



**Kenya Chemical Workers Union v Silafrika Limited (Cause
E074 of 2021) [2025] KEELRC 1205 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1205 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E074 OF 2021
CN BAARI, J
APRIL 30, 2025**

**BETWEEN
KENYA CHEMICAL WORKERS UNION CLAIMANT
AND
SILAFRICA LIMITED RESPONDENT**

JUDGMENT

Introduction

1. The Claimant filed a Memorandum of Claim dated 10th December, 2020, and filed in Court on 2nd January, 2021. The Claimant seeks an order for reinstatement or in the alternative an order directing the Respondent to pay the grievant a total of Kshs. 922,687 comprising of two months' notice, days worked, leave travel allowance, 29 annual leave days, pro-rata leave, gratuity/service pay benefits for 14 years, 3 months compensation for loss of employment and an ex-gratia payment in accordance with the CBA that was in force at the time.
2. The Respondent filed a Response to the Statement of Claim dated 2nd June, 2021, denying the Claimant's claim, and further stating that the Claimant breached his employment contract by participating in an illegal strike and was thus fairly terminated.
3. Both the Claimant's and the Respondent's cases were heard on 18th November, 2024, when the grievant, one James Kirubi Mwangi testified in support of his case, adopted his witness statement and produced the documents filed as exhibits in the matter. The Respondent presented the evidence of Angela Kariuki and David Malonza in support of its case, who both adopted their respective witness statements.
4. The Claimant filed submissions, the Respondent did not.



The Claimant's Case

5. It is the Claimant's case that the grievant herein, one James Kirubi Mwangi was employed by the Respondent on 2nd February, 2002 as a machine attendant. It avers that he was on 16th November, 2018 terminated from the service of the Respondent on unclear circumstances.
6. The Claimant states that the grievant was on 18th October, 2018 issued with a letter of suspension dated 17th October, 2018, directing him not to report to work the following day, which directive it states the grievant honoured by not reporting to work.
7. It is the Claimant's case that before the suspension period ended, the grievant was issued with a notice to show cause letter dated 24th October, 2018 and which he responded to.
8. The Claimant further avers that the grievant was later contacted by telephone by one Desmond Asisi, the Respondent's Human Resources Officer, to pick a letter from the Respondent's offices, and that when he did, he found out that the said letter was actually a letter of summary dismissal of his services.
9. The Claimant states that the grievant immediately on receiving the dismissal letter, informed the Claimant union and sought its intervention. It avers that the Federation of Kenya Employers (F.K.E) was informed of the dispute, and that Mr. Desmond Asisi confirmed to F.K.E that he sought the grievant's assistance in convincing the outsourced workers to go back to work.
10. The Claimant states that the strike by the outsourced workers concerned remittance of their NSSF, NHIF and PAYE deductions. The Claimant states that the grievant's case was not resolved by F. K. E and a dispute was reported to the Minister for Labour, and that a conciliator was appointed.
11. On cross-examination, the grievant told court that he be awarded dues per CBA and the Conciliator's recommendation. He confirmed that he was a shop floor steward.
12. It is the Claimant's prayer that the grievant be reinstated to the service of the Respondent, and that in the alternative, he be paid his dues in accordance with the CBA in force at his dismissal.

The Respondent's Case

13. The Respondent's case is that on 17th October 2019, all the company's outsourced workers failed to attend to their allocated duties, and which action completely paralyzed the operations of its entire factory.
14. Its states that during the time, the whereabouts of James Mwangi could not be ascertained as he could not be located from inside the company. The Respondent further states that the grievant was later found holding a meeting with the outsourced workers outside the factory, and that the nature of the meeting was not clear as it was held outside of the factory.
15. The Respondent avers that the grievant was suspended from work for 14 days to facilitate investigations, and thereafter issued with a notice to show case dated 24th October, 2018 detailing the allegations against him, and further requiring that he responds to the charges by 29th October, 2018.
16. It states further, that the show cause notice informed the grievant to appear before a disciplinary committee on 2nd November, 2018 in the company of a fellow employee or union representative.
17. The Respondent states that the grievant was in breach of his employment contract for participating in an illegal strike organized by outsourced workers and which resulted in losses to the company.



