



**Otara v Amiran Kenya Limited (Cause 406 of 2019)  
[2025] KEELRC 445 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 445 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 406 OF 2019  
L NDOLO, J  
FEBRUARY 20, 2025**

**BETWEEN**

**TRUPHENA MORAA OTARA ..... CLAIMANT**

**AND**

**AMIRAN KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. By her Memorandum of Claim dated 21<sup>st</sup> June 2019, the Claimant proceeds against the Respondent, alleging unlawful and unfair termination of employment. The Respondent counters the Claimant's claim by way of a Memorandum of Defence dated 19<sup>th</sup> March 2020.
2. At the trial, the Claimant testified on her own behalf and the Respondent called three witnesses; Gerald Muema, Julius Obonyo, and Mary Kioi. Thereafter, the parties filed written submissions.

**The Claimant's Case**

3. The Claimant was initially employed by the Respondent as a Store Keeper. She rose through the ranks to the position of Sales Manager, earning a basic monthly salary of Kshs. 126,000 and a house allowance of Kshs. 18,900 as at the time of separation.
4. The Claimant worked for the Respondent until 26<sup>th</sup> April 2019, when her employment was terminated, on allegations of authorising release of goods using an old Local Purchase Order (LPO). She claims to have been called to a meeting on 23<sup>rd</sup> April 2019, where the decision to terminate her employment was communicated to her.
5. The Claimant states that issuance of LPOs was not within her docket; rather, it fell within the mandate of the Accounts Manager.



6. The Claimant's case is that the termination of her employment was unlawful and unfair. She points out that she was not given sufficient opportunity to be heard.
7. The Claimant claims the following:
  - a. 1 month's pay in lieu of notice.....Kshs. 126,000.00
  - b. 12 months' salary in compensation.....1,512,000.00
  - c. Gratuity for 16 years @ 15 days' pay per year.....994,131.80
  - d. Damages for unlawful dismissal
  - e. Costs plus interest

### **The Respondent's Case**

8. In its Memorandum of Defence dated 10<sup>th</sup> March 2020, the Respondent admits having employed the Claimant on 1<sup>st</sup> October 2003 as an Irrigation Store Keeper. She was thereafter promoted to the position of Sales Manager until 23<sup>rd</sup> August 2019, when she was summarily dismissed for gross misconduct.
9. At the time of separation, the Claimant earned a monthly basic salary of Kshs. 126,000 plus a house allowance of Kshs. 18,900.
10. The Respondent states that on 15<sup>th</sup> April 2019, goods were intercepted at the gate with a Delivery Note from Colour Crop under Invoice Number 669078. The Respondent adds that upon inspection, it was discovered that the goods had not been recorded in the Delivery Note, with the Accounts Clerk.
11. The Respondent alleges that upon investigation, it was discovered that the Claimant had used an old LPO which had been fully supplied in the month of February and there was therefore no other LPO from the client for the supply of the particular goods that had been intercepted.
12. The Respondent avers that further investigation revealed that an employee by the name Robinah had been instructed by the Claimant to supply goods to Colour Crop without an LPO, an allegation the Claimant denied.
13. The Respondent accuses the Claimant of issuing an old LPO to bypass the Accounts Department, contrary to the standard operating procedures.
14. The Respondent further accuses the Claimant of giving an incorrect statement and compelling a fellow employee to issue a false statement. In addition, the Claimant is said to have attempted to call the client with the intention of securing the release of a new LPO for the intercepted goods, to mask the fraudulent and wrongful procedure she had followed.
15. According to the Respondent, the Claimant was summarily dismissed pursuant to a disciplinary hearing held on 23<sup>rd</sup> April 2019.
16. The Respondent defends the Claimant's dismissal and states that the Claimant was afforded an opportunity to be heard on 23<sup>rd</sup> April 2019 in addition to issuing a statement on 17<sup>th</sup> April 2019.
17. The Respondent avers that the dismissal letter was forwarded to the Claimant by email on 26<sup>th</sup> April 2019, pursuant to a disciplinary hearing held on 23<sup>rd</sup> April 2019.



