



**Obondo v Izwe Loans Limited (Cause E901 of 2021)
[2025] KEELRC 1487 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1487 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E901 OF 2021**

**CN BAARI, J
MAY 22, 2025**

BETWEEN

JARED ODHIAMBO OBONDO CLAIMANT

AND

IZWE LOANS LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant's Memorandum of Claim is dated 10th September, 2021 and filed on 3rd November, 2021. He seeks the following reliefs: -
 - a. A declaration that he was unfairly dismissed
 - b. Reinstatement without loss of benefits
 - c. 12 months' salary as compensation for wrongful dismissal amounting to Kshs. 2,121,816.
 - d. Interests
 - e. Costs of the suit.
2. The Respondent filed a Memorandum of Reply to the claim dated 16th December, 2022, and filed in court on even dated, admitting that the Claimant was its employee, but denying that he was unfairly dismissed, and instead, avers that there existed justifiable reasons and sufficient grounds for his dismissal.
3. The Claimant's case was heard on 1st October, 2024, when the Claimant testified in support of his case, adopted his witness statement and produced his documents as exhibits in the matter. The Respondent's case was subsequently heard on 31st October, 2024. It presented the evidence of Mary



Komu who adopted her witness statement and produced the Respondent's documents as exhibits in support of its case.

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

The Claimant's Case

5. The Claimant's case is that he was employed by the Respondent on 1st November, 2015 as Branch Sales Manager at a monthly salary of Kshs. 75,000. He avers that he was promoted to the position of Area Manager on 30th October 2018, which is the position he held at the time of termination.
6. He states that until termination of his employment contract, he was a diligent and hard-working employee who discharged his duties with utmost dedication and commitment. He states further, that in the course of his employment, his performance was found to be outstanding, and in many occasions exceeded expectations.
7. It is the Claimant's case that his exceptional performance is clearly demonstrated by the performance appraisal results which are phenomenally outstanding. He states that according to a performance appraisal conducted in the year 2020, he was found to be the best Area Manager, and was presented with a Certificate to that effect.
8. The Claimant states that on 29th April 2021, he was issued with a Notice to Show Cause letter which stated that his conduct had been found to be in contravention of the Company Policies and Procedures. That the Notice to Show Cause specifically itemized the allegations against him, including requesting for allowances to cater for travel expenses so as to conduct marketing activations, ISEs recruitment and training, but failed to make the said trips, and instead, fraudulently retaining the allowances for his own benefit and not carrying out the required marketing activations, ISEs recruitment and training.
9. The Claimant avers that he was further accused of asking for money from the Managing Director, one Jeff Ngeta, amounting to Kshs.21,000, as allowance in order to carry out marketing activations, ISEs recruitment and training in Njoro, Rongai, Kambiya Moto, Molo and Kuresoi North between 5th and 9th April 2021, but that his vehicle was on the material dates spotted via the car tracking system at Club Road in Nakuru county in the morning hours, and at Lunga Road in Nakuru county in the evening hours.
10. It is his case that the notice to show cause letter indicated that he had contravened the employment contract as well as the Respondent's Human Resource Manual. He states that the disciplinary hearing was held on 17th May 2021, and that on 31st May 2021, the disciplinary panel gave its verdict, dismissing him from the service of the Respondent.
11. The Claimant states that on 2nd June 2021, he appealed against the verdict of the disciplinary panel, and that on 10th June 2021, the appeal was dismissed via an e-mail without giving reasons for the dismissal.
12. The Claimant avers that at no time did he ask or request for allowance(s) from the Respondent to cater for his personal or private expenses nor benefit from allowances from the Respondent which he did not deserve. Her avers further, that at no time did he abscond duty or fail to perform duties assigned to him by the Respondent's management or at all.
13. It is his case that the hearing of his appeal contravened the rules of natural justice to the extent that some of the members of the disciplinary panel also sat in determining the appeal, thereby sitting on their own cause. He states that the tracking report which was the main evidence used against him was not made available to him.



14. On cross-exam, the Claimant faulted the disciplinary process on the basis that a member of the disciplinary committee is the same one who handed him the verdict of his appeal. He further argued that there was no human resources personnel at the disciplinary hearing.
15. The Claimant further confirmed that there were days when he did not manage to go out for marketing even when he had been facilitated. He avers that the Respondent was made aware when he did not go out, but did not have such communication before court.
16. The Claimant confirmed on cross exam, that under his appeal, he sought forgiveness and leniency for mistakes done.
17. It is the Claimant's prayer that the Court awards him the reliefs listed in his claim.

