



**Mburu v Vitaplant Kenya Limited (Cause E040 of 2023)
[2025] KEELRC 1573 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1573 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E040 OF 2023
AN MWAURE, J
MAY 23, 2025**

BETWEEN

CAROLINE WANGUI MBURU CLAIMANT

AND

VITAPLANT KENYA LIMITED RESPONDENT

JUDGMENT

Introduction.

1. The Claimant commenced this cause vide a Memorandum of Claim dated 21st August, 2023.

Claimant's case

2. The Claimant avers that she was employed by the Respondent as the Head of Accounts, Logistics, and Purchasing vide the letter of appointment dated 10th May 2022.
3. The Claimant avers that in her role as Head of Accounts, Logistics, and Purchasing at the Respondent, she performed her duties with full loyalty, diligence, and dedication, adhering to the expectations outlined in her Employment Contract.
4. The Claimant avers that 9th and 10th May 2023 the Respondent's Managing Director (MD), Mr. Geoffrey Morley, discreetly requested her to resign despite acknowledging her good performance, even suggesting he would find her a job in Nairobi. She says she was shocked by this request and she expressed her commitment to the company and stated she wanted to continue with her duties.
5. The Claimant avers that subsequently, the MD initiated a series of actions aimed at forcing her resignation, including unfounded allegations and changing her job description without proper procedure.



6. The Claimant avers that the Respondent issued her a backdated termination letter dated 1st June 2023, which was given to her after she had already reported to work that day.
7. The Claimant avers that the termination was obtained through coercion and undue influence, reflecting bad faith and a disregard for labour laws, as well as violations of the Constitution and Employment Act.
8. The Claimant avers that as a result of the unlawful termination, she has suffered significant financial and emotional distress, loss of income, and the violation of her rights.
9. The Claimant avers that the Respondent's termination of her employment demonstrated bias, discrimination, bad faith, lack of merit, and mischievous purpose, which constitutes unfair termination as outlined in section 45 of the Employment Act.
10. The Claimant avers that the Respondent issued a Notice to Show Cause in response to her email documenting a conversation with the Managing Director, which contained unsubstantiated allegations seemingly intended to justify her termination and harm her professional reputation.
11. The Claimant further avers that the Respondent failed to follow legal procedures for addressing such claims, including neglecting to conduct a formal disciplinary hearing.
12. The Claimant avers that she was denied a proper disciplinary hearing by giving her the opportunity to present her case, violating her rights under the Employment Act.
13. The Claimant avers that she has experienced a significant loss of income due to the Respondent's unjust termination, resulting in financial strain on her and her family. Furthermore, the abrupt termination disrupted her career progression, depriving her of valuable experience and hindering her professional growth.
14. The Claimant prays that:
 - a. Declaration that the termination of her employment was unlawful and unfair.
 - b. The Honourable Court be pleased to award compensation of Kshs.3,000,000 as 12 months' salary for wrongful and unfair termination
 - c. The Honourable Court be pleased to award Kshs. 500,000 as two months' notice pay.
 - d. The Honourable Court be pleased to award Kshs. 200,000 compensation for leave days earned but not paid.
 - e. The Honourable Court be pleased to award compensation for overtime worked amounting to Kshs.758,000.
 - f. The Honourable Court be pleased to award a gratuity of Kshs.125,000.
 - g. The Honourable Court be pleased to award compensation of Kshs.1,500,000 for costs incurred due to lack of allocation of the company car.
 - h. Exemplary damages of Kshs.5,000,000 for the mental anguish caused by the unjust termination.
 - i. Interest on the sums claimed above from the date of filing this cause in court.
 - j. Costs of this cause.
 - k. A Certificate of service.



- l. Orders that the Respondent provide her with a comprehensive and favourable recommendation letter, reflecting her contributions and accomplishments during her employment.
- m. Any other relief the court deems just and fit.

Respondent's case.