## Findings and Determination

18. There are two (2) issues for determination in this case:
  - a. Whether Claimant's dismissal was lawful and fair;
  - b. Whether the Claimant is entitled to the remedies sought.

## The Dismissal

19. On 23<sup>rd</sup> April 2019, the Respondent wrote to the Claimant as follows:

“RE: TERMINATION OF TRUPHENA MORAA'S EMPLOYMENT BY AMIRAN KENYA LIMITED

Reference is made to the below listed:

1. The subject of this letter,
2. Your Letter of Appointment,
3. Clause 44(4) of the Kenyan [Employment Act](#), Chapter 226, Revised Edition 2012 [2007],
4. The meeting held on the 17<sup>th</sup> of April 2019 regarding breach of processes in the release of company goods,
5. Your statement issued on the 17<sup>th</sup> of April 2019,
6. The Disciplinary Hearing held on 23<sup>rd</sup> April 2019,
7. The matter of Your conduct presented to you by The Company in the above mentioned meetings which you attended in the presence of Company representatives,
8. All other correspondence relating to the attempted theft of Company's goods from its premises.

Having considered all the above referenced, Amiran Kenya Limited now informs you of its decision to withdraw the offer of employment extended by it and accepted by you to the position of Sales Manager and A Job Description accepted by you.

During the course of your employment it has been noted that you issued instructions for the release of Company goods in favour of a client who had not placed an order for the said goods. This you did by illegally authorizing the use of an old LPO number to effect the processing of the goods out of the stores. Despite being giving (sic) an opportunity to explain the events of that day, you have withheld the truth, given an incorrect statement to the Company and proceeded to use your husband to forcefully compel an employee to issue a statement exonerating you from the matter despite your known contribution in the attempted theft of goods.

In line with the above, Amiran Kenya Limited hereby informs you that you have neglected or failed to uphold Company's values and principles. Under Section 44 (3) of the Kenya [Employment Act](#), an employer may dismiss an employee summarily when the employee has by conduct indicated that there has been a fundamental breach of obligations arising under the contract of service. You are hereby NOW notified that as a result of your gross



misconduct, your employment with The Company is terminated effective from the date of this letter. This decision was made after careful deliberations precipitating the move to terminate the relationship as a result of your registered intention to defraud the Company.

As is well known to you, the Company has completed its investigations and proved beyond reasonable doubt that you issued instructions for the release of goods not ordered for, upon interception of these goods at the gate, you proceeded to call the client attempting to secure the release of an LPO – despite having full knowledge that the client had not placed an order for the said goods. You also issued an untrue statement to the Company that you did not at any time know about this particular order. As a consequence, your dismissal is as a result of your deliberate attempt to defraud the Company of its goods.

By relying on Section 44 of the Kenyan *Employment Act*, the Company now terminates the employment contract immediately. Further, upon completion of the attached clearance form, you shall receive your salary for the unpaid period of time in which you were an employee, which shall include any accumulated leave days. This payment is made subject to all statutory deductions.

You are further requested to hand over ALL property belonging to the company which is in your possession to your Line Manager. Please sign and return a copy of this letter in acknowledgement of receipt.

Yours faithfully,

Amiran Kenya Limited

(signed)

Aviv Levi

Executive Vice President-Agriculture”

20. This letter accuses the Claimant of attempting to defraud the Respondent by procuring the release of goods without a proper LPO, an allegation the Claimant denied.

21. In her final submissions dated 19<sup>th</sup> November 2024, the Claimant cited the decision in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR where this Court stated as follows:

“For a termination of employment to pass the fairness, 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 to effect the termination.”

22. The standard for establishing a valid reason for termination of employment is set by Section 43 of the *Employment Act*, which provides as follows:

43.

- (1) In any claim arising out of termination of contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
- (2) The reason or reasons for termination of 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.



