



REPUBLIC OF KENYA



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**Gachanja v Synresins Limited (Cause 1120 of 2018)  
[2025] KEELRC 1555 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1555 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1120 OF 2018  
CN BAARI, J  
MAY 29, 2025**

**BETWEEN**

**CATHERINE GACHANJA ..... CLAIMANT**

**AND**

**SYNRESINS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant commenced these proceedings by a Memorandum of Claim dated 18<sup>th</sup> May, 2018 and filed in court on 3<sup>rd</sup> July, 2018. The Claimant seeks the following reliefs:
  - a. A declaration that her termination by the Respondent was unlawful.
  - b. Compensation/damages for wrongful and unfair termination.
  - c. Salary in lieu of notice.
  - d. General damages for leave days not taken.
  - e. Exemplary and general damages.
  - f. Interest on the sums claimed above from the date of filing this cause in Court.
  - g. Certificate of Service.
  - h. Costs of this cause.
2. The Respondent filed a replying Memorandum to the claim on 22<sup>nd</sup> March, 2019, denying the allegations and further asserting that the Claimant's termination was on account of misconduct.
3. The Claimant's case was heard on 5<sup>th</sup> July, 2024 before Hon. Justice Rika, and the Respondent's case was subsequently heard on 7<sup>th</sup> November, 2024 before this Court.



4. Submissions were filed for both parties, and have been duly considered.

### **The Claimant's Case**

5. The Claimant's case is that she was first employed by the Respondent sometime in 2006, and that on 12<sup>th</sup> November 2016, she was appointed as the Respondent's Sales Support in Charge, where she offered exemplary service.
6. It is her case that the Respondent unlawfully terminated her services, and dismissed her from its employ vide a letter dated 3<sup>rd</sup> August 2017. She avers that the said letter referenced an on-going investigation looking into irregularities pertaining to a few sales transactions, and further adverted to a decline in the Claimant's performance.
7. In her testimony, the Claimant told court that she was frog marched out of the Respondent's premises and the only time she had an opportunity to know the contents of the termination letter was when she was dumped outside the Respondent's gate.
8. It is her case that she was never aware of the investigations referred in the termination letter, and neither was she ever invited before any investigative committee to 'assist' in the said investigations.
9. The Claimant further states that though the termination letter referenced her declining contribution to the sales department, she was never put on a Performance Improvement Plan or issued with a warning letter adverting to her supposed waning performance.
10. The Claimant states that she was never taken through a disciplinary hearing to answer to the charges of poor performance as well as the alleged discrepancies in the sales department. It is her further testimony that her final dues were never paid out to her.
11. On cross-exam, the Claimant told Court that she kept unbanked cheques and post-dated cheques, and that she would hand them over to accounts department when they were due. She further confirmed that since there was no policy, one would receive the clients' money via Mpesa. She further admitted that a text message traced to her phone number asking a client of the Respondent to send a total of Kshs. 209,000 to herself, a Mr. Matasi, Michael and David. She also confirmed that she did not complain that her number was misused.
12. The Claimant further testified on cross-exam, that though she raised an invoice and the client paid the money, the money was not reflected in the Respondent's bank statement.
13. She further confirmed on cross-exam, that there were 23 cheques in her cabinet that were unbanked all for the year 2014 & 2015 and that customers had instead paid cash and the cash payment should have reflected in the Respondent's bank statement, but did not.
14. On the allegations of falsifying slips, the Claimant admitted that one of the slips was for 23<sup>rd</sup> March, 2017, which date was a Sunday when banks did not open. She further told court that the deposits were indicated as having been made by persons named Mulanya, Musyoki and Ondima, who are not employees of the Respondent, and could not explain how the Respondent could send persons who were not their employees to bank.
15. She told court that she now runs a company known as Samchem, with the same Mr. Matasi and Mr. Fredrick Otieno, who were all former employees of the Respondent, and that the said company does business similar to the Respondent's. She avers that they started this business in 2017/2018.