15. In opposition to the Memorandum of Claim, the Respondent filed a Statement of Defence dated 11th October 2023.
16. The Respondent denies the allegations in paragraph 5 of the Memorandum of Claim and demands strict proof from the Claimant. The Respondent avers that the Claimant frequently delayed completing the company's yearly audits and providing information required by the Kenya Revenue Authority (KRA), forcing the Respondent to hire a third-party agency at additional cost.
17. The Respondent further avers that emails from the Director of Finance & Controlling demonstrate the Claimant's failure to complete tasks, negatively impacting daily operations, and claim that she consistently breached her Employment Contract by not fulfilling her responsibilities.
18. The Respondent avers that the Claimant initiated discussions with the Managing Director, Geoffrey Morley, regarding her employment and suggested hiring two individuals to replace her, expressing discomfort in her working relationship and a desire to relocate to Nairobi to be near her family.
19. The Respondent avers that the Claimant often complained about her workload and pressured the company to hire more staff despite its financial constraints as a startup.
20. The Respondent avers that it added an external logistics manager and redistributed some of her tasks, but the Claimant still failed to perform her responsibilities on time.
21. The Respondent avers that the Claimant's termination was fair and based on prolonged discussions as the reasons cited include failure to fulfill her duties, failure to meet deadlines for audits, and repeated demands for a company car for personal use, despite her work and the company operations being based in Naivasha.
22. The Respondent avers that the Claimant persistently kept asking for a salary increase within the first year of employment despite failing to perform her tasks and deliverables, given that she was already being paid a higher salary compared to other management team members. She would also demand that accommodation be provided for her which was not part of the terms of her employment.
23. The Respondent avers that the Claimant was lawfully given a notice to show cause via the E-mail dated 13th June, 2023, which further directed the Claimant to give a response before the 22nd May, 2023 and that she failed to hand in. The Respondent gave the claimant a fair hearing and followed due procedure as per the *Employment Act*.
24. Further, the Respondent wishes to aver that, it issued a Notice to Show Cause to the Claimant which highlighted the breach of Contract of Employment by the Claimant which resulted to gross misconduct as outlined in the Contract of Employment signed by the parties in clause 5.3 and *Employment Act* section 44 and subsection 4 (c & e). Furthermore, it was the Claimant's duty and responsibility, as set forth under clause 5.3 of the Contract of Employment, to use her knowledge, skill and experience to train potential replacements.
25. The Respondent avers that the cause herein is frivolous, scandalous, and vexatious; the prayers sought are unmerited and should, therefore, be struck out with costs.



Evidence in court.

26. The Claimant, CW1, adopted her written statement dated 14th August 2023, together with her list of a bundle of documents dated 3rd June 2024 marked as exhibits 1 to 10 as her evidence in chief.
27. In cross-examination, CW1 stated that she worked for the Respondent for one year. CW1 stated that an agency was hired to do her work, and she was informed about it. She stated that she was not issued with a Notice to Show Cause letter but got an email where there were allegations that the MD had alluded to and included them in the Notice to Show Cause letter.
28. CW1 stated that the issues raised were her request for her salary review, that she complained of workload and that she requested for accommodation. She stated that she responded to the email and addressed the issues raised. She stated that the MD called her and informed her she deserved to be in a bigger company and asked her to resign.
29. CW1 stated that she did not want another job, and the MD, in an email dated 10th May 2023, informed her that if she did not resign, he would terminate her. She stated that she did not get any call to attend any disciplinary hearing, and she confirmed that she worked overtime. She stated that she used to work late to beat the deadlines. She stated that she did not take any leave days. She stated that she used to ask for the company car, but the same was not availed to her, and she did not have any communication to show before this Honourable Court.
30. In re-examination, CW1 stated that the MD told her that he would take the other 2 employees to take over her job, and the Respondent did not avail any evidence to show that she went for leave.

Respondent's case.

31. RW1, Helen Waithera Macharia, the Respondent's Human Resource Manager, adopted her written statement dated 6th October 2023 and list of documents dated 11th October 2023 marked as exhibits 1 to 6 as her evidence in chief.
32. RW1 stated that there was a disciplinary hearing that was held, but the Claimant failed to show up. She was well aware of the same as she had been informed about it.
33. In cross-examination, RW1 stated that she saw emails stating that she was lagging behind in work. RW1 stated that there was no evidence showing that Claimant complained that the work was too much and a letter stating that the distance to Nairobi was far. RW1 also stated that there was no evidence that the Claimant asked for a car.
34. RW1 stated that the MD issued a Notice to Show Cause letter, which was sent to the Claimant's email on 10th May 2023, and she responded to it. RW1 stated that the Claimant was not paid her terminal dues and issued her with her termination letter. RW1 stated that she asked the Claimant if she wanted clarification on the termination letter. RW1 stated that the company is responsible for conducting a disciplinary hearing, and the Respondent did not conduct a disciplinary hearing.
35. In re-examination, RW1 stated that the email referring to the employment of 2 employees was not about replacing the Claimant.
36. Parties were directed to put in written submissions.



Claimant's written submissions.

37. The Claimant submitted that no proper disciplinary process was undertaken according to procedural fairness and substantive justification for dismissal, amounting to unfair termination. The Claimant relied on Sections 45 and 47(5) of the *Employment Act* and the case of Idris Abdi V Garissa Water and Sewerage Company Limited [2021] eKLR and the court also relied on the case of Walter Ogal Anuro V Teachers Service Commission (2013) eKLR where it held as follows:

“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 to effect the termination.”