23. In applying the foregoing standard, which mirrors what is commonly known as the ‘reasonable responses test’ the Court is expected to weigh the employer’s decision against what an ordinary reasonable employer would do. In other words, the Court must inoculate itself against the temptation to replace the employer’s decision with its own.
24. In this regard, the following excerpt from the Halsbury’s Laws of England, 4<sup>th</sup> Edition, Vol. 16(1B) para 642 merits reproduction:
- “In adjudicating on the reasonableness of the employer’s conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide whether it would have dismissed on those facts; it must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts. The basis of this approach (the range of reasonable responses test) is that in many cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; but if falls outside the band, it is unfair.”
25. I am also persuaded by the South African decision in *Nampak Corrugated Wadeville v Khoza* (JA 14/98) [1998] ZALAC 24 where it was held that:
- “The determination of an appropriate sanction is a matter which is largely within the discretion of the employer. However, this discretion must be exercised fairly. A court should therefore, not lightly interfere with the sanction imposed by the employer unless the employer acted unfairly in imposing the sanction. The question is not whether it could have imposed the sanction imposed by the employer, but whether in the circumstances of the case the sanction was reasonable.”
26. In her statement at the shop floor and in her testimony before the Court, the Claimant denied the allegations levelled against her. She was categorical that in her position as Sales Manager, her duty was restricted to sourcing clients, and she had no role in handling LPOs or directing release of goods.
27. The Respondent’s witnesses confirmed that authorisation and approval of LPOs fell squarely within the Accounts Department and the Claimant had no role in processing the release of goods. In addition, the old LPO said to have been used to release the intercepted goods was not shown to the Court.
28. Further, the Respondent did not call the employees alleged to have been influenced by the Claimant or the client said to have been called by her to issue a belated LPO.
29. The Court therefore found no iota of evidence linking the Claimant with the allegations contained in the dismissal letter issued to her. As a consequence, I find and hold that the Respondent has failed to establish a valid reason for terminating the employment relationship, as required under Section 43 of the *Employment Act*.
30. The next issue for determination has to do with the procedure adopted by the Respondent in executing the dismissal. Section 41 of the *Employment Act* provides the following mandatory disciplinary procedure:
- 41.



- (1) Subject to Section 42(1) an employer shall, before terminating the employment of an employee on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during the explanation.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.

31. In addressing the ingredients of procedural fairness as set out in the foregoing provision, the Court in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] eKLR stated as follows:

“The ingredients of procedural fairness...within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee. Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly, if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

32. In its decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR this Court stated as follows:

“...in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”

33. It is on record that the Claimant was not issued with a show cause letter nor invitation to a disciplinary hearing. In fact, the heading of the minutes of the meeting held on 23<sup>rd</sup> April 2019 indicate that the disciplinary hearing took place in the Claimant’s absence. Moreover, the body of the minutes indicates that the Claimant was called in at a second disciplinary hearing because she had been adversely mentioned.

34. If indeed the Claimant had been adversely mentioned, she ought to have been allowed an opportunity to meet her accusers. Instead, the Respondent’s officers took on the role of investigators and the meeting of 23<sup>rd</sup> April 2019 cannot pass as a disciplinary hearing as contemplated under Section 41 of the *Employment Act*.

35. Overall, I find and hold that the Claimant’s dismissal was substantively and procedurally unfair.



## Remedies

36. I therefore award the Claimant twelve (12) months' salary in compensation. In arriving at this award, I have considered the Claimant's long service and the finding that she did not contribute to the dismissal. I have also taken into account the Respondent's blatant violation of due process.
37. I further award the Claimant one (1) month's salary in lieu of notice.
38. The claims for gratuity and damages were not supported by any evidence and are disallowed.
39. Finally, I enter judgment in favour of the Claimant as follows:
- a. 12 months' salary in compensation.....Kshs. 1,738,800
  - b. 1 month's salary in lieu of notice.....144,900
- Total.....1,883,700
40. This amount is subject to statutory deductions and will attract interest at court rates from the date of judgment until payment in full.
41. The Claimant will have the costs of the case.
42. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Mokuu for the Claimant

Mr. Ouma for the Respondent