18. The Respondent states that the grievant's termination was in line with *the Constitution*, the *Employment Act*, the *Labour Relations Act* and the *Employment and Labour Relations Court Act*.
19. The Respondent avers that Mr. Desmond Asisi, whom the grievant alleges sought his help to quell the strike, was not on duty on 17th October, 2018. It states further, that Desmond's role as a Human Resources Officer was not managerial, and that his role was limited to support and could therefore not issue directives.
20. The Respondent states that the mandate to address employees either outsourced, unionized or Non-unionized was vested in the Human Resources & Administration Manager and the Country Chief Executive Officer.
21. It is the Respondent's case that the grievant on his own accord, spearheaded disruption of the company business by organizing an illegal strike which affected the company's normal operations leading to massive losses.
22. The Respondent avers that it terminated the grievant due to fundamental breach of his obligations and gross misconduct in accordance with Sections 43 and 44 of the *Employment Act*.
23. It avers that the Claimant is not entitled to the reliefs sought and pray that the suit be dismissed with costs to the Respondent.

The Claimant's Submissions

24. The Claimant submits that the Respondent's actions in suspending the grievant without first issuing a show-cause letter, are in direct contravention of the procedural requirements set forth under the *Employment Act*, 2007.
25. The Claimant submits that the grievant's actions in addressing the striking workers, were carried out in his capacity as a shop steward and in exercise of his rights as a union representative, as protected under *the Constitution* of Kenya and the *Labour Relations Act*, 2007.
26. The Claimant submits further that although the workers involved were not members of the union, but employees of an outsourced company, the grievant in his role as a shop steward, was nonetheless within his rights to offer support and engage in discussions concerning the workers' grievances, including those arising during the course of the strike.
27. It is the Claimant's submission that the Respondent's decision to dismiss the grievant on the grounds of his involvement in the strike, constitutes an unjustified action and infringes upon his rights as a union representative.
28. It is the Claimant's submissions that the grievant has proved that he was unfairly terminated. It submits further that the Respondent failed to discharge their burden of proving the lawfulness of a termination, which burden lies with the employer and this includes the employer demonstrating that they complied with the procedural dictates of Section 41 of the *Employment Act* as read with Sections 43 and 45 of the Act.
29. The Claimant submits that the Respondent has failed to adduce documents to support a lawful termination of the grievant. It submits that the Respondent did not present minutes of the purported disciplinary hearing. The Claimant placed reliance in the case of *Galgalo Jarso Jillo v Agricultural Finance Corporation* to support this position.
30. It is the Claimant's submissions that the Respondent failed to follow the rules of natural justice before suspending the grievant as is provided for under Article 47 of *the Constitution* of Kenya 2010.



31. The Claimant finally submits that this matter tilts in favour of the grievant, having overwhelmingly brought out the grievant's case of unlawful suspension, and thereafter removal and or termination without regard to procedural fairness as provided for by article 25, 27, 35, 41, 47 and 50 of the Constitution of Kenya 2010.

Analysis and Determination

32. The issues that present for my determination are: -
- i. Whether the grievant was unfairly terminated
 - ii. Whether he is entitled to the reliefs sought