16. It is her evidence that there is a criminal case against four of them for falsification of accounts that is pending before court.
17. The Claimant states that auditors came in in July, 2017 and her termination happened August, 2017. She seeks payment on account of leave days, which she confirmed was not tabulation.
18. The Claimant prays that her claim be allowed.

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

19. The Respondent states that by a letter dated 12<sup>th</sup> November 2016, it employed the Claimant for the position of Sales Support In charge on a consolidated salary of Kshs. 95,000.00. It avers that the Claimant was on a two (2) year contract commencing 1<sup>st</sup> November 2016 to 31 October 2018.
20. It is the Respondent's case that sometime in July 2017, it identified discrepancies in the reconciliation of invoices, customer payments against the bank reconciliation, and it commissioned an audit to verify the cash banking to the bank statement and reconcile invoices and credit notes with ETR Receipts.
21. The Respondent further states that the preliminary findings of the investigation uncovered several fraudulent malpractices involving suspected collusion between the finance team and the sales team, where the Claimant was a coordinator and her immediate supervisor, the sales manager. It states that these included falsification of bank cash deposit slips, misrepresentation of cash collections in the ledger, payments made to employees' personal mobile numbers, and various unbanked cheques.
22. The Respondent states that among those implicated in the transactions were the Claimant, in her capacity as the Sales Support in charge, her immediate supervisor, Samuel Matasi (Sales and Marketing Manager), and the Finance Manager. Consequently, by a letter dated 3<sup>rd</sup> August 2017, the Respondent wrote to the Claimant communicating its decision to terminate her employment summarily.
23. It is the Respondent's case that during the course of these investigations, it was revealed that there had been apparent collusion and involvement of the Respondent's employees, including the Claimant, which had resulted in a loss of approximately Kshs. 30,000,000.00.
24. The Respondent avers that the final findings of the investigations as per the Forensic Audit report dated 20<sup>th</sup> September 2017, revealed breaches attributable to the Claimant and other employees in the sales department including falsification of Bank Cash Deposit Slips; falsification of cash collections from customers; non-remittance of cash payments made by the Respondent's clients to personal mobile phones contrary to company policy and unauthorized unbanked cheques.
25. It is the Respondent's case that according to the investigation report, the Claimant in collusion with other employees, namely Samuel Gachanja her immediate supervisor, David Mutuku a delivery assistant and Michael Muasya a rider, received payment totaling to Kes.209,850 from a customer by the name Eattlus Enterprises through their mobile phones, and that the money was not remitted to the company. It further avers that the Claimant together with her colleagues received money from another customer, Money link communications based in Uganda, a sum of Kshs. 70,330 and which money was also not remitted to the.
26. It avers that after reviewing the preliminary audit report, the Respondent filed a complaint with the Director of Criminal Investigations (DCI), who conducted further investigations and subsequently, the Claimant together with others were charged in Criminal Case No. 928 of 2018 Republic v Samuel Matasi & 2 Others.



27. It is the Respondent's case that it is evident from the foregoing that the Claimant's employment was terminated for valid reasons.
28. The Respondent prays that the suit be dismissed with costs.

### **Analysis and Determination**

29. I have considered the pleadings, the witnesses' testimonies and the rival submissions. The issues that fall for determination are:-
  - i. Whether the Claimant was unfairly terminated
  - ii. Whether the Claimant is entitled to the reliefs sought.

