



**Ware v G4S Kenya Ltd (Appeal E179 of 2023)
[2025] KEELRC 1593 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1593 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E179 OF 2023**

**JW KELI, J
MAY 23, 2025**

BETWEEN

JOSHUA OUMA WARE APPELLANT

AND

G4S KENYA LTD RESPONDENT

*(Being an Appeal from the Judgment and Orders of the Honourable P. Muholi
(PM) delivered at Nairobi on the 16th of July, 2021 in MCELRC No. E590 of 2020)*

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Orders of the Honourable P. Muholi (PM) delivered at Nairobi on the 16th of July, 2021 in Nairobi MCELRC Cause No. E590 of 2020 between the parties filed a Memorandum of Appeal dated 20th day of November, 2024 seeking the following orders:-
 - a)) The Appellant prays for judgment as pleaded in the Statement of Claim with costs of the suit and of this Appeal.

Grounds Of The Appeal

2. That the Honourable Trial Magistrate erred in law and in fact by holding the Appellant liable for the escape of a patient at Nairobi Hospital on 12th April 2018 without cogent admissible evidence.
3. That the Honourable Trial Magistrate erred in law and in fact by relying upon hearsay evidence CCTV electronic footage which was not adduced in evidence.
4. That the Honourable Trial Magistrate erred in law and in fact by relying upon an Investigation Report and oral evidence citing CCTV footage which was not adduced in evidence in compliance with Sections 106A and 106B of the Evidence Act [Chapter 80 of the Laws of Kenya].



5. That the Honourable Trial Magistrate erred in law and in fact by failing to hold that the Appellant was wrongfully and unfairly dismissed contrary to Section 49 (1) of the [Employment Act](#).
6. That the Honourable Trial Magistrate erred in law and in fact by dismissing the Appellant's prayers for:-
 - a. One month's salary in lieu of notice – Kshs. 11,056
 - b. Compensation for unfair dismissal
 - c. Costs of the primary suit.

Background To The Appeal

7. The Appellant filed a claim against the Respondent vide a memorandum of claim dated 3rd August 2020 seeking the following orders:-
 - A. A declaration that the termination of the Claimant's employment was unfair, unlawful and in breach of Section 41 of the [Employment Act](#).
 - B. An award of Kshs. 179,000/- on account of terminal dues owed to the Claimant.
 - C. Damages for unlawful termination of employment to the tune of Kshs. 312,000/- representing 12 months' salary.
 - D. Costs of the suit and interest thereof.
 - E. Any other or further relief as this Honourable Court may deem fit and just.
8. The Appellant filed his verifying affidavit, his witness statement, list of witnesses and list of documents all dated 3rd August 2020 (see pages 7-20 of ROA dated 6th December 2024).
9. The claim was opposed by the Respondent who entered appearance and filed a Statement of Response dated 15th October 2020 (pages 23-27 of ROA); Witness statement of Agneta Wakio dated 15th October 2020 (pages 29-32 of ROA); Witness statement of Peter Wakuu dated 15th October 2020 (pages 33-35 of ROA) and produced as its documents employment records (pages 36-89 of ROA).
10. The Claimant's/Appellant's case was heard on the 3rd of February 2021, where the claimant testified in the case, produced his documents, and was cross-examined by counsel for the Respondent Ms. Odiero (pages 226-230 of ROA).
11. The Respondent's case was heard on the same date where RW1 was Peter Muna Gakuo who relied on his filed witness statement and produced the Respondent's documents. He was cross-examined by counsel for the claimant Mr. Munyoki (pages 230-232 of ROA). RW2, Agneta Wakio also testified on the same date. She relied on her filed witness statement. She was cross-examined by counsel for the claimant Mr. Munyoki (pages 232-233 of ROA)
12. The parties took directions on filing of written submissions after the hearing. The parties complied.
13. The Trial Magistrate Court delivered its judgment on the 16th of July 2021 dismissing the Claimant/Appellant's case. (Judgment at pages 236 -242 of ROA).