38. The Claimant argued that the Respondent had the responsibility of proving a valid reason for her termination. She stated that this obligation extended beyond merely reiterating allegations in the termination letter dated 1st June 2023. The Claimant noted that the Respondent's witness failed to present any documents or evidence to substantiate the claims, rendering the termination unjustified.

39. The Claimant submitted that she is entitled to the reliefs sought as stated in the Memorandum of Claim and urged this Honourable Court to allow her cause as prayed.

Respondent's written submissions.

40. The Respondent relied on section 44(4) of the *Employment Act*, which provides that what constitutes gross misconduct which can lead to dismissal includes:

- a. Absence from work without leave or lawful cause.
- b. Intoxication during working hours, rendering the employee unwilling or incapable of proper performance.
- c. Wilful neglect or careless/improper performance of duties.
- d. Use of abusive or insulting language or behaviour towards the employer or authority figures.
- e. Knowingly failing or refusing to obey lawful commands within the scope of duty.
- f. Arrest for a cognizable offense punishable by imprisonment without release on bail or bond within 14 days.
- g. Committing or being reasonably suspected of committing a criminal offense causing substantial detriment to the employer or their property.

41. The Respondent submitted that the Claimant wilfully neglected her duties by failing to complete assigned tasks and meet deadlines, resulting in unnecessary costs to the company. The Respondent also submitted that the Claimant refused to follow lawful and proper instructions from the employer, particularly when directed to put more effort into her work.

42. In the case of Pheoby Aloo Inyanga V Stockwell One Homes Management Limited & Another [2022] eKLR the court relied on the case of Mckinley vs BC Tel, [2001] 2 SCR 161, 2001 SCC 38 [CanLII] it was held that determining whether misconduct justifies dismissal requires analyzing the specific context of the alleged behaviour. Misconduct alone does not automatically justify dismissal. Instead, the critical question is whether the employee's behaviour makes it impossible for the employment relationship to continue. In cases of dishonesty, the decision on just cause depends on an analysis of



the circumstances, including the nature and severity of the misconduct, its impact on the employment contract's essential conditions, and whether it undermines the employer's trust in the employee. These factors are key to assessing the existence of just cause for dismissal.

43. The Respondent submitted that the Claimant's role was critical to the company's daily operations and that the failure to perform essential tasks caused significant prejudice to the Respondent, thus breaching the fundamental terms of the employment contract, warranting her termination.
44. In *Pheoby Aloo Inyanga V Stockwell One Homes Management Limited & Another (Supra)*, the court stated as follows:

“Section 41 (2) of the *Employment Act* provides:

“Notwithstanding any provision of this part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representation which the employee may on the grounds of misconduct or poor performance, and the person if any, chosen by the employee within subsection (1), make.” [Emphasis mine].

The provision cannot be looked in any other way, it provides for a procedure *inter alia* to be adhered to before an employer summarily dismisses an employee. One is left to wonder how such an express mention of “summarily dismissing” would escape the sight of the Respondents' Counsel.

In the case of *Prof. Macha Isunde vs Lavington Security Guards Limited [2017] eKLR*, the Court of Appeal stated:

“There can be no doubt that the Act, which was enacted in 2007, places a heavy obligation on the employers in matters of summary dismissal (Emphasis mine) for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for terminating (section 43) – prove that the grounds are justified (section 47 (5), among other provisions. A mandatory and elaborate process is then set up under Section 41 requiring notification and hearing before termination.”

45. The Respondent submitted that the decision to terminate the Claimant's employment was just and equitable. The Respondent submitted that the procedure followed, the Claimant's conduct leading up to the termination, compliance with statutory provisions, and previous warning letters issued to the Claimant was justification for the termination.
46. The Respondent submitted that the Claimant is not entitled to the reliefs sought and urged this Honourable Court to dismiss the cause with costs.

Analysis and determination.

47. The court has considered the pleadings, evidence adduced, and submission for both counsels, the issues for determination are as follows:
 - i. Whether procedural fairness and substantive justification were followed.
 - ii. If (i) above is in the negative, whether the Claimant is entitled to the relief sought.
 - iii. Who should bear the costs.
48. The court reiterated the case of *Walter Ogal Anuro V Teachers Service Commission (Supra)*; the test for termination of employment is procedural fairness and substantive justification, which go hand in



hand. In *Pamela Nelima Lutta v Mumias Sugar Co. Ltd* [2017] eKLR, the court held that there are two elements of fair termination of employment that must be satisfied by the employer, fair procedure and valid reason.

49. In *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR, the Court of Appeal held as follows:

“There can be no doubt that the Act places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/ dismissal, prove the reasons are valid and fair, and prove that the grounds are justified. A mandatory and elaborate process under Section 41 requiring notification and a hearing before determination. The appellant (employee) in this case had the burden to prove, not only that his services terminated but also that the termination was unfair or wrongful. Only when this foundation has been laid will the employer be called upon to prove the reason for termination, and where the employer fails to do so, the termination will be deemed to have been unfair.”

