



Muriithi v Sabic Kenya Limited (Employment and Labour Relations Cause 921 of 2018) [2025] KEELRC 1434 (KLR) (19 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1434 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 921 OF 2018**

HS WASILWA, J

MAY 19, 2025

BETWEEN

JAMES ANTONY MAINGI MURIITHI CLAIMANT

AND

SABIC KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Statement of Claim dated 8th June 2018 on grounds that he was wrongfully and unfairly terminated. He prays for judgment against the Respondent for: -
 - a. A declaration that the Claimant's employment services with the Respondent were wrongfully and/or unfairly terminated.
 - b. Reinstatement of employment with all accruing benefits under the contract; in the alternative
 - c. General damages
 - d. Entitlement under Section 49 of the *Employment Act* (12 months pay for unfair termination)
 - e. Severance pay for the years worked at the Respondent company
 - f. Costs of this suit
 - g. Interest on (c) to (d) above at court rates; and
 - h. Any further relief that this Court may deem fit and just to grant.

Claimant's Case

2. The Claimant avers that vide an employment contract signed on 2nd December 2013, he was employed by the Respondent as its HR and Finance Senior Administrator.



3. The Claimant avers that the position was permanent and pensionable and save for other reasons, it was terminable upon attaining the age of 60 years.
4. The Claimant avers that on or about January 2016, the Respondent's General Manager was replaced by the current General Manager, Mr. Khalid Alrumaihi, who in wanton abuse of his office would issue the Claimant's juniors contra instructions in order to execute his interests and undermine the Claimant's position.
5. The Claimant avers that he raised protest with the General Manager outlining his disregard and lack of respect of the Claimant's office but his complaints were disregarded.
6. The Claimant avers that in June 2017, in his capacity as Senior Finance Administrator, he informed the Respondent's management that the local staff were being grossly underpaid and there was need to provide housing allowance as per the Kenyan employment laws. This created animosity with the General Manager which became apparent on 19th March 2018 when he was summoned to the General Manager's office and was directed to vacate the Respondent's office without any reasons.
7. The Claimant avers that on 29th March 2018, he was issued with a letter of suspension notifying him the Respondent intended to carry out investigations on his alleged poor performance of duties with a view of undertaking disciplinary measures. Prior to this, he had not been informed of any complaints against him or dissatisfaction with his duties and no written warnings against him as required by the Respondent's Human Resource and Policy Manual ('Employee Handbook').
8. It is the Claimant's case that if the assertion of his poor performance were genuine, it was the General Manager's responsibility as his immediate supervisor to ensure he was put under an Individual Development Plan (IDP) as prescribed under the Employee Handbook.
9. The Claimant avers that vide a letter dated 26th April 2018, the Respondent invited him for a disciplinary hearing scheduled on 7th May 2018 on grounds of poor performance; behaviour that does not reflect the Respondent's values; and performance evaluation.
10. It is the Claimant's case that the panel constituted to hear the disciplinary hearing was not properly constituted and biased. The panel was led by the General Manager's peer thus creating no opportunity for an impartial hearing as the General Manager was his accuser, judge and jury.
11. The Claimant avers that despite providing irrefutable evidence negating the Respondent's allegations, the Respondent terminated his employment vide a letter dated 25th May 2018 on unfounded grounds.
12. The Claimant avers that he was denied an opportunity to appeal the board's decision contrary to the Policy Manual.
13. It is the Claimant's case that the Respondent denied him the benefit of earning a living for the remainder 10 years 7 months as his employment was to be terminated upon attaining 60 years.

Respondent's Case

14. In opposition, the Respondent filed a Memorandum of Defence and Counter Claim dated October 2018.
15. The Respondent avers that the Claimant's duties were set out under Schedule 1 of the Employment Contract and was subsequently increased upon the Claimant's request following an unfavourable performance review in 2016.



16. The Respondent avers that the Claimant's performance review for the years 2015, 2016 and 2017 fell short in aspects such as communication with the team; following up on tasks; monitoring team mates; and seeking feedback in relation to his performance.
17. It is the Respondent's case that the overall rating of the performance review was upon analysis of information input by the employee and his supervisor. During the performance review, discussions are held between the employee and his supervisor on the appraisal and the employee is required to confirm the same even when he does not agree with supervisor's comments.
18. The Respondent avers that the Claimant failed to remedy the issues raised which continued to come up in subsequent appraisals.
19. The Respondent avers that in November 2017, there was discussions and finally a process flow chart was developed to support the Claimant to understand and execute his tasks. Additionally, the Claimant together with the Respondent's Human Resource Manager, Mr. Khalid Alshurayhi engaged the Respondent's staff who made numerous complaints about the Claimant's poor treatment towards them.
20. The Respondent avers that there was improvement in the Claimant's performance and/or behaviour necessitating further discussions on 7th February 2018 and subsequently the Claimant was issued a letter of suspension dated 29th March 2018.
21. It is the Respondent's case that the Employee Handbook provides where an employee's performance has not improved the HR Manager may give his/her recommendation to the Managing Director.
22. The Respondent avers that during the Claimant's suspension, he was paid his full salary.
23. The Respondent avers that on 26th April 2018, it invited the Claimant to attend a disciplinary hearing on 7th May 2018 and provided him with a detailed notice including evidence of the allegations against him. The Claimant was also advised to bring an employee of his choice and on his rights.
24. It is the Respondent's case that the panel that heard the Claimant's case was chaired by Mr. Iyad AlGarawi, its Director, Global Banks & Investment, Corporate Finance, this rank is higher than that of the General Manager. Mr. Iyad was an impartial chairman and there was no bias against the Claimant.
25. The Respondent avers that Mr. Iyad carefully considered the Claimant's defence and found the allegation against him had been substantiated. It further avers that the investigations, suspension and the disciplinary hearing were conducted transparently and in accordance with the Employment Act and its Employment Handbook.
26. The Respondent avers that the Claimant was entitled to appeal the decision to terminate him in accordance with its Employee Handbook which decision the Claimant did not appeal against.
27. The Respondent avers that the Claimant was availed with a certificate of service on 29th August 2018 and paid all the sum entitled to him on 11th October 2018 but he undertook a partial handover of the Respondent's property assigned.