Determination

14. The appeal was canvassed by way of written submissions. Both parties filed.



15. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:-
“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”
16. Further in on principles for appeal decisions in *Mbogo V Shah* [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94: “I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a Wrong Conclusion.”

Issues for determination

17. The appellant stated the following as the issues for determination in the appeal:-
 - (i) Whether the Honourable Magistrate erred in Law and fact by holding the Appellant liable for the patient’s escape without cogent admissible evidence.
 - (ii) Whether the Honourable Magistrate erred in Law and fact by relying upon Hearsay Evidence of CCTV electronic footage which was not adduced in evidence under Section 106A and 106B of the *Evidence Act*.
 - (iii) Whether the Honourable Magistrate erred in Law and fact by relying upon Hearsay Evidence without the Nurse’s and/or Mr. Moses Omuterema’s testimony.
 - (iv) Whether the Honourable Magistrate erred in law and fact by falling to hold that the Appellant was wrongfully and unfairly dismissed contrary to Sections 45 and 49(1) of the *Employment Act*.
 - (v) Whether the Honourable Magistrate erred in law and fact by demining the Appellant’s prayer for remedies under section 49(1) of the *Employment Act*.
18. The Respondent addressed the same issues as the appellant.
19. The court then concluded that the issues before it on appeal were :-
 - a. Whether the reason for termination was fair
 - b. Whether there was procedural fairness in the termination
 - c. Whether the claimant was entitled to reliefs sought



Whether the reason for termination was fair

Appellant's submissions

20. In Republic v Mark Mungatha And Another (2020) e KLR In which Kinyati V Republic [1984] e KLR was cited, the rule against hearsay evidence was defined as follows: - (see page 98, 108, 109, 110, for the cited Judicial Authority). "Hearsay or indirect evidence is the assertion of a person other than the witness who is testifying, offered as evidence of the truth of that asserted rather than as evidence of the fact that the assertion was made. The Rule against Hearsay is that a statement other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact stated. Archbold Criminal Pleading Evidence & Practice 40th Edition Page 809 paragraph 1282.....It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement." The averments or statements made by the Nurse and/or Moses Omuterema/The Supervisor were hearsay and inadmissible in so far as the Respondent failed to establish the reasons for failing to procure the said witnesses' attendance to permit the Court to rely upon their statements according to Sections 35(2) of the *Evidence Act*.
21. The Respondent further relied upon the Investigation Report compiled by Mr. Patrick Munagakuo (RW1) which extensively cited a CCTV footage that showed the patient escape from the Hospital while the Appellant was not at his station such CCTV evidence was not adduced neither was the person in control thereof called as a witness nor a certificate of its authenticity adduced pursuant to Sections 106A and 106B of the *Evidence Act*.

Respondent's submissions

22. The respondent addressed the grounds of appeal as set out in the Memorandum of Appeal dated 20th November, 2024 (page 1-2 of the Record).
 - (a) The magistrate erred in law and in fact by holding the appellant liable for the escape of a patient at Nairobi Hospital on 12th April, 2018 without cogent admissible evidence. The following facts were not disputed at the trial;
 - (i) The appellant was assigned at the MCF ward of Nairobi Hospital to keep an eye on a stubborn patient who was threatening to escape;
 - (ii) The appellant was shown the patient and assigned to a location at the balcony door in the patient's room, which was about 2 meters from the patient's bed;
 - (iii) The appellant moved away from the assigned post, but failed to report to his supervisor that he had been asked to move; and
 - (iv) The patient escaped.
23. The appellant does not identify what cogent admissible evidence was required and how based on the matters set out above, he was not culpable of negligent performance of duty. This was compounded by the fact that the appellant first attributed his failure to immediately alert his supervisor to the fact that it was only for twenty minutes and later challenged the position and claimed that his phone was faulty. Based on the evidence and the appellant's own admission (page 63 to 64 of the Record), It is clear that the appellant was liable for the patient's escape.
 - (b) The Magistrate erred in law and in fact by relying upon Hearsay evidence CCTV electronic footage which was not adduced in evidence .



