



REPUBLIC OF KENYA



**KENYA LAW**  
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**Motrex Limited v Koech (Appeal E200 of 2024)  
[2025] KEELRC 785 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 785 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E200 OF 2024  
M MBARŪ, J  
MARCH 6, 2025**

**BETWEEN**

**MOTREX LIMITED ..... APPELLANT**

**AND**

**HENRY KIPKORIR KOECH ..... RESPONDENT**

*(Being an appeal from the judgment of D.O. Mbeja delivered  
on 16 November 2023 in Mombasa CMELRC No.E83 of 2020)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 16 November 2023 in Mombasa CMELRC No.83 of 2020. The appellant seeks that the judgment be set aside and substituted with an order dismissing the claims with costs.
2. The respondent filed his claim before the trial court and claimed that he was employed by the appellant as a driver on 1 March 2012, earning ksh.35, 000 per month. His case was that on 23 November 2019, he was issued a termination notice and directed to leave the premises. The employer did not give a genuine reason, contrary to Sections 35, 41, 43 and 45 of the Employment Act. He made the following claims;
  - a. Notice pay Ksh.35,000;
  - b. Unpaid leave from 2012 to 2019;
  - c. Unpaid holidays from 2012 to 2019;
  - d. 12months compensation Ksh.240,000;  
Less what was paid Ksh.83, 000;
  - e. Costs of the suit.



3. In reply, the appellant's case was that on 10 May 2014, they formerly employed the respondent as a driver of motor vehicle No.KBT 369P at a gross wage of Ksh.35, 003 per month. On 16 October 2019 at 2.20 pm, he was before an internal disciplinary committee for violating company policy and NTSA regulations by overspeeding at 82kmph at Maji Mazuri Equator and driving past curfew hours. After the hearing, it was agreed that his employment be terminated through a notice dated 18 October 2019. The appellant wrote to the director apologizing for overspeeding and driving past curfew hours, which violated company policy. He then filed an appeal against the decision to terminate his employment.
4. The response was that on 20 November 2019, while the respondent was driving motor vehicle KBT 369P in Amagoro, Busia, he decided to overspeed and ignore the truck warning alarm system. On 23 November 2019, the appellant summoned the respondent to a disciplinary hearing where he confessed that he overspending to overtake another vehicle ahead of him and did not hear the alarm system go off at 82kmph, which was past the required speed of 78kmph. After the disciplinary hearing, it was agreed to dismiss the respondent from his employment because he violated the same policy on 16 October 2019 and was issued a final warning notice. Notice to terminate employment was issued on 20 November 2019. There existed genuine reasons leading to the termination of employment. The trade union and the labour office were notified.
5. The learned magistrate delivered judgment and held that employment was terminated without any reason. The process was unfair since the disciplinary hearing had no notice inviting the respondent to show the cause of his contract being terminated. The court held that;
 

...the claimant is entitled to reliefs sought in the Memorandum of Claim in the sum of Ksh.814, 271.4, all circumstances considered. The above award shall carry the costs of the suit plus interest at court rates from the date of filing the suit.
6. The appeal is that the trial court erred in finding no warning before termination of employment and hence failed to appreciate that terminal dues were paid in full. The finding that employment was terminated unlawfully and unfairly was in error since there was a disciplinary hearing, and the respondent was invited to attend. Ksh.68, 760 paid to the respondent should have been deducted from his dues.
7. The appellant submitted that the respondent was invited to the disciplinary hearing on 18 October 2019 for violating the company policy by overspeeding and NTSA regulations and driving past curfew hours while driving along Maji Mazuri Equator. He attended a disciplinary hearing with Thomas Muteti, a shop steward. After the hearing, he apologized for his conduct and was issued with a final warning notice. On 20 November 2019, the claimant was invited to a disciplinary hearing for speeding and driving along Amagoro, Busia, despite the truck alarm system warning him about the speed limits. He was summoned to the disciplinary hearing and confessed. He noted that he was overtaking another vehicle and did not notice the speed limit alarm. He was issued with notice terminating employment for gross misconduct. There existed a genuine and valid reason leading to termination of employment. The apologies issued were admissions of breach of employment terms and conditions.
8. In the case of *Sheila Khaoya Akaliche v ArtCaffe Coffee and Bakery Limited* [2021] eKLR, the court held that where an employee willfully neglected to perform allocated duty and then apologized, a valid reason existed to terminate the employment. In *John Rioba Mugo v Riley Falcon Security Limited* [2016] eKLR, the court held that section 41 of the *Employment Act* requires procedural fairness. The employee should be invited for a hearing and allowed to make his representations in the presence of another employee of his choice of non-representative. In both cases where the respondent breached his contract, due process was followed.



