



**Gachiri v Thika Water & Sewerage Co Ltd; Kenya Union of Commercial  
Food & Allied Workers (Interested Party) (Cause E174 of 2023)  
[2025] KEELRC 349 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 349 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E174 OF 2023  
S RADIDO, J  
FEBRUARY 13, 2025**

**BETWEEN**

**JANE NJERI GACHIRI ..... CLAIMANT**

**AND**

**THIKA WATER & SEWERAGE CO LTD ..... RESPONDENT**

**AND**

**KENYA UNION OF COMMERCIAL FOOD & ALLIED  
WORKERS ..... INTERESTED PARTY**

**JUDGMENT**

1. The questions for adjudication are:
  - i. Whether the summary dismissal of Jane Njeri Gachiri (the Claimant) was unfair?
  - ii. Appropriate remedies.
2. The Cause was heard on 14 January 2025. The Claimant and a Human Resource & Administration Manager with Thika Water & Sewerage Co Ltd (the Respondent) testified.
3. The Claimant filed her submissions on 3 February 2025 (should have been filed and served before 24 January 2025), and the Respondent on 6 February 2025.
4. The Court has considered the pleadings, evidence and submissions.



## Unfair termination of employment

### Procedural fairness

5. In Court, the Claimant challenged the procedural fairness of her dismissal on the grounds that the customer who had complained against her was called to testify during the hearing without alerting her in advance; that she was not given the written complaint at the time of show-cause; the Respondent had overly protected the customer and that the complaint had been drafted with the assistance of the Commercial Manager.
6. The Claimant relied on clauses 20.19 and 20.5 of the Collective Bargaining Agreement.
7. The Respondent issued a show-cause letter dated 10 August 2021 to the Claimant. The letter was copied to the Kenya Union of Commercial Food & Allied Workers (the Union) and it set out the allegations against the Claimant and requested her to respond within 7 days.
8. The Claimant responded to the notice on 18 August 2021, after which she was invited to a disciplinary hearing on 10 September 2021. The Claimant attended the hearing in the company of 3 union representatives.
9. During the hearing, witnesses were called and asked questions.
10. The Respondent considered the evidence and decided to summarily dismiss the Claimant through a letter dated 29 November 2021. The Union appealed but the dismissal was upheld.
11. The Claimant was not satisfied and she caused the Union to report a trade dispute to the Cabinet Secretary, Labour. A Conciliator was appointed and he gave recommendations which the Respondent did not agree with.
12. Sections 35(1) and 41 of the *Employment Act*, 2007 set out the elements of procedural fairness in a disciplinary process. In the case at hand, there was a Collective Bargaining Agreement which supplemented the statute.
13. The Claimant made assertions about the Commercial Manager assisting the customer in drafting the complaint letter. No evidence to back up the assertion was placed before the Court.
14. Concerning calling the customer who complained to testify at the disciplinary hearing and that the complaint letter was not attached to the show cause, the Court notes that the particulars of the complaint were set out in the show-cause notice and the customer merely repeated the complaints during the hearing.
15. From the record of the proceedings, there is no material to suggest that the Claimant was prejudiced.
16. The Claimant further alleged non-compliance with the terms of clause 20.5 of the Collective Bargaining Agreement.
17. The Court has looked at clause 20.5 of the Collective Bargaining Agreement. The clause is referenced:  
Managers are expected to investigate misconduct and proceed through the following steps:
  - (a) A verbal warning should be given to an employee for minor misconduct. A record of the warning must be kept by the manager and should be signed by the employee. The employee must be given the opportunity to respond.



- (b) If the unacceptable behaviour continues, a written warning will be issued, and signed by the employee as being received and understood. The employee must be given the opportunity to respond.
  - (c) A second written warning should be given to an employee if he/she requires further discipline for the same or a related issue, and signed by the employee as being received and understood. The employee must be given the opportunity to respond.
  - (d) Employees who have been disciplined three times are subject to dismissal.
  - (e) Details of disciplinary actions should be recorded on the employee's personnel file and removed after one year if further disciplinary action is not required.
  - (f) The employee must sign this notice as being received and understood. This letter should invite the employee to present his/her version of events to the investigating officer and inform he/her representative may accompany her. The only purpose of the representative's visit is to observe – they are not participants.
18. The steps listed in the clause are in the nature of penalties/sanctions such as verbal and written warnings, disciplinary record keeping and dismissal.
19. The Claimant did not point out exactly or prove how the Respondent did not comply with the clause.
20. The Court can conclude that steps taken by the Respondent were in tandem with clause 20.19 and 20.5 of the Collective Bargaining Agreement.
21. The Court is satisfied that the Respondent was in substantial compliance with the dictates of procedural fairness.

### **Substantive fairness**

22. Sections 43 and 45 of the *Employment Act*, 2007 require an employer to prove the validity and fairness of the reasons leading to the termination of an employment.
23. The principal ground for the dismissal of the Claimant was corruption/bribery. The Respondent asserted that the Claimant received a bribe of Kshs 10,000/- from a customer to assist in adjusting the customer's water bill. The Respondent relied on a complaint by a customer and text messages exchanged between the Claimant and the customer.
24. The Court has perused the disciplinary proceedings records. The Claimant did not deny receiving the money but explained that the money was meant to help the customer's son get admission at Muranga High School. The Claimant contended that she had known the customer for over 10 years.
25. The Claimant also made much of the fact that the customer stated during the disciplinary hearing that the money was not a bribe.
26. In the complaint letter, the customer clearly stated that the Claimant requested for Kshs 10,000/- to help facilitate the adjusting of her water bill. She also described the Claimant.
27. The complaint letter clearly pointed out to the fact that the Kshs 10,000/- was meant to facilitate the adjustment of the customer's water bill. The text from the customer produced in Court support such fact.



28. It is correct that during the disciplinary hearing the customer stated that the money was not a bribe, but that assertion is contradicted by the complaint and texts exchanged between the Claimant and customer. The Court cannot second guess why the customer shifted her story.
29. Since the Claimant admitted receiving the Kshs 10,000/-, the Court is convinced that the money was to facilitate the adjustment of the customer's water bill and not admission of the customer's child to school.
30. The Respondent offers a public service and any monies paid should be properly receipted. By short-circuiting the system, the Claimant was being dishonest and it does not matter whether the money was named as a bribe or not.
31. The Court finds that the Respondent proved valid and fair reasons to dismiss the Claimant.

#### **Severance/service pay**

32. The Claimant prayed to be awarded Kshs 802,555/- as severance pay. The head of the claim was amended to service pay.
33. In the submissions, the Claimant referred to service pay under section 35(5) of the *Employment Act, 2007*.
34. A copy of the Claimant's pay slip for October 2021 produced in Court indicated that she was a contributor to CPF, a pension scheme and she is therefore not entitled to service pay.

#### **Terminal benefits**

35. The Claimant made a plea for Kshs 1,731,786/- on account of terminal benefits.
36. The Claimant did not lay any evidential, contractual or legal basis for this head of claim and relief is declined.

#### **Certificate of Service**

37. A Certificate of Service is a statutory entitlement and the Respondent should issue one to the Claimant.

#### **Conclusion and Orders**

38. Flowing from the above, save for a Certificate of Service to be issued within 21 days, the Court finds and declares that the Claimant is not deserving of any of the reliefs pleaded. The Cause is dismissed with costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Ms Wachira instructed by Magee Law LLP

For Respondent Ms Pepela instructed by Nyongesa Nafula & Co. Advocates

For Interested Party Mr Atela, Deputy Secretary General

Court Assistant Wangu

