



**Mbogo v Priyann Enterprises Limited (Cause E728 of 2023)
[2025] KEELRC 666 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 666 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E728 OF 2023
SC RUTTO, J
FEBRUARY 28, 2025**

BETWEEN

MARY WANGAI MBOGO CLAIMANT

AND

PRIYANN ENTERPRISES LIMITED RESPONDENT

JUDGMENT

1. Through a Statement of Claim dated 6th September 2023, the Claimant avers that she was employed by the Respondent with effect from 2nd April 2011 in the position of Stores Supervisor. According to the Claimant, she discharged her duties with utmost honesty and due diligence to the Respondent's satisfaction until her dismissal from employment on 11th December 2020.
2. It is the Claimant's contention that her dismissal from employment fell short of the requirements of the *Employment Act* as there were no justifiable grounds for her dismissal and the procedure for termination was not followed. To this end, the Claimant has asked the Court to award her notice pay, accrued annual leave for the year 2020, salary for 13 days worked in December 2020, service pay, and compensation for unfair termination. The Claimant further seeks to be awarded the costs of the suit plus interest.
3. The Respondent countered the Claim through its Response dated 31st January 2024, in which it avers that the termination of the Claimant's employment was fair as stealing by servant and dereliction of duty is sufficient grounds for summary dismissal. Accordingly, the Respondent has urged the Court to dismiss the suit with costs.
4. The matter proceeded for hearing on 17th October 2024 and 12th November 2024, during which both sides called oral evidence.



Claimant's Case

5. The Claimant testified as CW1 and for starters, she sought to adopt her witness statement together with the list and bundle of documents filed on her behalf to constitute her evidence in chief.
6. It was the Claimant's evidence that on or about 24th November 2020, she was informed by her immediate boss that there was loss of goods/stock at godown no. 4 which was among her allocated places of work and under her supervision.
7. This was despite the fact that she was not the sole custodian of the keys to the said godown as the keys were hung in a common place in the office. As such, the keys could have been easily accessed by any employee or staff.
8. The Claimant further averred that she was aware that in some circumstances, and when there were urgent deliveries, the manager or any other employees would have access to the said godown on Sunday, which was not a normal working day for her.
9. The Claimant further stated that on 25th November 2020, she wrote to her immediate boss explaining the loss that had allegedly occurred in godown no. 4. She further filled out an internal stock handling questionnaire in which she addressed the issues raised therein.
10. That on 30th November 2020, she received a Notice of Suspension from duty from the Respondent's General Manager following the alleged loss of goods/ stock in godown no. 4.
11. The Claimant further averred that on or about 11th December 2020, she received a letter of summary dismissal from the Respondent's General Manager, informing her that the management of the Respondent company had decided to summarily dismiss her from employment effective 11th December 2020.
12. That on 16th December 2020, she wrote to the Respondent's General Manager in response to the summary dismissal letter further clarifying issues to the best of her ability. According to the Claimant, the letter was ignored by the Respondent.
13. In the Claimant's view, her dismissal was unfair as no justifiable reason was given to her warranting the said dismissal. That further, the said termination was unprocedural and was not in accordance with the law.
14. For the foregoing reasons, the Claimant has asked the Court to award her prayers as set out in the Statement of Claim.

Respondent's Case

15. The Respondent called oral evidence through Ms. Mariam Juma who testified as RW1. She identified herself as the Senior Executive Supply Chain at the Respondent Company and similarly, she adopted her witness statement to constitute her evidence in chief. She further produced the documents filed on behalf of the Respondent as exhibits before Court.
16. It was RW1's testimony that the Claimant was terminated from employment after an audit was carried out on the warehouse where she was the store supervisor and goods worth Kshs 957,500/= were reported lost.
17. That among the audit conclusions was that the Claimant failed to sign loading notes to confirm the goods moving out from the godown where she was the supervisor.



18. It was RW1's evidence that the Claimant was unable to provide a justification on how the goods were lost under her watch, thus resulting in the termination.
19. According to RW1, the termination was lawful and was based on dereliction of duty by the Claimant who was the supervisor of godown no.4 and after an external audit showed that stock had been lost under her supervision and her explanation leading to the loss was not satisfactory.
20. It was RW1's view that the contract of employment provides that where there is a breach of the agreement, the Respondent can summarily dismiss the Claimant without issuance of notice as is the case herein.

