



**Lijoodi v Transmara Sugar Company Ltd (Cause E695 of 2023)
[2025] KEELRC 667 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 667 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E695 OF 2023
SC RUTTO, J
FEBRUARY 28, 2025**

BETWEEN

HERBERT SHITSUKANE LIJOODI CLAIMANT

AND

TRANSMARA SUGAR COMPANY LTD RESPONDENT

JUDGMENT

1. The Claimant avers that he was employed by the Respondent on contract as a Head of Recovery and Tyre Section. According to the Claimant, he served the Respondent with loyalty and diligence until 13th March 2023 when he was issued with a notice of dismissal on false allegations of theft. He avers that the Respondent was unable to substantiate the allegations against him, hence he was absolved by the police of the alleged theft.
2. In the Claimant's view, his termination from employment was wrongful and unlawful. As such, he claims against the Respondent the sum of Kshs 1,413,750/= being notice pay and compensation for unfair termination. The Claimant has further prayed for the costs of the suit together with interest.
3. The Claim did not go unopposed. Through a Memorandum of Response dated 6th December 2023, the Respondent avers that on or about 14th December 2022, the Respondent had cleared the sale of used 30 tyre tubes to a private purchaser. That in the course of loading the 30 pieces of the authorized tubes, the Claimant together with two other colleagues colluded to siphon out 63 extra pieces of usable tubes. That when the Claimant was asked about it, he derisively and dismissively referred to them as "takataka".
4. The Respondent further contends that being the head of section in charge of recovery and tyres, it was his duty to ensure that only what was sanctioned was what would be authorized to leave the Respondent's store.



5. It is the Respondent's case that the Claimant was subsequently subjected to a disciplinary process arising from a valid reason. The Respondent further asserts that the Claimant was terminated from employment following due process.
6. Consequently, the Respondent has averred that the Claim has not disclosed any reasonable cause of action against it for unfair and unlawful dismissal. In this regard, the Respondent has asked the Court to disallow the Claim with costs.
7. In his Reply to the Respondent's Memorandum of Response, the Claimant has denied the Respondent's assertions and specifically that he authorized or was involved in the issue of the 30 tyre tubes or the 63 usable tubes. To this end, he put the Respondent to strict proof thereof.
8. The Claimant has further averred that his responsibilities did not include the daily happenings in the stores as there are officers in charge. Consequently, he asked the Court to strike out the Response with costs and enter judgment as prayed in the Memorandum of Claim.
9. During the hearing which took place on 7th November 2024 and 3rd December 2024, both parties called oral evidence.

Claimant's Case

10. The Claimant who testified in support of his case, sought to adopt his witness statement and the list and bundle of documents filed alongside his Claim, to constitute his evidence in chief.
11. It was the Claimant's evidence that the theft allegations leveled against him by the Respondent were false. It was the Claimant's view that that was the reason why he was not charged in Court by the police.
12. The Claimant further questioned why the Respondent would give him an employment contract on a permanent basis after the theft if at all he was guilty.
13. The Claimant further averred that he was working in the workshop and not in the stores as the Respondent has alleged. He challenged the Respondent to produce evidence to that effect.
14. It was the Claimant's assertion that after his wrongful and unlawful termination from employment, the Respondent failed to pay him his terminal benefits.

Respondent's Case

15. The Respondent called oral evidence through Mr. Yoshiah Meitiaki who testified as RW1. He identified himself as the Respondent's Human Resource Manager. At the outset, RW1 adopted the Respondent's Memorandum of Response, his witness statement as well as the list and bundle of documents filed on behalf of the Respondent to constitute his evidence in chief.
16. RW1 told the Court that arising from the events of 14th December 2022, the Claimant was issued with a show cause letter dated 23rd February 2023 where the allegations were inter alia, that he had connived with a colleague and the purchaser to steal 63 extra tyre tubes above the approved 30 pieces and that he failed in his responsibility as the tyre section head to ensure safe custody of the tyre tubes as 63 tyre tubes were found in the custody of a buyer without approval with the Claimant's authority to their removal as "takataka" and without any documentation.
17. RW1 further averred that the Claimant responded to the show cause letter by his letter dated 2nd March 2023 and did not deny that undocumented tyre tubes were being spirited out of the Respondent's premises. He however indicated that he was not responsible for documenting any tubes that would leave the stores.