The Respondent's Case

18. It is the Respondent's case that it employed the Claimant in the position of Branch Sales Manager through an employment contract of 1st November, 2015 wherein, it agreed to pay the Claimant a monthly gross salary of Kshs 75,000.
19. It states that sometime in April 2021, the Claimant, on several occasions, requested the Respondent for allowances to cater for his various expenses in conducting marketing activations, ISE recruitment and trainings in various parts of the country. It states that in particular, the Claimant requested it for Kshs, 21,000 as allowance to carry out marketing activations, ISE recruitment and training in Njoro, Rongai, Kambi ya Moto and Kuresoi North between the dates of 5th April to 9th April 2021.
20. The Respondent states that despite having received the allowances, the Claimant did not conduct the activities noted above because on the material dates, the Company's car tracking system showed that the Claimant's vehicle was stationed at Club Road in Nakuru County in the morning hours, and at Lunga Road in Nakuru County in the evening hours.
21. The Respondent further states that the Claimant also requested for Kshs. 16,000 from the Respondent as allowance to carry out inter alia marketing activations in Bahati, Subukia, Gilgil, Kikopey and Naivasha between the dates of 12th April and 16th April 2021, but that despite having received the allowance as requested, the Claimant did not apply the allowance towards the reasons for which it was requested.
22. It states that in view of the aforesaid acts of misconduct which breached several clauses of the Claimant's employment contract, it issued the Claimant a notice to show cause dated 29th April 2021 requesting him to show cause and respond in writing by 6th May 2021, why disciplinary action should not be taken against him for failing to make the said trips and conducting the required marketing activations.
23. The Respondent avers that the Claimant responded to the Show Cause Letter through his letter dated 3rd May 2021, admitting inter alia that whereas he was financially facilitated by the Respondent to carry daily sales and marketing duties in the specified areas, and on specific dates, there were days he did not carry out the said duties as facilitated. It avers further, that the Claimant did not, in his response dated 3rd May 2021, provide any evidence confirming that he attended the scheduled trips, and that he did not retain the allowances advanced to him for his personal gain.
24. The Respondent states that it notified the Claimant of the finding of the disciplinary committee by way of a letter dated 31st May 2021 and dismissed the Claimant for reasons of gross misconduct and violation of his employment contract. That the Respondent also informed the Claimant of his right to



appeal the decision of the disciplinary committee as provided in the Respondent's Human Resource Policy.

25. It is the Respondent's case that it is not true that the Claimant's rights under *the Constitution* of Kenya were infringed upon by denying him the main evidence to the disciplinary hearing, and avers further that the Claimant was not only given ample time to prepare his defence ahead of the disciplinary hearing, but was also advised to consult the Respondent in the event of any query or problem, yet at no point prior to the disciplinary hearing did the Claimant request for the tracking report.
26. On cross-exam, RW1 told court that the car tracking system was not before Court and that the Claimant had not asked for it. She further confirmed that the Claimant's working hours were between 8a.m and 5pm.
27. RW1 further told Court that although the Claimant was not represented at the disciplinary hearing, he was informed vide the notice to show cause to attend with a representative but which he did not.
28. She clarified on re-exam, that one Sarah Teko did not sit in the appeal, but that she only sent an email to the Claimant notifying him of the verdict of his appeal. She told court that the Respondent's Managing Director and joint MD sat in the appeal panel and they did not sit in the disciplinary hearing.
29. It is the Respondent's prayer that the Claimant's claim herein, be dismissed with costs.

Analysis and Determination

30. I have carefully considered the pleadings, the witnesses' oral testimonies and the rival submissions. The issues for determination are:-
 - i. Whether the Claimant was unfairly dismissed
 - ii. Whether the Claimant is entitled to the reliefs sought

Whether the Claimant was unfairly dismissed

31. The Claimant contends that he was unfairly dismissed on the premise that the hearing of his appeal contravened the rules of natural justice on the basis that some of the members of the disciplinary panel also sat in determining the appeal, thereby sitting on appeal in their own decision. He further asserts that the tracking report which was the main evidence used against him was not made available to him and that he ought to have been issued with a warning letter and not dismissed.
32. On its part, the Respondent argued that the Claimant contravened the employment contract between himself and the Respondent, as well as the Respondent's Human Resource Policy and Procedure Manual. The Respondent further states that its investigation revealed that the Claimant, despite being facilitated to conduct training, did not proceed as agreed, thus, breaching the provisions of his employment contract and the human resource manual.
33. A dismissal is considered fair and lawful, when an employer adheres to Sections 41, 43, 45 and 47(5) of the Employment, 2007 in effecting the dismissal. Section 41 states thus: -
 - “(1) subject to section 42(1), an employer shall, before terminating the employment of an employee, on 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.”

34. The question then, is whether for starters, the Respondent met the tenets of fair procedure espoused under Section 41 above. The Court of Appeal in *Postal Corporation of Kenya vs Andrew K.B. Tanui* (2019) eKLR explained Section 41 by setting out what has come to be recognized as the minimum standards of a fair hearing, in the following words: -

“Four elements must thus be discernible for the procedure to pass muster: -

- i. an explanation of the grounds of termination in a language understood by the employee;
- ii. the reason for which the employer is considering termination;
- iii. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- iv. hearing and considering any representations made by the employee and the person chosen by the employee.”

