency plans put in place, with the engagement of these high powered government teams.
64. Even prior to the visit, the Claimant had received a letter dated 28th November 2016, complaining about his inefficiencies as Head of Production. There was a worrying pattern, to his performance as Head of Production.
65. The Court is not persuaded by the Claimant's position that he failed on account of internal challenges. It may well be that the Respondent, needed an overhaul, but on the presidential visit, the Claimant failed.
66. The Respondent had reasonable and sufficient ground, to justify termination, under Sections 43 and 45 of the *Employment Act*.
67. Remedies: To the extent that procedure was flawed on appeal, the Court declares that termination was unfair and unlawful.
68. There is no basis for the prayer for loss of earnings from the date of termination, to the date of retirement. The Claimant left employment, and would not be entitled to earn salaries for no service rendered to the public, until his expected date of retirement.
69. His letter of summary dismissal indicates that he would be paid pension in accordance with regulations governing pension scheme and gratuity. His prayer for service for the years worked, together with interest at court rate, is not rooted in his contract of employment, or any of the laws and regulations applicable to his contract. He did not support this prayer through his evidence. It is declined.



70. He did not plead for compensation directly, but prays for any other fair and just award the Court deems [not seems] fair to grant.
71. He worked from 1st August 2016 to 28th September 2017, a period of about 1 year and 2 months. He played a big role in circumstances leading to termination of his contract.
72. He is granted 1 ½ month's salary in compensation for unfair termination at Kshs. 360,000.
73. No order on the costs.
74. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

In sum it is ordered: -

- a. It is declared that termination was unfair.
- b. The Respondent shall pay to the Claimant equivalent of 1 ½ months' salary in compensation for unfair termination at Kshs. 360,000.
- c. No order on the costs.
- d. Interest granted at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020 THIS 31ST DAY OF JANUARY 2025.

JAMES RIKA

JUDGE