Submissions

21. Evidently, the Respondent did not file written submissions as the same are not on the Court's physical record and the online portal. This is despite being granted more time to file the said submissions on 27th January 2025.
22. On her part, the Claimant submitted that there is no nexus between the loading notes produced by the Respondent with godown number 4 and as such, she cannot be faulted for not signing the same.
23. It was the Claimant's further submission that there was no independent evidence to buttress the allegation of any stock theft or loss. On this issue, she contended that no loading staff recorded statements on alleged loss and no stock inventory system report was produced in Court to show any discrepancies in stock movement.
24. In the same vein, the Claimant submitted that without providing any loss of stock and without proving the loading notes allegedly not signed by her, the reason for termination cannot be termed as valid.
25. The Claimant further submitted that the termination was not fair and that the procedure was vindictive and malicious. On this score, she posited that she was not present during the alleged stock take, was not informed of the result of the investigations and was also not afforded an opportunity to be heard. In support of the Claimant's submissions, reliance was placed on the case of Nairobi ELRC No.798 of 2015 Evans Nyang'wono Monda vs Kenya Pipeline Company Limited and Nairobi ELRC No.1712 of 2014 Angela Wokabi Muoki vs Tribe Hotel Limited.

Analysis and Determination

26. I have considered the pleadings by both parties, the evidentiary material on record together with the Claimant's submissions and the following issues stand out for determination:
 - i. Was there a justifiable reason to terminate the employment of the Claimant?
 - ii. Was the Claimant accorded procedural fairness prior to being terminated from employment?
 - iii. Is the Claimant entitled to the reliefs sought?

Justifiable reason?

27. As can be discerned from the record, the reason leading to the Claimant's termination from employment was loss of stock from godown no. 4 which was under her supervision and control. It was further alleged in the letter of dismissal that the Claimant was negligent and careless in handling stock, which led to stock loss, which she could not explain. The Claimant was further accused of failing in her duty as the store supervisor to constantly check and control stock movement during normal dispatch routine.



28. In support of its case, the Respondent exhibited a copy of a stock report for godown no. 4 dated 24th November 2020 which states that its internal audit had established that loading notes were not duly signed by the Claimant after the loading of goods from the godown as per the Respondent's dispatch procedures. According to the said stock report, loading and offloading responsibilities in godown no. 4 were assigned to the Claimant.
29. In her handwritten letter dated 25th November 2020, the Claimant admitted that she had been a supervisor at godown no. 4 for two years prior to that. The Claimant further highlighted her duties within the godown, which included ensuring that goods were loaded for deliveries as per the order provided in the loading sheet and that the deliveries were submitted for the security check at the exit gate. According to the Claimant, she was not aware of any loss of goods at the godown and was surprised to learn of the same. To this end, the Claimant attributed the loss of the goods to excess loading and improper custody of keys.
30. In further support of its case, the Respondent exhibited copies of loading notes with respect to the month of January 2020. What is notable from the said loading notes is that the same do not indicate the godown to which they relate. I say so noting that during the trial, it was apparent that the Respondent has more than one godown. This being the case, the loading notes exhibited in Court may very well relate to any of the Respondent's godowns and not necessarily godown no. 4 which was under the supervision of the Claimant. As a matter of fact, during cross-examination, the Claimant disowned the loading notes exhibited and contended that they were not the ones that she used to use.
31. In light of the findings of the stock report and the internal inventory report that the Claimant had failed to duly sign the loading notes, it was imperative that the Respondent adduces cogent evidence to support its claims that the loading notes exhibited relate to godown no. 4. Differently expressed, it was imperative for the Respondent to draw a connection between the Claimant and the loading notes exhibited.
32. This is more so noting that in her testimony, RW1 stated that the theft of the goods from the godown occurred through the loading notes. Therefore, the Respondent's case wholly depended on the evidential value of the loading notes exhibited.
33. Further to the foregoing, it is notable that the Respondent did not discount the Claimant's evidence that she was not the sole custodian of the keys to the said godown and that the same were easily accessible to other employees of the Respondent. Indeed, the Claimant had raised this issue in her letter dated 25th November 2020 in which she attributed the loss of the goods to improper custody of the keys.
34. This being the case, it is probable that the goods from the Respondent's godown no. 4 may not have been necessarily lost due to the Claimant's negligence or improper handling and management of the loading notes as alleged by the Respondent but rather due to the improper custody of the keys to the godown.
35. The foregoing gaps lead me to conclude that the Respondent has failed to prove to the required standard that the reasons advanced for the dismissal of the Claimant from its employment were fair, valid and related to her conduct. As such, the said reasons were not justified and did not pass the threshold under Section 45 (2) (a) and (b) of the *Employment Act*.