35. The Claimant was issued with a show cause letter dated 29th April, 2021, spelling out a total of four (4) charges against him, all related to requesting for travel allowances to cater for marketing of the Respondent’s products, which the Court was told, he did not travel but instead, used the money for his own benefit. The letter further goes on to state the clauses of the employment contract and the Human Resources Manual that the Claimant had breached.

36. In a letter dated 3rd May, 2021, the Claimant responded to the charges levelled against him explaining what transpired on the subject dates. It is also evident from the court record that the Claimant was invited to attend the disciplinary hearing vide the Respondent’s letter of 13th May, 2021, which letter notified him of the date and venue of the hearing. The letter further informed the Claimant of his right to have representative present, the right to cross-examine witnesses, challenge the evidence presented by the Respondent as well as an opportunity to present his own evidence including calling witnesses.

37. On dismissal, the Claimant was again informed of his right of appeal, which he exercised and the decision communicated to him.

38. From the foregone chronology of events, there is no doubt in my mind that the Respondent accorded the Claimant fair process in accordance with Section 41 of the *Employment Act*. In the case of *Philip Kimosop v Kingdom Bank Limited* (2022) eKLR, the Court held that the Respondent’s action of serving a show cause letter to the Claimant, inviting the Claimant to an oral hearing, giving the Claimant the right to call witnesses, produce documents and also be represented by another employee at the hearing, constituted fair procedure. The Court emphasized that all these steps taken by the Respondent prior to terminating the Claimant’s employment qualified as following due procedure as contemplated by Section 41 of the *Employment Act*.

39. I in the circumstances, find and hold that the Claimant’s dismissal is procedurally fair.

40. The second limb in determining a fair dismissal, is the question of substantive fairness for the dismissal. Section 45 of the *Employment Act*, provides that: -

- (2) a termination of employment by an employer is unfair if the employer fails to prove-
 - a. the reason for termination is valid:



- b. that the reason for the termination is a fair reason (i) related to the employees 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:
41. The Respondent's position is that sometime in April 2021, the Claimant, on several occasions, requested for allowances to cater for his various expenses in conducting marketing activations, ISE recruitment and trainings in various parts of the country, but despite being facilitated, he did not conduct the activities and that on the material dates, the Company's car tracking system showed that the Claimant's vehicle was stationed at Club Road in Nakuru County in the morning hours, and at Lunga Lunga Road in Nakuru County in the evening hours.
 42. The Respondent further asserts that the Claimant in his response to the Show Cause Letter through his letter dated 3rd May 2021, admitted that though he was financially facilitated by the Respondent to conduct daily sales and marketing duties in specified areas, and on specific dates, there were days he did not carry out the said duties as facilitated. It avers further, that the Claimant did not, in his response dated 3rd May 2021, provide any evidence confirming that he attended the scheduled trips, and that he did not retain the allowances advanced to him for his personal gain.
 43. In rebuttal, the Claimant told court that at no time did he ask or request for allowance(s) from the Respondent to cater for his personal or private expenses nor benefit from allowances from the Respondent which he did not deserve. He avers further, that at no time did he abscond duty or fail to perform duties assigned to him by the Respondent's management or at all.
 44. The Court notes that during cross-examination, the Claimant confirmed that there were days when he did not manage to go out for marketing even when he had been facilitated, and that the Respondent was made aware when he did not go out, but he did not have such communication before court. The Claimant further told this Court that under his appeal, he sought forgiveness and leniency for mistakes done.
 45. The Court of Appeal in the case of Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR held: -
 - “..... The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions.”
 46. The Claimant's admission that he failed to travel for marketing after being facilitated by the Respondent, and in the absence of any communication notifying the Respondent of his reasons for not travelling, goes to show that the Respondent had fair reasons to dismiss the Claimant. Further, going by the Claimant's response to the show cause letter, it is evident that he spend the Respondent's money on activities other than those for which the money was advanced to him.
 47. I thus hold that the Respondent had valid, fair and justified grounds to dismiss the Claimant. The Claimant's dismissal is thus held both procedurally and substantively fair.

Whether the Claimant is entitled to the reliefs sought

48. The Claimant sought a declaration that his dismissal was unfair, reinstatement without loss of benefits, 12 months salary as compensation for the unfair dismissal, costs and interests thereon.



49. The reliefs sought herein, would only hold if the dismissal was found to be unfair. With the finding that the Claimant was fairly dismissed, all the prayers herein must fail, and are all dismissed.
50. In the final analysis, the Claimant's suit is dismissed in its entirety with costs to the Respondent.
51. Judgment of the Court.

**DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
22ND DAY OF MAY, 2025.**

C. N. BAARI

JUDGE

Appearance:

Mr. Githumbi present for the Claimant

Mr. Kamara present for the Respondent

Ms. Esther S - CA