- The award of notice pay and compensation was not justified.
9. The claim for unpaid leave days from 2012 to 2019 was time-barred under Section 90 of the *Employment Act*, while the final dues paid included 19 accrued leave days for 2019.
  10. On the claim for unpaid holidays, the court in *Reef Hotel Limited v Josephine Chivatsi* [2021] eKLR held that the particular public holidays claimed were not demonstrated. A general claim in this regard cannot apply.
  11. The trial court awarded costs from the date of filing suit, whereas this was not a liquidated claim. Costs are not due, and appeals should be allowed.
  12. The respondent submitted that on 23 November 2019, he was summoned by the human resource manager and informed that his employment had been terminated. When asked, he was told he had been overspeeding while driving motor vehicle KBT 369P. His questions about why he was not notified of such allegations were unanswered, and he was issued a notice terminating his employment. Section 41 of the *Employment Act* requires a notice to be issued to allow the employee to attend and defend himself. This was not done in his case.
  13. There was no show-cause notice issued. The respondent did not know what allegations he was facing.
  14. The respondent submitted that the appellant alleged that on 16 October 2019, he was invited to the disciplinary hearing. He did not sign the minutes produced. In the alleged meeting, there was no representative. In *Kenya Plantation and Agricultural Workers Union v Eastern Produce (K) Limited* [2022] eKLR, the court held that a notice must be issued to the employee before termination of employment. This resulted in unfair termination of employment. The awards by the trial court were justified, and the appeal should have been dismissed with costs.

### **Determination**

15. This being a first appeal, the court must review and reassess the entire record and draw conclusions. However, the trial court had the opportunity to hear the witness testify.
16. The respondent's case is that on 23 November 2019, he was issued a notice terminating his employment and directed to leave the premises.
17. The appellant's case is that on 16 October 2019, the respondent was invited to a disciplinary hearing for breaching the policy by speeding and violating NTSA regulations and curfew hours. On 23 November 2019, the respondent was found speeding, and upon invitation to the disciplinary hearing, he confessed to his acts of gross misconduct, leading to the termination of his employment.
18. In his evidence before the trial court, the respondent admitted that he was issued a warning letter after being called to a disciplinary hearing. He disputed the allegations that he was driving at 82kmph and was compelled to write an apology on 16 October 2019.
19. On his evidence, the respondent's admission of wrongdoing was sufficient cause for the appellant to sanction him. The respondent asserts that he was compelled to tender the letter of apology on 16 October 2019; after the submission, he did not contest it. He accepted the warning notice issued.
20. The submission that the respondent was unaware of the allegations against him is incorrect. The apology remains part of his work records.



21. The respondent further testified that on 23 November 2019, he was issued with a notice terminating his employment together with a Certificate of Service and paid Ksh.73, 000 in terminal dues. The dues paid included accrued leave days. He testified that;

... I drove 82kmph while overtaking. I explained. We used to work day and night. ...

The vehicle speedometer was not functional. There were no parking policies. There was no limit of time. ... We were told not to carry unauthorized goods. ...

22. Indeed, the respondent knew he was driving at 82kmph and was aware that a policy required him not to carry unauthorized goods.

His defence to driving at 82kmph was because he was overtaking.

23. This meant that he knew he should not have been driving at such a speed in ordinary times. There was a policy that included not carrying unauthorized goods.

24. The evidence from the appellant's witness, Ali Twalimu, shows that the policy to have drivers drive at 75kmph was to secure them and the vehicles. To safeguard the driver and other road users. To avoid overspeeding. This evidence was not challenged in any material way.

25. However, the respondent's alleged confession that he admitted to his charges was not filed. The record filed is the letter of apology dated 18 November 2019 before the disciplinary hearing, which was said to be held on 23 November 2019 after his misconduct on 20 November 2019 while driving along Amagoro in Busia.