### **Whether the Claimant was unfairly terminated**

30. The Claimant's position is that she was unfairly terminated on the premise that firstly, she was frog matched out of the Respondent's premises and the only time she had an opportunity to know the contents of the termination letter that was issued to her, was when she was dumped outside the Respondent's gate, and secondly, that she was never taken through a disciplinary hearing to answer to the charges of poor performance as well as the alleged discrepancies in the sales department.
31. A fair termination is deduced from the employer's adherence or lack thereof to the twin demands of fair procedure and the substantive justification test.
32. In the now popularly cited case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, the Court had this to say on this twin requirement: -

“For a termination of employment to pass the fairness test, 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 in effecting the termination.’
33. The termination of the Claimant's contract was communicated in a letter dated 3<sup>rd</sup> August, 2017, which partly reads:-

“It is with great regret that we have to inform you of the Management's decision to terminate your services with immediate effect. ....thus your last working day is 3<sup>rd</sup> August, 2017...”
34. The excerpts of the termination letter reproduced above, is evidence that the termination of the Claimant's services took effect immediately just like she told court. There is no indication that a disciplinary process was ever contemplated. The Respondent's position is that the Claimant was summarily dismissed and did not deserve a hearing.
35. In the case of *Hosea Akunga Ombwori v Bidco Oil Refineries Limited* [2017] eKLR the Court expounded on the provisions of Section 41 in the following words: -

“To satisfy the requirements of Section 41 of the *Employment Act*, 2007, an employer issues what is called in ordinary parlance a show cause notice/letter. Such a letter or notice should outline the allegations or charges against the employee and also request him to respond within a reasonable time.



The notice also ought to inform the employee that disciplinary action which might lead to termination of employment is under consideration. In other words, the notice should be set out in clear terms”.

36. Further in *Mary Mutanu Mwendwa v Ayuda* [2013] eKLR the Court held that the *Employment Act* has made it mandatory by virtue of Section 41 for an employer to notify and hear any representations an employee may wish to make whenever termination is contemplated by the employer and is entitled to have a representative present.
37. The right to fair process is no longer just a statutory requirement, but is now also a Constitutional imperative that an employer cannot ignore and purport to cling on Section 44 of the *Employment Act*, 2007. An employee must be accorded fair process irrespective of the grounds for the termination.
38. On this account, I find the termination of the Claimant’s contract procedurally flawed, is unfair and unlawful.
39. On the second limb, the letter terminating the Claimant’s services referenced an ongoing investigation looking into irregularities pertaining to sales transactions, and further adverted to a decline in the Claimant’s performance.
40. The Claimant’s position is that though the termination letter referenced her declining contribution to the sales department, she was never put on a Performance Improvement Plan or issued a warning letter adverted to her supposed waning performance.
41. The Respondent contends that it noted discrepancies in reconciliation of invoices and customer payments against the bank reconciliation, causing it to commission an audit, whose preliminary findings uncovered several fraudulent malpractices involving suspected collusion between the finance team and the sales team, where the Claimant was a coordinator and her immediate supervisor, the sales manager. It states that the breaches included falsification of bank cash deposit slips, misrepresentation of cash collections in the ledger, payments made to employees’ personal mobile numbers, and various unbanked cheques.
42. The Respondent further contends that the final report of the investigation dated 20<sup>th</sup> September 2017, revealed breaches attributable to the Claimant and other employees in the sales department.
43. The termination letter clearly spelt out the irregularities on sales transactions as the first ground for the Claimant’s termination coupled with the allegation of declining performance.
44. On cross-examination, the Claimant told Court that she kept unbanked cheques and post-dated cheques, and that she would hand them over to accounts department when they were due. She further admitted that a text message traced to her phone number asked a client of the Respondent to send a total of Kshs.209,000 to herself, a Mr. Matasi, Michael and David. She also confirmed that she did not complain that her number was misused.
45. The Claimant further testified on cross-exam, that though she raised an invoice and the client paid the money, the money was not reflected in the Respondent’s bank statement. She further confirmed that there were 23 cheques in her cabinet that were unbanked at the time of her termination, all for the year 2014 & 2015, and that customers had instead paid cash and the cash payment should have reflected in the Respondent’s bank statement, but it did not.
46. On the allegations of falsifying slips, the Claimant admitted that one of the slips was for 23<sup>rd</sup> March, 2017, which date was a Sunday when banks did not open. She further told court that the deposits were indicated as having been made by persons named Mulanya, Musyoki and Ondima, who are not



employees of the Respondent, and could not explain how the Respondent could send persons who were not their employees to make bank deposits on their behalf.

