



**Aduo v New Kenya Cooperative Creameries Limited (Cause
E021 of 2023) [2025] KEELRC 1218 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1218 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E021 OF 2023**

J RIKA, J

APRIL 30, 2025

BETWEEN

BERNARD ODHIAMBO ADUO CLAIMANT

AND

NEW KENYA COOPERATIVE CREAMERIES LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 9th October 2023.
2. He avers that he was employed by the Respondent on 1st September 2019, as a Sales Representative. He was permanent and pensionable.
3. The Respondent terminated his contract on 15th June 2021 prematurely, without just cause and in complete disregard of rules of natural justice.
4. He was transferred from Kisumu Sales Department to Sotik, on 26th February 2021. He was to hand over to the Regional Sales Manager, before moving. He was required to reconcile his account to nil balance.
5. On 15th April 2021, he was required by the Regional Sales Manager to pay Kshs. 254,663, which was found to have been due under his account, within 7 days.
6. On 7th May 2021, the Regional Sales Manager wrote to him, stating that the Claimant had failed to redress his account, and that the Regional Sales Manager had escalated the issue to his superiors.
7. The Claimant was managing Dynamic Wholesalers Limited and Maishamart accounts. There was a policy that if a customer collected milk using own transport, the customer would be granted transport rebate of 2.5%.
8. If delivery was made by the Respondent, there was no rebate.



9. Dynamic bought 8,425 cartons of milk. It collected the milk from the Respondent's plant. Self-delivery covered a distance of 50 km. The customer was to benefit from rebate of 2.5%. This was not paid to the customer immediately. When the customer paid for the milk by cheque, the amount paid of Kshs. 126, 375, was less the transport rebate.
10. Maishamart was offered Kshs. 24,000 worth of milk. There was a power blackout at the plant for 1 week. The customer was supplied with a manual invoice while waiting for a SAP copy. When the customer prepared the credit note, it was declined by the Respondent, creating a difference of Kshs. 24,000.
11. The Claimant was able to account for all his sales, but the Respondent was keen on dismissing him.
12. He was dismissed on 15th June 2021 for failure to attend disciplinary hearing. The reasons were that he had absconded, failed to follow instructions, and falsification of documents presented to the Respondent. He unsuccessfully appealed against the decision to terminate his contract.
13. He states that termination was unfair under Section 45 of the *Employment Act*.
14. His prayers are: -
 - a. 1- month salary in lieu of notice at Kshs. 113,000.
 - b. Equivalent of 12 months' salary in compensation for unfair termination, at Kshs. 1,356,000.
 - c. Severance pay at 15 days' salary for each complete year of service, at Kshs. 130,384.
 - d. House allowance at 15% of his basic salary at Kshs. 322,050.
 - e. Outstanding annual leave 2019-2021 at Kshs. 220,567.
 - f. Unpaid public holidays worked, 2019 -2021 at Kshs. 130,384.
 - g. Exemplary damages for unfair labour practice at Kshs. 100,000.
Total ... Kshs. 2,372,386.
 - h. Certificate of Service to issue.
 - i. Costs.
15. The Respondent filed its Statement of Response, dated 28th May 2024. It is admitted that the Claimant was an Employee of the Respondent, as pleaded in the Statement of Claim. His contract was terminated on 20th September 2021, on account of gross misconduct. He absconded, failed to follow instructions of his supervisor and presented falsified documents to the Respondent.
16. He was unable to account for the full amount of money, due under his account. He was dismissed fairly. He appealed unsuccessfully. He was advised through the letter of termination that he would be supplied with his Certificate of Service and paid terminal if any, upon clearance. Although he never cleared, he was paid salary for days worked. The Respondent urges the Court to dismiss the Claim with costs.
17. The Claimant gave evidence, and closed his case, on 24th June 2024. He relied on his Witness Statement, and Documents [1-64] on record. He denied that he was invited for disciplinary hearing, which he refused to attend. He received the invitation letter, after the hearing. He was admitted in hospital at the time hearing was scheduled. The Respondent sent someone who was unknown to the hospital, to confirm his hospitalisation.