26. The due process of Sections 41 and 44 of the *Employment Act*, even where the employee has committed gross misconduct, is to allow him to attend and make his representations. He should participate in the presence of another employee of his choice, as held in the case of *Patrick Abuya v Institute of Certified Public Accountants of Kenya (ICPAK) & another* [2015] eKLR, that;

Procedural fairness requires not only an advance and reasonable notice of the steps to be taken but also time for an employee to prepare psychologically, as such an employee is constantly threatened to lose a livelihood. The Respondent wrote Respondent an invitation letter on 3 March 2014 inviting the Claimant to a hearing on the morning of 4 March 2014 when, according to it, he had absconded and, therefore, his whereabouts were not known was ill-motivated. He did not align with the statutory requirements of procedural fairness. It was equally not in accord with justice and equity as envisaged by section 45(4)(b) of the *Employment Act*, 2007. The dismissal was, therefore, procedurally unfair.

27. The minutes on 16 October 2019 demonstrate that the respondent had received notice. During the hearing, in attendance was the shop steward, Thomas Muteti. For the meeting held on 23 November 2019, there is no record of the procedures and motions gone into. Was this a deliberate lapse or an error? The implication in law is severe. Non-adherence to the due process under Section 41 of the *Employment Act*.

Notice pay is due as awarded by the trial court.

28. The trial court awarded compensation as pleaded in the Memorandum of Claim. Such cannot suffice. The allocation of 12 months under Section 49 of the *Employment Act* must be rationalized and supported with cogent reasons as held in

29. In the case of *Gas Kenya Limited v Odhiambo* (Appeal E006 of 2022) [2022] KEELRC 3930 (KLR), the court held that courts must justify the awards they make by providing reasons for the award. In the



case of *Kenya Broadcasting Corporation v Geoffrey Wakio* [2019] eKLR, the court pointed out that an award of a maximum of 12 months' pay must be based on sound judicial principles and that the trial court must justify or explain why a claimant is entitled to the maximum award.

30. In this case, the court finds no particular reason(s) or rationale for the maximum allocation of compensation. The respondent was serving a last warning for a similar offence, and he tendered an apology on 16 October 2019. To be faced with similar accusations soon thereafter does not place him in good standing for a maximum allocation of 12 months. The provisions of Section 45(5) (b) of the *Employment Act* should have been put into perspective;
  - (b) The conduct and culpability of the employee up to the date of termination;
31. The respondent's conduct is considered, and compensation at one month is found appropriate. Compensation Ksh.35, 000.  
Notice pay of Ksh.35,000 is due.
32. In his clearance form on 26 November 2019, part of the dues paid is notice pay of Ksh.30, 627.
33. This should be at gross pay, hence the balance of Ksh.4, 373 in notice pay.
34. On the claims for accrued leave days, the respondent admitted that he was paid for his leave days in November 2019. The termination dues tabulations and clearance on 26 November 2019 show leave pay at 19.25 days at Ksh.19, 632.
35. Under Section 28(4) of the *Employment Act*, a claim for leave days beyond 18 months is not lawful. Since 2012, such claims have been time-barred by operation of Section 89 of the *Employment Act*.
36. On the claim for work during holidays (public holidays), such as special days published by the Minister in a Gazette Notice. They do not form general days and must be particularized to allow the employer to assess and respond and for the court to review and allow or disallow. In this case, the general claim is not due without any particulars.
37. On costs, the award of costs in employment claims must address Section 12(4) of the *Employment and Labour Relations Court Act*. Costs must be rationalized and not applied from when the suit was filed. Good cause must be established. The appeal was analyzed as above, and there were no orders on costs.
38. The appeal also sought that the dues paid be less Ksh.68, 780 already paid to the respondent. The respondent, for his part, claimed that he had been paid Ksh. 73, 760.
39. On the clearance form on 26 November 2019, the payment of Ksh.68, 780 included;
  - a. Notice pay Ksh.30,627;
  - b. Leave pay Ksh.19,652;
  - c. Salary for days worked Ksh.23,481;  
Less advance of Ksh.5, 000.
40. The analysis above has taken the terminal dues paid for notice and salary as claimed.
41. The appeal analyzed above is with merit, save for the award of a balance in notice pay at Ksh.4,373 and compensation at Ksh. 35,000, to be paid less than what is acknowledged, whichever is higher. Each party will bear its costs in the trial court and this appeal.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 6<sup>TH</sup> DAY OF MARCH 2025.**



**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