24. The appellant contended that the statements made by the nurse and the instructions issued by the appellant's supervisor were hearsay and inadmissible, and further contends that the CCTV was not produced in evidence. In response to these appellant's assertions, the respondent submitted that the matter on hearsay evidence was raised by the appellant and properly canvassed before the trial court. The respondent through DW1 produced the statement by the appellant's supervisor, Moses Omuterema. DW1 testified that Mr. Omuterema was not called as a witness because he had left the respondent's employment and could not be reached to testify (see page 65 to 66 of the Record). The respondent also made submissions on the issue (see page 157-158 at paragraph 21-25 of the Record). The respondent reiterates these submissions herein. The learned magistrate considered these facts and the reasons advanced by the respondent for dismissing the appellant including the fact that the appellant had admitted that he was assigned duties which he failed to perform leading to a patient escaping from the hospital (see page 240 of the Record). In considering the issue on the evidence, the learned Magistrate stated that;

'The claimant alleges that the reasons advanced were not satisfactory, the supervisor who allegedly made the report and or issued the instruction was not called to testify and what exact orders or directions had been given...I have considered the reasons advanced and even the claimant himself has admitted that he was assigned those duties and failed to perform. The patient escaped'.

25. The appellant challenged the finding of the learned Magistrate on the basis that the respondent relied on an Investigation Report compiled by a Mr. "Patrick Munagakuo" (sic) which extensively cited a CCTV footage that showed the patient escape when the appellant was not at his station. He also stated that the person in control of the footage was not called as a witness, nor was a certificate of the authenticity of the CCTV footage produced. In response the respondent stated that the appellant having confirmed that the CCTV footage was not produced in evidence, the issue of a certificate of authenticity does not arise and the appellant's submissions in this respect are superfluous.

26. The respondent produced an investigation report prepared by Peter Gakuu DW1 (Page 67 to 68 of the Record). The investigation report records the information provided by the appellant's Site Manager Mr Omutelema. DW1 was notified of the patient's escape and upon arrival at the hospital, viewed the footage, which showed the patient exiting through the main reception (Page 66 of the Record). Following conclusion of the investigations, DW1 summarized what the site manager had informed him. The assertion that the investigation report extensively cited the CCTV footage is incorrect as DW1 only made one note of it in his report (see page 68 of the Record). DW1's comments on the CCTV footage came up during cross examination, where he confirmed that he had also viewed the CCTV footage, and that he saw the patient leave through the main door and that the claimant was not where he was assigned. DW1 confirmed during cross-examination that the Site Manager was retired hence his absence during the proceedings (see page 231 of the Record). Given that his attendance could not be procured due to his retirement, the statement he recorded falls within the exceptions to the admissibility of his statement under section 33 (b) of the Evidence Act as the statement was recorded in the course of his professional duty.

27. Given that the appellant himself admitted that the patient had escaped, what difference would the production of a CCTV footage (not belonging to the respondent) have made? Reference to the CCTV footage was as contained in an investigations report and was not the basis for establishing the fact that the appellant had failed to discharge his duties. This was established by the singular fact that the patient he was to guard had escaped.