47. The Claimant further confirmed that she runs a company known as Samchem, with the same Mr. Matasi and Mr. Fredrick Otieno, who were all former employees of the Respondent, and that the said company does business similar to the Respondent's. She avers that they started this business in 2017/2018, while still in the service of the Respondent, despite signing a non-compete agreement.

48. The test as to the fairness and validity of the reasons warranting termination or dismissal of an employee was enunciated by Lord Denning in *British Leyland UK Ltd v. Swift* [1981] IRLR 91 as follows: -

“The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which an employer might reasonably take one view: another quite reasonably take a different view. One would quite reasonably dismiss the man. The other quite reasonably keep 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.”

49. Further, in the case of *Cooperative Bank of Kenya Limited v Banking Insurance & Finance Union* [2017] eKLR it was held that the Court looks into the validity and justifiability of the reasons for termination.

50. The question of fairness of reasons for termination was also address by Court in the case of *Charles Musungu Odana v Kenya Ports Authority* [2019] eKLR where the Court stated,

“It is now clear that the burden placed on an employer by Section 43 of the *Employment Act* is to establish a valid reason that would cause a reasonable employer to terminate employment. The Court of Appeal affirmed this position in its decision in *Reuben Ikatwa & 17 Others v Commanding Officer British Army Training Unit Kenya & Another* [2017] eKLR by citing with approval the following excerpt from the Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol.16(1B) para 642:

“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 response 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 it falls outside the band, it is unfair.

In assessing an employer's action therefore, the Court is not expected to supplant its own decision with that of the employer. In other words, the Court does not ask what it would have done in the circumstances of the particular case; all the Court asks is whether overall, the employer acted responsibly and reasonably and if the answer to this question is in the affirmative, the Court should not interfere with the employer's decision”.



51. The Respondent did not urge the issue of poor performance as informing its decision to terminate the Claimant's employment, it instead, sought to prove the fraudulent malpractices involving suspected collusion between the Claimant and the Respondent's finance team, the falsification of bank cash deposit slips, misrepresentation of cash collections in the ledger, payments made to employees' personal mobile numbers, and various unbanked cheques.
52. The Claimant on cross-examination, admitted a bulk of these financial irregularities which costs the Respondent colossal sums of money. It is also not disputed that the Claimant and other former employees of the Respondent have an ongoing criminal case on the same issues.
53. In light of the foregoing, I find and hold that the Respondent acted responsibly and reasonably in terminating the Claimant's contract on account of the sea of financial irregularities attributed to her.
54. I thus find the termination substantively fair.

**Whether the Claimant is entitled to the remedies sought**

55. The Claimant herein, sought a declaration that the termination of her employment by the Respondent was unlawful, compensation/damages for wrongful and unfair termination, salary in lieu of notice, pay for leave days not taken, exemplary and general damages, interest on the sums claimed above from the date of filing this cause in Court, a Certificate of Service and costs of this cause.
56. Considering that the Claimant's termination has been held unfair only on account of procedure, I deem an award of one month's salary sufficient compensation for the unfair termination.
57. The circumstances of this case, are such that the Claimant does not deserve any further relief, except a certificate of service in addition to the award already granted.
58. In conclusion, the termination of the Claimant's contract is found unfair solely on account of procedure and the court awards the following remedies: -
  - a. A declaration that the termination was unfair on account of procedure
  - b. An award of one month's salary as compensation for the unfair termination at Kshs. 95,000/-
  - c. That the Respondent issues the Claimant a certificate of service within 14 days of this order
  - d. Parties shall bear their own costs of the suit.
59. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Ms. Matasi h/b for Mr. Aloo for the Claimant

Ms. Weru present for the Respondent

Ms. Esther s- C/A