Procedural fairness?

36. The requirement for fair procedure is generally provided for under Section 45 (2) (c) of the *Employment Act*. Relatedly, Section 41 (1) of the *Employment Act* makes specific requirements



regarding the process to be complied with by an employer prior to terminating the employment of an employee. This entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of his or her own choice.

37. In the instant case, the Claimant was issued with a letter dated 30th November 2020 in which she was suspended from duty with effect from 1st December 2020 to pave way for investigations. Through the same letter, the Claimant was advised to return to work on 10th December 2020 subject to the outcome of the investigations. Come 11th December 2020, the Claimant was summarily dismissed from employment.
38. There is no evidence that the Claimant was taken through the process contemplated under Section 41 of the *Employment Act* prior to being summarily dismissed from employment. For instance, there is no evidence that the Claimant was put on notice that the Respondent was contemplating termination of her employment on the basis of the loss of goods from godown no 4.
39. Further to that, there is no evidence that the Claimant was invited to a disciplinary hearing to respond to the allegations leveled against her in the presence of a fellow employee or a shop floor union representative.
40. In *Postal Corporation of Kenya vs Andrew K. Tanui* [2019] eKLR, the Court of Appeal considered the import of Section 41 of the *Employment Act* and had this to say:

“ Four elements must thus be discernible for the procedure to pass muster:-

- (i) an explanation of the grounds of termination in a language understood by the employee;
- (ii) the reason for which the employer is considering termination;
- (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- (iv) hearing and considering any representations made by the employee and the person chosen by the employee.”

41. Applying the above decision to the instant case, it becomes apparent that the Respondent did not comply with the statutory requirements set out under Section 41 of the *Employment Act* in terminating the employment of the Claimant. In the end, the Claimant’s termination from employment was procedurally unfair hence unlawful.

Reliefs?

42. On account of the Court’s finding that the Claimant’s termination from employment was not for a justified reason and that in so doing, the Respondent failed to comply with the statutory requirements under Section 41 of the *Employment Act*, the Claimant is awarded one (1) month’s salary in lieu of notice and compensatory damages equivalent to six (6) months of her gross salary. This award has taken into consideration amongst other factors, the length of the employment relationship as well as the circumstances attendant to the termination of the Claimant from employment.
43. The claim for accrued leave is declined as the record bears that the same was paid to the Claimant together with her terminal dues.



44. Similarly, the claim for the days worked in December 2020 flops as it is evident that the same was paid to the Claimant as part of her terminal dues. Indeed, during cross-examination, the Claimant confirmed receiving her salary for the month of December 2020.
45. The claim for service pay is equally declined as it is evident from the Claimant's pay slip that she was a registered member of the National Social Security Fund. As such, this brings her within the ambit of Section 35(6) of the Employment Act.

Orders

46. In the final analysis, Judgment is entered in favour of the Claimant against the Respondent as follows: -
- a. The Claimant is awarded the sum of Kshs 45,679.00 being one month's salary in lieu of notice.
 - b. The Claimant is awarded the sum of Kshs. 274,074.00 being compensatory damages equivalent to six (6) months of her salary.
 - c. The total award is Kshs 319,753.00.
 - d. Interest shall apply on the amount in (c) at Court rates from the date of Judgment until payment in full.
 - e. The Claimant shall have the costs of the suit.

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 Mr. Karuga

For the Respondent Mr. Irungu

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.

