



**Genga v Royal Garment Industries EPZ Limited (Cause E383 of 2020)  
[2025] KEELRC 1544 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1544 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E383 OF 2020**

**B ONGAYA, J  
MAY 29, 2025**

**BETWEEN**

**POLYCARP OCHIENG GENGA ..... CLAIMANT**

**AND**

**ROYAL GARMENT INDUSTRIES EPZ LIMITED ..... RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Thursday 29th May, 2025)*

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 12.08.2020 through Muli & Company Advocates. He prayed for judgment against the respondent for:
  - i. A declaration that the claimant's dismissal is unlawful, wrongful and unfair.
  - ii. Salary for 1<sup>st</sup> June 2020 to 1<sup>st</sup> July 2020 - Kshs. 150,382.73
  - iii. Payment in lieu of notice - Kshs. 144,813.00
  - iv. Payment in lieu of leave - Kshs. 69,621.63
  - v. Underpayment of basic salary - Kshs. 1,392,054.00
  - vi. Underpayment of leave - Kshs. 343,255.52
  - vii. Gratuity/ Service Pay - Kshs. 551,403.35
  - viii. Compensation - Kshs. 1,737,756.00
  - ix. Certificate of service
  - x. Costs of the cause



- xi. Interest on (ii) – (iv)
  - xii. Any other and/or further relief this Honourable Court may deem fit and just to grant.
2. The claimant's case was as follows:
- a. That under a contract dated 21.01.2015, the respondent employed him in the position of Stores In-charge through its subsidiary holding company or affiliate, MES (UK) Limited Sesby Global Sourcing, and at a monthly salary of Kshs. 55,000.00.
  - b. On 04.01.2017, the respondent issued him an appointment letter for the position of Stores In-charge at a monthly consolidated salary of Kshs. 54,133.00. He successfully served the three-month probationary period and a confirmation letter was issued to him thereafter.
  - c. He was dutiful and diligent in discharging his duty at the respondent, working well without any record of indiscipline until he was unlawfully, wrongfully and unfairly dismissed from employment.
  - d. On 01.07.2020, while at work, he sought and obtained permission from the respondent to take with him a piece of waste or a rejected piece of material measuring about two (2) metres. Upon getting permission, he notified the security guard present of that fact. However, as he was leaving upon the close of business, the security guard stopped him.
  - e. He was issued with a show cause notice on allegations of inability to perform task assigned to him and alleged negligence of duty.
  - f. As directed by the respondent, he immediately responded and was thereafter issued with a letter summarily dismissing him from employment.
  - g. Following a call from the respondent, he was arrested by police officers from EPZ Athi River Police Post, who escorted him to the police post. However, upon arrival, he was released and directed to report to the post the following day.
  - h. When he reported to the police post the next day on 02.07.2020, he met representatives of the respondent who withdrew the charges on the grounds that they did not have any evidence of the alleged theft. He was therefore released without charge.
  - i. When he subsequently tried to collect his final dues, the respondent prevented him from doing so with threats of arrest from persons who identified themselves as police officers.
  - j. He was dismissed based on invalid and non-existent grounds and had not been negligent as alleged, or at all. That if there was theft at the store, the same was not brought to his attention. Further, he did not commit any offence as contained in the dismissal letter or at all to warrant dismissal.
  - k. In addition, he was dismissed from employment without being afforded an opportunity to be heard on the allegations contained in the dismissal letter or at all as provided by law.
  - l. His dismissal was therefore unfair, unlawful and wrongful for failure to accord both substantive and procedural dictates, and he is therefore entitled to 12 months' salary compensation.
  - m. Before the dismissal, he had not been paid his salary for June 2020 and the first day of July 2020, and one (1) month's notice as provided by law and thus seeks the outstanding salary and payment in lieu of notice as claimed.