28. The appellant did not raise any objection to the production of the investigations report which made reference to the CCTV footage, nor did he seek its production. Being in the hands of the hospital, he could have summoned a witness to produce it if it was necessary for his defence.
- (c) That the honourable Magistrate erred in law and fact by failing to hold that the appellant was wrongfully and unfairly dismissed contrary to Section 49(1) of the *Employment Act*.
 - (d) That the honourable Magistrate erred in law and fact by dismissing the appellant's prayer.
29. On the above grounds the Respondent submitted that the law provides that a party is precluded from raising new issues on appeal which had not been raised before the lower court. The Court of Appeal in *Kenya Hotels Limited vs. Oriental Commercial Bank Limited* [2019] eKLR stated that: "Where the applicant seeks to introduce an entirely new point, there are well known structures that seek to ensure firstly, that an appellate court does not, in disguise, metamorphose into a trial court and make first-instance determinations without the benefit of the input of the court from which the appeal arises... Due to these fundamental concerns, the Courts have developed fairly elaborate principles that guide it in determining whether or not to allow a new point on appeal. In *Openda v. Ahn*, (ca 42/1981) this Court identified some of the principles to include that all grounds of appeal must arise from issues that were sufficiently pleaded, canvassed, raised or succinctly made issues at the trial; that the point sought to be introduced must be consistent with the applicant's case as conducted in the trial court, not changing it into a totally different case; the matter must have been properly pleaded and the facts in support of the new point must have come out in the trial court; a new point which has not been pleaded or canvassed in the trial court should not be allowed to be taken on appeal, unless the evidence establishes beyond reasonable doubt that the facts before the trial court, if fully investigated, would support the point."
30. The appellant's main challenge on the evidence produced by the respondent in the trial court was first set out in the appellant's submissions and was limited to the fact that the respondent could not prove:-
- a. The nature and extent of instructions and directions issued to the appellant by his supervisor at the Nairobi Hospital on the material day; and
 - b. The willful or negligent failure, neglect and/or refusal by the claimant to execute the said instructions and/or directions.
31. Given that the evidence alleged to be hearsay has been corroborated by the appellant, it is clear that presenting the CCTV footage was immaterial to these proceedings. In the claim before the trial court, the appellant challenged the fairness/unlawfulness of his termination on the fact that the respondent failed to follow the procedure outlined under section 41 and 45 of the *Employment Act*; wrongfully constituting the disciplinary committee; failing to consider the appellant's representations; and failing to pay the appellant his legal dues. The respondent addressed these issues in their submissions dated 30th March 2021 at pages 156 to 160 of the Record and submits further as set out below. By abandoning his assigned post, the appellant exposed the respondent to loss as the respondent was exposed to the risk of losing its contract with its customer. The appellant was negligent in the performance of his duties and fundamentally breached his contract of employment, which conduct could not be tolerated in the respondent's business operations. See *Robert Kenga & another v Ocean Sports Resort* [2015] eKLR

Decision

32. The appellant pleaded that he was dismissed on allegations of gross misconduct by failing to follow lawful instructions given to him in an incident at the claimant's work station (Nairobi Hospital) on



12th April 2018. The letter of dismissal by the Respondent was dated 23rd April 2018 and stated the reasons for dismissal and is re-produced follows:- "G4S Kenya Limited

Witu Road, off Lusaka Road. P.O. Box 30242, G.P.O. Nairobi 00100

Tel: +254-20-6982000/2999

Fax: +254-20-532380.531719, 69822

Mobile: 0732172000, 0711042000

Email: info@ke.g4s.com www.g4s.co

23rd April 2018

Joshua Ware

Pers. 35451 City Valley Road

Dear Joshua,

Re: Summary Dismissal

We make reference to the disciplinary hearing held at Head office on 19th April 2018. It was established that while assigned duties at Nairobi Hospital on 12th April 2018, you failed to remain to the assigned post and keep vigil to a patient who had shown signs of disappearing from the hospital bed without clearing a medical bill of Ksh 728,092/= as instructed by your in charge.

Failing to take lawful instructions and/or follow them through as given is an act of gross misconduct.

You are therefore dismissed from company service with effect from the date of this letter as per section 44 of the *Employment Act* 2007.

You are required to hand in all the company property in your possession to enable us process your final dues.

Your terminal dues will be paid as follows:-

- a) Days worked if any up to 23rd April 2018
- b) Days worked plus overtime if any up to 23rd April 2018
- c) Leave earned but not taken up to 23rd April 2018
- d) House Allowance for days worked

From this payment, the company shall deduct statutory deductions, any loans owed to the company, cost of lost company property in your possession if any and customer claims.

Yours Sincerely,

Agneta Wario Tangai Hr Business Partner – MSS” (Page 16 of ROA). Prior to the dismissal, this Court found that the appellant had been issued with a suspension letter on the same incident (page 18), investigations were done and disciplinary proceedings conducted (pages 59-71 of ROA).

33. The test of validity of grounds of termination is as stated in section 43 of the *Employment Act* to wit:-



‘43. Proof of reason for termination

- (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.”