18. The Respondent was not satisfied with the response that the Claimant gave and by its letter dated 9th March 2023, it invited the Claimant to attend a disciplinary hearing scheduled for 11th March 2023.
19. That on 11th March 2023, the Claimant attended the disciplinary hearing where he was given an opportunity to defend himself.
20. According to RW1, the Respondent was not satisfied with the Claimant's explanation and by its letter dated 13th March 2023, the Claimant was dismissed from service. He was advised of his right to appeal the decision of the Respondent, which he did not pursue.
21. RW1 further stated that with that complicity, the trust bestowed upon the Claimant by the Respondent was thus seriously eroded as it was not clear how many times the Claimant had been involved in such acts of dishonesty.
22. It was RW1's further evidence that the Respondent lost trust in the ability of the Claimant to protect its interest as the Section Head of Tyres and Recovery.
23. In RW1's view, the Claimant was dismissed for a lawful cause and by following due process.
24. RW1 further stated that the Claimant cleared with the Respondent and was paid his terminal dues which he acknowledged.
25. RW1 added that the Claimant's short stint with the Respondent as an employee was not without its fair share of disciplinary issues.

Submissions

26. On his part, the Claimant argued that the Respondent failed to report the alleged crime to the relevant authorities, and as a result, he was not afforded the opportunity to defend himself in a court of law. He further argued that the stolen items were never found in his possession, rendering the theft allegations unsubstantiated.
27. The Claimant further submitted that he presented a police report that exonerated him from the accusations of theft. That despite this, the Respondent disregarded the police report and relied on a security report prepared by one of its security officers, who was evidently biased against him. In the Claimant's view, the security report appears to be motivated by malice or vendetta rather than a fair and impartial investigation.
28. The Claimant further posited that his job description did not include the authority to approve or authorize the loading of materials, as this responsibility lay solely with the stores department, which employed personnel specifically tasked with that role. On this score, the Claimant posited that there was no justification for him to have appended his signature to documents for actions outside his authorized duties.
29. Referencing the case of *Matesho vs Newton (Cause 9 of 2019) (2022) KEELRC 1554 (KLR) (29 July 2022)*, the Claimant submitted that the Respondent's failure to adhere to due process constitutes a clear violation of fair labour practices and amounts to unfair termination.
30. The Claimant further contended that the Respondent's failure to remit his final dues underscores the perpetuation of unfair labour practices.
31. In conclusion, the Claimant submitted that the termination of his employment was procedurally flawed and substantively unjustified, amounting to a violation of the principles of natural justice, fair labour practices, and the provisions of the *Employment Act*.



32. On its part, the Respondent submitted that being the head of the section in charge of recovery and tyres, it was the Claimant's duty to ensure that only what was sanctioned was what would be authorized to leave its stores.
33. The Respondent further submitted that under the prevailing circumstances, it had a justifiable reason to contemplate initiating disciplinary action against the Claimant and his colleagues. To this end, the Respondent urged the Court to find so.
34. The Respondent stated in further submission that the Claimant was taken through a fair process where he was given an opportunity to exonerate himself from the allegations against him but he failed to do so.
35. It was the Respondent's position that the manner in which the attempted theft took place could not have been effected without the knowledge of the Claimant, being the section head of the tyres.
36. The Respondent further posited that the substratum of its defence was not challenged and that the Claimant instead embarked on "a wild goose chase" as he advanced issues that were not relevant to the case herein.

Analysis and Determination

37. Flowing from the pleadings, the evidentiary material on record, and the rival submissions, the following issues stand out for determination:
 - i. Whether the Respondent has proved that it had a valid and fair reason to terminate the employment of the Claimant.
 - ii. Whether the Claimant's termination from employment was in accordance with fair procedure.
 - iii. Is the Claimant entitled to the reliefs sought?

Valid and fair reason?