- n. At the time of dismissal, he was earning a gross salary of Kshs. 17,250.00 per month and constant allowances of Kshs. 90,680.00 per month despite his contract of employment providing for a monthly gross consolidated pay of Kshs. 54,133.00. The respondent underpaid him from the time of employment in April 2017 to May 2020, as computed in the claim.
  - o. He had 12.5 days untaken leave at the time of dismissal, which he therefore claims for payment in lieu computed as  $144,813 / 26 \text{ days} \times 12.5 \text{ days} = \text{Kshs. } 69,621.63$ .
  - p. Further, for the period he was engaged with the respondent, he was underpaid in lieu of leave based on the basic salary of Kshs. 15,000 instead of the gross monthly pay of Kshs. 144,813.00. He therefore claims underpayment for pay in lieu of leave from April 2017 to December 2019 as computed in the claim.
  - q. The respondent also discriminated against him because, whereas it pays gratuity to unionized employees upon separation, he was not paid gratuity and/or service pay despite his position preventing his unionization. As the collective agreement in place provides for gratuity at the rate of 18 days for each completed year of service, he claims the same computed as  $144,813 / 26 \times 18 \times 5.5 \text{ years} = \text{Kshs. } 551,403.35$ .
  - r. He was also not issued with a certificate of service upon his dismissal as provided by law or at all.
3. The respondent's statement of response to claimant's statement of claim, and counterclaim dated 05.11.2020 was filed through Naikuni, Ngaah & Miencha Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs and judgment be entered for the respondent for:
- i. The sum of Kshs. 1,665,574/- as claimed in paragraph 19 being alleged loss suffered by the claimant for alleged theft of fabric between 01.01.2020 to 01.07.2020;
  - ii. Costs of the suit and counterclaim; and
  - iii. Interest on (i) and (ii) above at court rates.
4. The respondent's case was as follows:
- a. The claimant was initially employed by MES (UK) Limited Sesby Global Sourcing, and then later employed by the respondent on 04.01.2017 at a basic salary of Kshs. 15,000 and allowances amounting to Kshs. 86,837/-.
  - b. It has no policy that allows employees to carry waste or unused material from the company premises.
  - c. The claimant has a record of misconduct. On 01.07.2020, he was caught by the security guard trying to leave the premises with material without the permission or authority of the respondent.
  - d. The claimant was given an opportunity to respond to allegations levelled against him, to which he responded by admitting stealing fabric from the respondent's premises.
  - e. The claimant was accordingly summarily dismissed and advised to collect all his dues and certificate of service, but he ignored or refused to do so for reasons best known to him.
  - f. All remuneration and unpaid leave due to the claimant were paid in full.