34. At examination in chief the appellant stated that he was outside of the main entrance of the ward where the patient to be guarded was. He stated that he was told by the nurse the patient had escaped. That the patient did not escape from the balcony. During cross-examination the claimant said he did what he was assigned to do at Nairobi Hospital being to watch a patient who wanted to escape. He said that he did what he was told to do by the nurse. He confirmed that he had been assigned to the balcony. During re-exam the claimant told the court that he was at the ward and had been told to guard the entrance and balcony. At exam in chief of DW1 (customer service manager in charge of open City Center and Valley Road) confirmed that the claimant was assigned to stand at the door and balcony . During cross-examination, DW1 stated that what he testified he was told by the people on site what happened and that the commander who was in charge had retired. DW1 stated that he reviewed CCTV footage and the claimant was not where he was assigned. On re-examination, DW1 told the court that the claimant was assigned at the balcony of the room. DW2 was the HR persons and testified on the procedural process of dismissal. The trial court held:- ‘ I have considered the reasons advanced and even the claimant himself has admitted that he was assigned those duties and failed to perform. The patient escaped. In considering the issue of whether the action amounted to misconduct. I am grounded by the respondent’s authority of Robert Kenya & Another vs Ocean Sports Resort [2015] eKLR, when the court stated that it is upon their employer to make a decision on whether the actions amounted to gross misconduct. In my view, the claimant was assigned to guard a particular patient at MCF ward who had shown signs of escapement. The patient escaped. At the time of escape, it is confirmed that the claimant was not at the station at the time the patient escaped. Even if there was insurer he had failed to discharge the duties as assigned. I find that the respondent was not at fault in reaching the decision so that the actions amounted to gross misconduct.’ The court having re-evaluated the evidence found that the CCTV referred was of Nairobi Hospital. If the claimant wanted to rely on it he should have sought the same even with the help of the trial court though issuance of summons. The court found the finding by the trial court was consistent with the evidence before the trial court. The claimant admitted not to have been at the assigned place alleging to have got other instructions from the nurse yet his boss had given specific instructions. The allegation about the nurse was not corroborated and most important she was not his boss. Fact is the appellant failed in his duty as the patient escaped for lack of diligence and adherence to lawful instruction. Applying the decision in Mbogo V Shah [1968] EA Page 93 De Lestang V.P (As He Then Was) observation at Page 94: “i think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.” I find no basis to interfere with the decision of the trial court.



Whether there was procedural fairness in the termination

The appellant's submissions

35. Sections 45(2) of the *Employment Act* stipulates conditions required of an employer to comply with for a fair termination. Sections 45(1) and 45(2) of the Act provides as follows:

‘5(1) No employer shall terminate the employment of an employee unfairly.

45(2) A termination of employment by an employer fails to prove

(a) That the reason for the termination is valid:

(b) That the reason for the termination is a fair reason-

(1) Related to the employee's conduct, capacity or compatibility, or

(ii) Based on the operational requirements of the employer, and

(c) That the employment was terminated in accordance with fair procedure.”

Section 45(4) provides that-

"A termination of employment shall be unfair for the purposes of this Part where-

(a) The termination is for one of the reasons specified in Section 46; or

(b) It is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee."

36. In *David Gichana Omuya Vs Mombasa Maize Millers Ltd* [2014] e KLR Justice Stephen Radido held that:-

“The ordinary worker in Kenya now has security of tenure and cannot be dismissed at will. The employer must justify the grounds and prove the reasons and that the reasons are valid and fair and in accordance with justice and equity or the employer risks paying appropriate and just compensation or even facing an order of reinstatement.” (pages 112 to 119 of the Record of Appeal) In *Mombasa Cause No. 110 of 2013 Alphonse Sulpice Mzenge Vs Mombasa Air Safari Ltd*, held that-

"prior to the *Employment Act*, 2007 an employer could dismiss an employee for a bad reason or no reason at all, provided it was on notice. That has now changed. Sections 45 of the *Employment Act* has made serious inroads in regards to dismissals. An employer is under an obligation to prove the existence of good and valid reasons for dismissal even if he give notice." (page 117 of the Record of Appeal)

Respondent's submissions

37. The appellant's main claim before the lower court was that the disciplinary committee was wrongfully constituted and that the panel failed to consider his representations. The appellant did not present any particulars either in his pleadings or during the hearing as to why the panel was not properly constituted.