38. It is discernible from the record that the Claimant was dismissed from employment on grounds that he committed a criminal offence against or to the substantial detriment of his employer or his employer's property when on 14th December 2022, he connived with Jackson Mwandikwa and Nicholas Musyoki, the tyre buyer, to steal 63 pieces of used cut tyre tubes (49 cut tubes and 14 uncut tubes) above the approved 30 pieces of used cut tubes that were approved and paid for.
39. The Claimant was further accused of failing in his responsibility as the Head of the Tyre Section to ensure safe custody of the tyre tubes as 63 pieces of tyre tubes were found in the hands of the buyer without approval.
40. It is not in dispute that the Claimant was employed by the Respondent in the position of Head of Section - Recovery and Tyres and that he served in the said position up to the point he was terminated from employment.
41. It is also an uncontested fact that there was theft of uncut usable tyre tubes from the Respondent's premises during the loading of 30 pieces of used tyre tubes which had been authorized for sale to one Nicholas Musyoki.
42. The Claimant distanced himself from the theft and contended that he had been absolved from the allegations by the police. In the same vein, the Claimant maintained that he was not responsible for the stores as he was working in the workshop. To this end, he challenged the Respondent to produce his job description.



43. Both parties exhibited a copy of an investigation report signed by one David Tonkei, the Respondent's Chief Security Officer. According to the said investigation report, the investigator had found the Claimant and two other employees (Jackson Mwandikwa-Store clerk and William Kijape-Tyre section and tubes clearance) of the Respondent culpable of stealing the tyre tubes in question hence recommended that disciplinary action be taken against them.
44. With respect to the Claimant, the investigator recommended that he be required to explain the circumstances under which he authorized and categorized the tyre tubes as "takataka".
45. The investigation report further noted that the CCTV footage had confirmed that Jackson Mwandikwa, who was the store clerk, had called the Claimant to confirm the buyer's position that he was authorized to load and remove the extra tubes (takataka) and that the Claimant had answered in the affirmative.
46. In support of his case, the Claimant exhibited a copy of a police report dated 10th March 2023, signed by one Sylvanus Odera. According to the police report, the Claimant was summoned by the police in the course of their investigations and he recorded a statement. In this regard, the report reads in part:

"In the statement of Mr. Herbert Lijoodi, he confirmed that at a particular time of the fateful day, he was busy in the workshop carrying out his duty when he received a telephone call from the accused person namely Jackson Mwandikwa who asked him whether he can dispose the tubes he referred to as "Takataka". That since he had shared the same with the caller and had actually showed him those "Takataka" tubes sometimes before, he gave him a go ahead to dispose the "Takataka" tubes.

In the eyes of the investigator, the word "Takataka" and what was recovered with the two accused left a question mark.

It was thus in the view of the investigator that if "Takataka" could not be understood well by the accused who was the releasing officer ought to have seek (sic) for a clear (sic) clarification since all the tubes in excess to (sic) what was authorized were purely tubes that did not meet (sic) the word "Takataka"...it thus remained undoubtedly in the view of the investigator that one Jackson Mwandikwa colluded with another Nickson Musyoki who had officially purchased the authorized used tubes without any permission...."

47. What can be deduced from the above excerpt of the police report is that by telephone, the Claimant had authorized Jackson Mwandikwa to dispose of the tubes he referred to as "takataka". It is also apparent that what was recovered was usable, hence could not have been authorized for disposal without proper documentation.
48. What further manifests from the foregoing is that the Claimant's assertion that he was not responsible for the stores is not entirely accurate. If not, one wonders the basis under which he was authorizing Jackson Mwandikwa to dispose of the tubes he had referred to as "takataka".
49. What's more, the Claimant's designation at the Respondent company speaks for itself. He was Head of Section- Recovery and Tyres. Therefore, it goes without saying that the Claimant was in charge of the tyres at the Respondent company.
50. Consequently, it follows that the Claimant had the ultimate responsibility of ensuring that only the tyre tubes that were authorized, left the Respondent's premises.
51. As such, the Claimant acting prudently as the Head of Section, ought to have taken measures to ensure that nothing beyond the authorized tyre tubes left the Respondent's stores. For instance, why didn't



the Claimant go an extra mile to supervise the process so as to ensure that only the authorized tubes were loaded? This is bearing in mind that he had authorized Jackson Mwandikwa to dispose of other tubes he had referred to as “takataka”.