18. He worked with a team. He was a supervisor. The team did not have an account. The Claimant requested the Respondent to assign them an account, so that they would not be using his own. 11 salespeople, could not suitably work under his account. The underpayment was loaded on to his account unfairly.
19. Cross-examined, the Claimant told the Court that he worked for 1 ½ years. He was familiar with his workplace policies. Performance was measured by stock sales. He was to reconcile accounts daily. He never failed to do so. He received the letter to show cause. He reconciled his account. He was not invited for disciplinary hearing. He was unwell on the date scheduled for hearing. He submitted a letter to the Respondent from the hospital to confirm hospitalisation. The letter had no stamp. It was not a fraudulent document.
20. Redirected, the Claimant told the Court that he reconciled the accounts. The invitation letter was dated 17th August 2021. Hearing was on 19th August 2021. He received the letter on 19th August 2021.
21. The Respondent's Witness, Michael Mukopi, Industrial Relations Manager, gave evidence on 30th January 2025, closing the hearing. He adopted his Witness Statement and Documents filed by the Respondent [1-7].
22. The Claimant was issued a letter to show cause. He owed the Respondent money. He did not account for it. He obtained fabricated discharge sheet from Jaramogi Oginga hospital, Kisumu. It did not have the stamp. The Respondent contacted the hospital, which disowned the document. The Claimant acted against policy.
23. Cross-examined, Mukopi told the Court that the letter of termination mentioned the fabricated letter and failure to account, as reasons justifying termination. It also mentioned absconding. The Claimant gave an explanation about his account, in his letter of appeal. He did not receive clearance certificate on accounting. Clearance was to be issued by the Regional Sales Manager. Employees on transfer must reconcile before leaving.
24. He was transferred from Kisumu to Sotik. Mukopi did not know why he was transferred. Transfer was immediate. Reconciliation is done within 7 days. Discharge letter did not have the stamp of the hospital. The hospital's name was on the letter. Mukopi did not know doctor Juma. The Respondent asked the hospital to authenticate the letter, and received a reply. The reply was handwritten. Mukopi did not know why this was so. It was an administrative process. The disciplinary hearing was scheduled for 19th August 2021. Invitation letter is dated 17th August 2021, 2 days earlier.
25. The issues are whether the Claimant's contract of employment was terminated on a fair procedure [Section 41 and 45 of the *Employment Act*]; whether termination was founded on valid reason [Section 43 and 45 of the same Act]; and whether the Claimant merits the prayers sought.

The Court Finds

26. It is not disputed that the Claimant was employed by the Respondent as a Sales Representative. He was based at Kisumu, but had just been transferred to Sotik, at the time the dispute arose. He was dismissed on 15th June 2021, on the allegations that he had fabricated a letter from Jaramogi Oginga Odinga indicating he was a patient there; the letter suggested that the Claimant had absconded duty; and he failed to follow the instructions of his supervisor to reconcile his account before moving to Sotik. His monthly salary of Kshs. 113,000, is likewise not a contested item.
27. Procedure: The Claimant was transferred from Kisumu to Sotik, way back on 26th February 2021.



28. He was asked to hand over to his Regional Manager, before moving. He was required to reconcile his account.
29. By 7th May 2021, he had not done so, and was issued a Memo by Chief Manager Sales and Marketing, requiring him to account for the sum of Kshs. 269, 633.
30. The Memo indicates that the Claimant had received another Memo previously, on 15th April 2021, asking him to account.
31. The record indicates that he was issued a letter to show cause, which is dated 18th May 2021, requiring him to respond to the allegations.
32. The Head of Employee Relations, Alice Manyura, asked the Claimant to make his response by 20th April 2021. The date was subsequently rectified to 20th May 2021. Curiously though, the amendment letter is itself dated 28th May 2021.
33. He was suspended through a letter dated 31st May 2021.
34. He states that he was called for the initial disciplinary hearing by his immediate former manager on phone, on 2nd June 2021. Hearing was on 3rd June 2021.
35. There are no minutes of the hearing which took place on 3rd June 2021. The Claimant was issued a letter of dismissal, dated 15th June 2021, alleging that the Claimant had failed to attend disciplinary hearing, presented falsified discharge summary from the hospital, absconded and had failed to reconcile his accounts.
36. The initial hearing appears to the Court to have been flawed. There was no written invitation, with details of the charges the Claimant was required to respond to. He was called on 2nd June 2021, for a hearing that was scheduled on 3rd June 2021. There was no proper and adequate notice to prepare for the hearing.
37. There was no advice given to the Claimant, of his right to attend the hearing, in the company of a colleague, or a trade union representative of his choice, if applicable.
38. Whether the Claimant was unwell or not, the invitation to the initial hearing was so flawed, that he could be excused for not making it at the hearing.
39. He lodged an appeal, through his letter dated 2nd August 2021.
40. The Industrial Relations Officer wrote to the Claimant on 17th August 2021. She invited him through post, to attend an appellate hearing, scheduled for 2 days later, on 19th August 2021, at the Head Office. The Respondent states that the Claimant was heard on 19th August 2021. It was resolved to reduce the Claimant's summary dismissal to regular termination, on humanitarian grounds.
41. There are no minutes of the appellate hearing exhibited before the Court, and it is not shown what were the specific findings on appeal, on each allegation.
42. Procedure was flawed, with improper and insufficient notice of the disciplinary hearing given to the Claimant. Whether the Claimant was well or unwell, he would not make it to the disciplinary hearing and participate fairly, considering that notice was issued a day before the hearing, and through a phone call. The notice on appeal was itself issued 2 days before the hearing, and in either case, there is no record of disciplinary proceedings, showing how evidence was recorded and findings made, leading to dismissal and eventually, commutation to regular termination. The date on letters to show cause, kept being amended. The amendment was inconsistent errors of typography.