Whether the grievant was unfairly terminated

33. The Claimant contends that the grievant herein-one James Kirubi Mwangi, was unfairly terminated from the service of the Respondent on the premise that he was not granted fair process, and that his suspension was unprocedural.
34. The Respondent on its part, avers that the grievant on his own accord, spearheaded disruption of the company business by organizing an illegal strike which affected the company's normal operations leading to massive losses. It further contends that it terminated the grievant due to fundamental breach of his obligations and gross misconduct, and that the termination was in accordance with Sections 43 and 44 of the Employment Act.
35. For a termination to be considered fair, the employer is enjoined to adhere to both the tenets of fair procedure and the substantive fairness test.
36. Section 41 of the Employment Act, 2007, spells out what has largely been considered to amounts to an effective disciplinary procedure. The Section states thus: -
- “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 this explanation.”
37. The Claimant's position is that the Respondent's actions in suspending the grievant without first issuing a show-cause letter, was in direct contravention of the procedural requirements set forth under the Employment Act, 2007.
38. It is the Claimant's further submissions that the Respondent failed to follow the rules of natural justice before suspending the grievant as provided under Article 47 of the Constitution of Kenya 2010.
39. The Black's Law Dictionary, 7th Edition, defines suspension as to temporarily keep a person from performing a function, occupying an office, holding a job, or exercising a right or Privilege.
40. A suspension is generally an administrative measure and does not imply that there has been a finding of any misbehaviour or breach of rules by the suspended employee, but merely that an allegation of some impropriety or misconduct has been made against the employee in question.
41. Contrary to the Claimant's assertion, a hearing at the point of issuance of a holding suspension is not necessary. In the case of Kwale County Assembly Service Board & 6 others v Dzila (Civil Appeal E102



of 2022) [2024] KECA 945 (KLR) (26 July 2024), the Court of Appeal held that hearing an employee before suspension for investigations is not a mandatory requirement under the *Employment Act*.

42. The suspension of the grievant without a hearing did not thus in itself render the termination unfair, as no such hearing is envisaged at that stage. The question for this Court then, is whether the grievant was given a fair hearing post issuance of the show cause notice.
43. The Claimant produced a show cause letter issued to the grievant dated 24th October, 2018, listing 6 charges against him. The grievant responded to the show cause and subsequently appeared before a disciplinary panel for hearing unaccompanied. The Respondent's witness's assertion that the grievant was notified to appear with a representative was not controverted.
44. In *Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd* [2013] eKLR, the Court had this to say on procedural fairness: -

“The ingredients of procedural fairness as I understand it 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.”

45. It would then appear that the Respondent did adhere to the tenets of fair procedure stipulated under Section 41 of the *Employment Act*, 2007, which leads me to the finding that the dismissal was procedural fair.
46. On the issue of whether the dismissal meets the substantive justification test, the question is whether the reasons for the termination are matters the Respondent believed to exist at the time of dismissal, and which constituted reasonable ground to dismiss.
47. Section 43 of the *Employment Act* states: -

“(1) In any claim arising out of termination of a 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 a 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.”

48. The Respondent's position is that the grievant was in breach of his employment contract for having participated in an illegal strike organized by outsourced workers, which caused it losses going into millions of shillings. RW1 further told this Court that the grievant was absent at his work station at the time of the subject strike, and was later found inciting outsourced workers who had grievances with the Respondent.



49. The grievant's assertion is that being a shop floor steward, he was instructed by the Respondent's Human Resources Officer named Desmond Asisi to assist in quelling a strike by workers that took place at the Respondent's premises on 17th October, 2018. The Respondent's argument is that the said Desmond had no authority to instruct the grievant to stop the strike, as his role was limited to support, but also admitting that Desmond signed the letter summarily dismissing the grievant.
50. RW2's evidence is that the grievant had indeed gone to talk to the striking workers to convince them to go back to work on the day of the strike. He further confirmed that the striking workers were outsourced employees and that the grievant was a shop steward at the Respondent's company.
51. The Claimant's position is that the Respondent's decision to dismiss the grievant on the grounds of his involvement in the strike, constitutes an unjustified action and infringes upon his rights as a union representative.
52. Shop stewards are the foundation of trade unions at the place of work. Their role is mainly to monitor and report to the union, employer's actual and threatened violations of rights at the work place. They also have a role to assist employers at the shop floor level in grievance and disciplinary hearings.
53. For reason of being the intermediary between employers and employees, shop stewards are regarded as a special dispensation who can easily become prey for victimization by employers. (See Seth Panyako v. Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (2013) eKLR).
54. ILO Convention 135 provides that workers representatives shall enjoy effective protection against acts prejudicial to them, based on activities as workers representatives.
55. The Claimant's assertion and which was confirmed by RW2, is that one Mr Desmond Asisi sought the grievant out as a shop steward to assist in quelling the strike by the outsourced workers. No evidence has been led to show that the outsourced workers were not members of the Claimant's union which the grievant represented. Further, nothing bars a worker from joining or participating in the activities of a union for reason only that they are outsourced to an entity. This right is a Constitutional guarantee that is applicable to every employee, including casual workers.
56. It is also glaring that the Respondent did not present Mr. Desmond Asisi as a witness in the matter, having been at the center of what transpired on the material day (the day of the said illegal strike) that the grievant was accused of spearheading.
57. The Respondent's witness' (RW1) evidence that the grievant's letter was signed by the said Desmond Asisi, while at the same time the Respondent contends that Desmond had not authority to issue any instructions to the grievant, is double speak, and a contradiction of the said evidence.
58. In *British Leyland UK Ltd v Swift* (1981) I.R.L.R. 91 Lord Denning described the test of reasonableness in the following words: -