52. If the police report is anything to go by, the said Jackson Mwandikwa had taken advantage of what the Claimant had referred to as “takataka” and removed usable tyre tubes for loading by the buyer.
53. Granted, the Claimant may not have been directly involved in the theft of the tyre tubes in question. However, since the tyre tubes left the Respondent’s premises without authority, the buck stopped with him as the Head of Section- Recovery and Tyres.
54. Further, in as much as the Claimant was not charged with the theft of the tyre tubes, that did not absolve him from negligence bearing in mind his level of responsibility.
55. Pursuant to Section 43(2) of the *Employment Act*, the reason or reasons for termination of an employee are matters that the employer at the time of termination genuinely believed to exist, and which caused the employer to terminate the services of the employee. In this respect, the standard of proof is on a balance of probability as opposed to, beyond reasonable doubt.
56. In light of the circumstances of the case herein, it can very well be said that by his own actions and omissions, the Claimant had led the Respondent to genuinely believe that he was not diligent and was imprudent in his role as the Head of Section- Recovery and Tyres.
57. To this end, I am led to find that the Respondent has proved on a balance of probabilities that there was a valid and fair reason to terminate the Claimant’s employment on account of his conduct.

Whether the Claimant’s termination was in accordance with fair procedure

58. In terms of Section 45(2) (c) of the *Employment Act*, an employer is duty-bound to prove that it terminated an employee’s employment in accordance with fair procedure. What entails fair procedure is to be found in Section 41 of the *Employment Act*. Specifically, an employer is required to notify the employee of the allegations he or she is required to respond to and thereafter grant him or her the opportunity to make representations in response to the said allegations, in the presence of a fellow employee or shop floor union representative of his own choice.
59. The requirements of a fair process as envisaged under Section 41 aforesaid were reiterated by the Court of Appeal in the case of *National Bank of Kenya vs Anthony Njue John* [2019] eKLR, as follows:

“Section 41 of the Act, enjoins the employer in mandatory terms, before terminating the employment of an employee on grounds of misconduct, poor performance or physical incapacity to explain to the employee in a language that the employee understands the reasons for which the employer is considering to terminate the employee’s employment with them. The employer is also enjoined to ensure that the employee receives the said reasons in the presence of a fellow employee or a shop floor union representative of own choice; and to hear and consider any representations which the employee may advance in response to allegations levelled against him by the employer.”

60. From the record, the Claimant was issued with a show cause letter dated 23rd February 2023, which set out in detail the allegations levelled against him and to which he was required to respond to.
61. The Claimant responded to the allegations contained in the Notice to Show Cause through his letter dated 2nd March 2023.



62. Vide a letter dated 9th March 20203, the Claimant was invited to a disciplinary hearing which was scheduled for 11th March 2023. Through the same letter, he was advised of his right to be accompanied to the disciplinary hearing, by a colleague of his choice, a witness and or a translator if he so wished.
63. The Claimant does not deny appearing before the disciplinary panel on 11th March 2023. Indeed, the record of the disciplinary hearing reveals that the Claimant was given an opportunity to articulate his case and give his side of the story.
64. In light of the foregoing, I am persuaded that the procedure applied by the Respondent prior to terminating the Claimant's employment met the minimum requirements of a fair hearing as envisaged under Section 41 of the *Employment Act*. I say so on the basis that the Claimant was made aware of the reasons for which the Respondent was contemplating terminating his employment and was further afforded an opportunity to appear before a disciplinary panel to render his explanation in answer to the allegations.
65. The total sum of my consideration is that the Respondent has proved to the requisite standard that it had a valid and fair reason to terminate the Claimant's employment and in so doing, observed the basic requirements of a fair hearing. Therefore, the Claimant's termination was neither unfair nor unlawful.

Orders

66. In the final analysis, I find that the Claimant has failed to prove his case on a balance of probability hence the reliefs sought do not lie.
67. It was however apparent during the hearing that despite the Respondent's assertions that the Claimant had been paid his terminal dues, the same was not evident from the record. It was also apparent that the Claimant was yet to clear with the Respondent. This being the case, the Claimant will attend the Respondent's offices for clearance and payment of his terminal dues and collection of his Certificate of Service.
68. The rest of the claims are dismissed with an order that each party bears its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant In person

For the Respondent Ms. Okello instructed by Mr. Ouma

Court Assistant Millicent

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 had 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.

STELLA RUTTO

JUDGE