- g. The sum of Kshs. 54,133/- was inclusive of basic salary and allowances as at 04.01.2017 as evidenced by payslips of January 2017. The said amount was also revised over the contract period.
  - h. There was no provision of gratuity in the claimant's contract and he was not discriminated against as alleged.
  - i. On various dates between 01.01.2020 and 01.07.2020, the claimant systematically stole fabric material from the respondent's premises without any authorization, leading to his arrest when the matter was reported to the police in Occurrence Book No. 6/01/07/2020.
  - j. The security CCTV footage in its possession confirms the claimant colluded with other staff members in the systematic theft of fabric.
  - k. As a result of the said theft amounting to Kshs. 1,665,574/-, the respondent has suffered loss. In addition, there was a criminal charge against the claimant before the Chief Magistrate's Court at Mavoko Law Courts, being Criminal Case No. 447 of 2020.
  - l. The claimant admitted to the theft when he was accorded an opportunity to explain.
5. The claimant's reply to respondent's statement of response and counterclaim dated 04.12.2020 was filed through Muli & Company Advocates. He denied that he was employed at a basic salary of Kshs. 15,000/- and refuted that he admitted to stealing fabric from the respondent's premises. He contended that the respondent filed pay slips that conceal the items for which payments were made against in a bid to mislead this Court. That in any event, there was no agreement between him and the respondent for review of the gross consolidated salary of Kshs. 54,133/- as alleged by the respondent or at all.
6. Regarding the counterclaim, the claimant denied having been involved in theft as alleged. He asserted that the alleged CCTV footage was not furnished to him and that he was denied an opportunity to be heard. That the respondent did not suffer any loss under the claimant's watch throughout his employment. He further averred that the criminal case referred to by the respondent has no basis and effect in this matter, and that he would be vindicated.
7. The parties tendered their evidence before the Court and filed their respective submissions. The Court has considered the material on record and returns as follows:
- a. The evidence is that parties were in a contract of service. The respondent paid the claimant per the agreed salary in the contract and the payslips. The alleged underpayment is found unjustified.
  - b. The respondent summarily dismissed the claimant on 01.07.2020 upon grounds that the claimant had stolen some fabrics. The claimant was given a show cause letter, he replied, was heard and summarily dismissed the same day. Under section 44 of the *Employment Act, 2007*, summary dismissal is permissible with shorter or no notice prescribed in the Act or contract. The Court finds that in that consideration the lamentation by the claimant that no sufficient notice was allowed is unfounded. Section 41 of the Act on notice and hearing was complied with and section 44 on shortness of notice as well applied. As for reason for summary dismissal being theft, it is found to have been valid and fair per sections 43 and 45 of the Act. The claimant was subsequently convicted of the same theft in Criminal Case No. 447 of 2020 at Mavoko Chief Magistrates Court, Republic –Versus- Polycap Ochieng Genga and 3 others and the judgment delivered on 14.03.2022 by Hon. Stephen Jalang'o, Principal Magistrate thus "38. On analysis of the evidence of record I find that the prosecution has proved their



case against the 1<sup>st</sup> accused person. He was intercepted by PW2 trying to leave the premises while in possession of stolen fabric. A review of the CCTV footage exhibit no. 1 shows him cutting the subject fabric and placing the same inside the bag.” He was found guilty of stealing by servant contrary to section 281 of the Penal Code and convicted under section 215 of the Criminal Procedure Code. In the circumstances and as submitted for the respondent the reason for termination was valid per section 43 of the Act and was fair per section 45 of the Act. The summary dismissal was not unfair in substance and in procedure. The related prayers of compensation will collapse as unjustified.

- c. The claimant prays for pay in lieu of leave 12.5 days for 2020; under payment of basic salary; underpayment of leave; and service pay. These will fail as not based on contract or for want of due evidence. For leave, while it is established that it was due, the respondent says it was paid per last payslip of June 2020. The claimant urges that it was for the respondent to prove the payment by producing evidence of such payment. However, the claimant never demanded production of what would be such evidence and in possession of the respondent. Further, the claimant confirmed that he was paid by the respondent at his bank account but failed to produce his bank statement to show such payment was not made. In the circumstances it is unjustified for the claimant to shift his burden of proving his allegation that he was not paid. On a balance of probability, he was paid.
- d. As relates the counterclaim, it must fail for want of particulars of the alleged claimant’s theft between 01.01.2020 to 01.07.2020 as to the amount of fabric and its value attributable to the claimant as alleged. The theft the claimant was culpable of was with respect to a fabric found in his possession and whose specific value was not quantified and in any event had been recovered and used in the criminal trial Court as an exhibit. It is that the respondent had opportunity to put to the claimant allegations of the claim in the show cause letter of 01.07.2020 but that was not done. The counterclaim is found to fail for want of particularised claim and then strict proving in that respect.
- e. The claimant is entitled to statutory certificate of service.
- f. In view of margins of success each party to bear own costs of the suit.

In conclusion judgment is hereby entered with orders:

- a. The respondent to deliver the claimant’s certificate of service within 30 days from today and subject to the delivery, the claimant’s suit is otherwise dismissed.
- b. The counterclaim is dismissed.
- c. Each party to bear own costs of the entire proceedings.

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

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