“The correct test is; was it reasonable for the employers to dismiss him” If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him.”



59. The grievant was a shop steward and which fact is not disputed. In my view, it would not be far-fetched that a Human Resources Officer would request a shop floor steward to intervene in a strike situation such as the one the Respondent company was experiencing.
60. In my considered view, the Respondent has not rebutted the Claimant's assertion that the grievant was requested to help in quelling the strike. To then proceed to dismiss him for doing what constitutes his role as a shop floor steward, is for all intent, an unfair labour practice.
61. In the end, I find and hold that the Respondent's decision to dismiss the grievant was draconian in view of his position as a workers' representative. The Respondent has therefore not proved fair and justified reason(s) to dismiss the grievant, and which renders the summary dismissal unfair and unlawful.

Whether the Claimant is entitled to the remedies sought

62. The Claimant's claim is for an order for the grievant's reinstatement or in the alternative, an order directing the Respondent to pay the grievant a total of Kshs. 922,687 comprising of two months' notice, days worked, leave travelling allowance, 29 annual leave days, pro-rata leave, gratuity/service pay benefits for 14 years, 3 months compensation for loss of employment and an ex-gratia payment in accordance with the CBA that was in force at the time.

Reinstatement

63. The remedy of reinstatement is provided for under Section 49 (3)(a) of the *Employment Act*, 2007, in the following words: -

“Where in the opinion of a labour officer an employee's summary dismissal or termination of employment was unfair, the labour officer may recommend to the employer to –

- a. reinstate the employee and treat the employee in all respects as if the employees employment had not been terminated;”

64. Further, Section 12 (3) (vii) of the *Employment and Labour Relations Court Act* states: -

“In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders—

.....

- (vii) an order for reinstatement of any employee within three years of dismissal, (emphasis own) subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law;...”

65. In *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR the Court of Appeal held that reinstatement should not be given except in 'very special circumstances'.
66. Reinstatement is a relief tenable only where the order is made within three years from the date of dismissal/termination. The grievant herein, were dismissed on 16th November, 2018. It is over six years today since the said dismissal. No evidence has been led to prove special circumstances that warrant the reinstatement of the grievant, and in the circumstances, the prayer for reinstatement fails and is dismissed.



67. On the alternative reliefs, the Respondent led no evidence to controvert the Claimant's claims. I however note from the CBA between the parties herein, that ex-gratia payment is only available to employees who retire from the service of the Respondent. Pro-rata leave is similarly not provided for.

68. I therefore proceed to allow the rest of the reliefs as follows: -

- a. Two months' notice at Kshs. 76,660/-
- b. Days worked at Kshs. 23,588/-
- c. Leave travelling allowance at Kshs. 8,875/-
- d. 29 annual leave days at Kshs. 42,752/-
- e. Gratuity benefits for 14 years at Kshs. 619,080/-
- f. 3 months compensation for unfair dismissal at Kshs. 114,990/-
- g. Costs will be borne by the Respondent.

69. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Mutongoi present for the Claimant

Mr. Kagunyi present for the Respondent

Ms. Esther S- C/A