50. In this instant case, the Managing Director had some discussions with the Claimant, and he appreciated the work she was doing. In an email dated 10th May 2022, the Managing Director had suggested to her to resign from the company, and since her family was based in Nairobi, he wondered if she was comfortable coming to Naivasha. The Managing Director wrote back, refuting those allegations and stating that the Claimant wanted a salary review and that she claimed the work was too much to handle, and also asked for a company vehicle as the distance was too far to Nairobi. The Managing Director issued a Notice to Show Cause, which led to the Claimant’s termination.

51. The evidence adduced by the Respondent as to the reason the Claimant was issued with a Notice to show cause was that she wrote an email citing labour law violation. The email dated 22nd May 2023 the Claimant was accused of having complained about the review of her salary and workload among other issues.

She was also accused of delay in gathering information for audit and that she would usually complain instead of responding.

She was therefore asked to show cause why disciplinary action would not be taken against her in keeping with Section 44 of the [Employment Act](#).

52. The same day the Claimant wrote a response and she said that she had been asked to resign from the Respondent’s company and was not willing to resign. She says that Geoffrey offered to get her another job. She affirmed she was happy to continue working for Respondent and requested for clarification for grounds of disciplinary actions against her.

53. Looking at the respective emails of the parties the court finds no clear grounds that would constitute gross misconduct to justify terminating the Claimant’s employment summarily.

54. In Section 54(1) of the [Employment Act](#) it is provided: -

“(1) No employer shall terminate the employment of an employee unfairly.”

55. Further Section 47(5) of the [Employment Act](#) states as hereunder: -

“



“(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

56. The court is not persuaded that the Respondent gave valid grounds to justify termination of the Claimant. Indeed it would appear they were looking for a way to cause her to resign and when she refused to resign they sent her the termination letter dated 1st June 2023.

The reasons for termination in the termination letter were delay in finalising the audit and a third party had to be called to assist with her work.

57. The Claimant was also not invited for a disciplinary hearing under Section 41 of the Employment Act. An employer must follow the mandatory procedure to take an employee through the disciplinary process pending termination. Section 41(1) of the Employment Act provides as follows: -

“

“(1) 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.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”

58. Persuaded by myriad of authorities and the law the court holds that an employer must comply with procedural fairness and natural justice.

In the case of *Loice Otieno -VS- Kenya Commercial Bank Limited Cause 1050 of 2011* the court held: -

“Summary dismissal even in the face of a fundamental breach of the employment contract/ obligations or gross misconduct must not be resorted to without resorting to without complying with procedural fairness and natural justice. An employer who summarily dismisses an employee without a hearing will be falling afoul of Section 42(2) of the Employment Act.”



59. Also in the case of Raymond Cherokewa Mrisha -VS- Civicon Limited (2014) eKLR the court held: -

“The respondent has denied liability for unfair termination and averred that the claimant was guilty of gross misconduct and as such the dismissal was substantively and procedurally unfair. In addition, the respondent has averred that despite his misconduct the claimant was paid one month salary in lieu of notice, accrued leave days, plus gratuity.”

60. The court is of the view that the Claimant was unfairly terminated, and RW1 admitted during cross-examination that a disciplinary hearing was not conducted for the Claimant and that there was no evidence of minutes as well that a disciplinary hearing was conducted. In view of the foregoing, the court finds that the Claimant was unfairly terminated and so judgment is entered in her favour.

61. The court will award the reliefs as follows:

- a. Compensation for unfair termination amounting to Kshs.500,000 for 2 months equivalent of her salary in accordance with Section 49(1)(c) of the Employment Act as she worked for the Respondent for less than one year.
- b. Two months' salary amounting to Kshs.500,000 in lieu of notice but if same is paid this award will be set aside.
- c. The prayer of overtime is declined. In Rogol Rogoli Ole Manadiagi v General Cargo Services Limited [2016] KEELRC 1607 (KLR), the court stated that employers are responsible for maintaining employment records, and employees must prove their claims for overtime pay. The court held that the claim for overtime was not proven on the balance of probability. Since the same has not been proved, the court will decline to award.
- d. Leave days is NOT awarded as Claimant did not prove she applied for the same and it was declined.
- e. Gratuity is declined as is not provided for.
- f. Compensation for costs incurred in lack of allocation of the company car is declined for lack of any specifics on entitlement.
- g. Exemplary damages for mental anguish are declined as the same were also not proved.
- h. Certificate of service to be issued as per Section 51 of the Employment Act within 30 days hereof.

62. The total awarded is Kshs.1,000,000/= plus interest at 14% per annum from date of judgment till payment.

63. The Claimant will have the costs of the suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF MAY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions



of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