38. On 16th April 2018, the appellant was issued with a notice inviting him for a disciplinary hearing to be held on 19th April 2018. The notice informed the appellant of the charges against him, the date



of the disciplinary hearing and that he was entitled to have a shop floor representative present at the hearing. (see page 61 to 62 of the Record).

39. The disciplinary hearing was held on 19th April 2018 as scheduled. The appellant attended the hearing and was accompanied by a shop steward. Both the appellant and his representative were given an opportunity to make their representations. (see page 69 to 71 of the Record).
40. The appellant's claims before the trial court that he was denied an opportunity to defend himself as alleged during cross examination were incorrect as confirmed by the trial court given that the minutes of the disciplinary hearing which were signed by the appellant confirmed that the appellant actively participated in the proceedings (see page 69 to 70 of the Record).
41. Based on the evidence provided, the panel was satisfied that the grounds for dismissal had been established and also considered that the appellant did not have evidence to disprove allegations raised against him, the panel recommended that the appellant be summarily dismissed (see page 70 of the Record). The appellant was subsequently issued with the dismissal letter (see page 16 of the Record).
42. The respondent demonstrated that it had a fair and valid reason to dismiss the appellant. The appellant does not outline the errors that he contends the Magistrate fell into. There was no basis to hold that the termination was wrongful and the Magistrate arrived at the correct finding.

Decision.

43. During examination in chief, the claimant denied having been on disciplinary. At cross-examination in chief, the appellant admitted to having been to disciplinary but stated he was not allowed to talk. DW2 was the Human Resources Officer who took him through the process and testified she recorded his responses and was in the panel that made the decision. As stated earlier the minutes were produced. On the process the trial court observed:- "Turning to whether the procedure followed was lawful.

Both parties agreed before this court that a suspension letter was issued, stating the reasons, it is also not disputed that a disciplinary meeting was held, the claimant was present and even a uni-steward was present. A decision was reached to dismiss him. In my view the due process was followed in reaching the decision. Section 4b(sic) of the *Employment Act* states the process upon which a summary dismissal can be undertaken. In this case it is my finding that the respondents complied with all the substantive and procedural aspect if the termination" Having re-evaluated the evidence before the trial court I find no basis to disturb the finding of the Hon Magistrate. (Mbogo v Shah -supra) The claimant was issued with a suspension letter , investigations were done, the investigation report was produced before the trial court without any objection. The disciplinary proceedings minutes were also produced and the dismissal letter. I was satisfied of the compliance with the provisions of section 41 of the *Employment Act* by the employer/ respondent. I uphold the decision of the trial court.

Whether the claimant was entitled to relief sought

44. The Appellant filed a claim against the Respondent vide a memorandum of claim dated 3rd August 2020 seeking the following orders:-
 - a. A declaration that the termination of the Claimant's employment was unfair, unlawful and in breach of Section 41 of the *Employment Act*.
 - b. An award of Kshs. 179,000/- on account of terminal dues owed to the Claimant.
 - c. Damages for unlawful termination of employment to the tune of Kshs. 312,000/- representing 12 months' salary.



- d. Costs of the suit and interest thereof.
 - e. Any other or further relief as this Honourable Court may deem fit and just.
45. The trial court held that the unpaid salary and leave had been computed. That service pay was not due as the claimant was under NSSF. The termination was fair, hence no issue of notice or compensation. The appellant challenged the decision of his dues having been paid to the SACCO by the respondent. He did not dispute had had debts with the SACCO. In the upshot I find no basis to interfere with the decision the trial court (Mbogo v Shah).
46. In conclusion, the appeal is held to be without merit and is dismissed. To temper mercy with justice, I make no order as to costs in the appeal. The file is marked as closed.
47. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF MAY 2025.

**J.W. KELI,
JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Appellant: Jaoko

Respondent: Mwendwa.

Court Order

The appellant has right of appeal

23rd May 2025