43. Validity of Reason: - The allegation surrounding reconciliation of the account at Kisumu, before moving to Sotik, was not objectively looked into, by the Respondent.
44. In his evidence, Mukopi told the Court that the Claimant's transfer was with immediate effect. When was he expected to reconcile accounts and hand over, while transfer was with immediate effect?
45. The Claimant explained that he had been designated as a team leader. He had 11 salespeople working under him, who used his account. He been imploring the Respondent to assign them their own accounts. To reconcile that account, it would in the view of the Court require that the Claimant was given adequate notice on transfer to Sotik. Transfer with immediate effect gave him no time, to provide evidence, such as on the transactions relating to Dynamic Limited and Maishamart accounts.
46. The amount stated by the Respondent not to have been accounted for, was not uniformly stated. It was variously indicated as Kshs. 269,633 and Kshs, 196,579.
47. The charge relating to absconding, was not initially there. It arose because the Claimant was alleged to have absented himself from the first disciplinary hearing, allegedly because he was hospitalized. He was alleged not to have been hospitalized at all, and his document from the hospital, showing that he was hospitalized, was said to have been fabricated. Absconding and falsification of documents, was therefore a charge that was introduced by the Respondent in the course of an ongoing disciplinary process. These allegations were not properly investigated by the Respondent, and were not shown to have been established at the hearing.
48. Having given the Claimant inadequate notice to attend hearing, the prudent thing to do would have been, to deferred hearing, and investigate why the Claimant was not available. There was no rush, and his assertion that he was hospitalized, ought to have properly been investigated and discounted.
49. Both the discharge summary exhibited by the Claimant, and the handwritten note exhibited by the Respondent denying that the discharge summary was issued by the hospital, are not documents that the Court can rely on. They are not critical to determination of the Claim. The authors of those conflicting documents, Dr. F.S. Juma and Adelina Vera, were not called by the respective parties, to explain the conflict.
50. The Court has concluded that notice to attend disciplinary hearing was inadequate, as to excuse the Claimant's absence. It is not conclusive that he was hospitalized at Jaramogi Oginga Odinga with Covid-19 at the time the rushed, phone call -scheduled hearing, was going on. If he fabricated documents, the Respondent ought to have conducted proper investigations into the allegation, and presented proper evidence of fabrication, instead of exhibiting a handwritten note, from an unknown author, Adelina Vera.
51. Termination was unfair for want of valid reason[s], under Sections 43 and 45 of the [Employment Act](#).
52. Remedies: The prayer for 1 month salary in lieu of notice is allowed, at Kshs. 113,000.
53. The Claimant worked for 1 ½ years. He was not shown to have caused or contributed to the circumstances leading to termination of his contract. He did not disclose to the Court whether he secured alternative employment after he left the Respondent. He was paid nothing, although the Respondent commuted his dismissal to regular termination. He was told that he would be paid after he cleared. He is granted equivalent of 3 month's salary in compensation for unfair termination at Kshs. 339,000.
54. He did not supply the Court with adequate evidence on house, leave arrears, severance and public holiday pay. He did not leave employment on redundancy, so as to claim severance. There is nothing in



the evidence of the parties to suggest the Respondent's treatment of the Claimant should be punished through exemplary damages. The Respondent was merely in breach of a contract of employment, a breach that has adequately been redressed through a compensatory award.

55. Certificate of Service to issue.
56. No order on the costs.
57. Interest allowed at court rate, from the date of Judgment till payment is satisfied in full.

In sum, it is Ordered: -

- a. It is declared that termination was unfair.
- b. The Respondent shall pay to the Claimant, 1-month salary in lieu of notice at Kshs. 113,000 and compensation for unfair termination equivalent of 3 months' salary at Kshs. 339,000- total Kshs. 452,000.
- c. Certificate of Service to issue.
- d. No order on the costs.
- e. Interest allowed at court rate, from the date of Judgment till payment is made in full.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, THIS 30TH DAY OF APRIL 2025.

JAMES RIKA

JUDGE