Respondent/Claimant's Counter-claim

28. The Respondent/Claimant in its counter-claim prayed for the following against the Claimant/ Respondent :
 - a. Damages for breach of contract in the sum of Kshs. 3,092,794;



- b. Mandatory injunction compelling the Claimant/Respondent to return all property assigned to him during the period of employment;
 - c. General damages on account of the Claimant/Respondent's negligence;
 - d. In the alternative, indemnification in the sum of Kshs. 3,092,794 for the sum due to KRA, NSSF and NHIF;
 - e. Indemnification for any loss that may arise by virtue of the Claimant/Respondent's failure to return its property;
 - f. Interest on (i) and (iv) above;
 - g. Costs of the suit.
29. The Respondent/Claimant avers that the Claimant/Respondent breached the Employment Contract by: failing to make payments to vendors, agents and partners; making unscheduled and unapproved bonus payments to employees; failing to timeously remit statutory deductions; and being disrespectful to the Respondent/Claimant's employees, agents and subcontractors.
30. The Respondent/Claimant further avers that upon termination, the Claimant/Respondent failed to return its properties, namely: SABIC sim card phone number 0705808375; SAGE Evolution accounting software; Login credentials for (Polycom system, door access system, server access, office printer-Konica Minolta, Telkom Kenya, Total Kenya Ltd, and SAGE); Service contract for Total Kenya Limited; and Fuel card.
31. The Respondent/Claimant avers that Claimant/Respondent negligently conducted his duties by failing to remit withholding tax for various payments; tax deductions for its motor vehicle benefits; made wrong payments to the Respondent/Claimant's agents; capturing incorrect vendor codes under numerous transactions; and capturing various transactions into balance sheets account using incorrect GL codes.
32. The Respondent/Claimant avers that the Claimant/Respondent's actions occasioned it loss and damages as follows: principal tax for motor vehicle benefit due to KRA in the sum of Kshs 2,675,030; penalties and interest for late and unremitted NSSF and NHIF payments of Kshs 84,564 and Kshs, 333,200 respectively.

Response to Counterclaim dated 17th July 2019

33. The Claimant/Respondent avers that he neither collected the company sim card number 0705808375 nor the login credentials for Polycom system and server access from the Respondent/Claimant.
34. The Claimant/Respondent avers that the SAGE Evolution Accounting Software remains in the Respondent's possession and the login credentials were handed over. He further handed over the door access login credentials; fuel card to Total Kenya; and the server room keys which the Respondent duly acknowledged receipt.
35. The Claimant/Respondent avers that the office printers were installed by the Respondent's former CEO and he did not receive any access credentials of the same. In respect to the Telkom Kenya bills, there is no special log ins and the same was not issued to him.
36. The Claimant/Respondent avers that the Respondent's finance accounting policy manual was web based in the Company's intranet and the contracts with Total Kenya were duly filed and returned to the supplier with the deposit.



37. It is the Claimant/Respondent's case that the particulars of negligence alleged by the Respondent are unfounded and malicious as the same occurred in 2017 and were never raised at the appropriate 30-day complaint time period provided under Clause 11.3 of the Employee Handbook.
38. The Claimant/Respondent avers that the motor vehicle benefit tax due to KRA accrued solely due to the Respondent/Claimant's refusal and negligence to factor the same in its PAYE tax. He had severally requested the Respondent/Claimant to factor the motor vehicle benefit in its PAYE so as to make necessary adjustment to his gross pay but the same was disregarded. Further, the Claimant/Respondent was accorded the benefit 2 years after employment thus the tax obligation had not been factored into the agreed contractual salary.
39. The Claimant/Respondent avers that the Respondent/Claimant failed to demonstrate how penalties and interest accrued due to the alleged late payment of NSSF and NHIF deductions.
40. The Claimant/Respondent denied acting in an insubordinate manner towards any of his seniors or been disrespectful to the Respondent/Claimant's employees, agents and subcontractors; the allegations are targeted, unfounded, malicious and made in bad faith.
41. The Claimant/Respondent denies that Respondent/Claimant's claim of late payment and avers the delay to pay Tsusho Capital was not his doing but failure of another staff member to remit the payment vouchers.
42. The Respondent/Claimant's complaint that the Claimant/Respondent ought to have paid the Kempinski/ Brand Extreme to accounts of its choice, however, this information was not communicated to him at the time of payment. Further, these details were only provided to specific sub-contracted staff to his exclusion between 5th and 11th April 2018 when he was suspension. The Claimant/Respondent had paid the vendor through the bank account it had previously provided.

Evidence in Court

43. The Claimant (CW1) adopted his witness statement and consolidated list of document 22nd March 2023 as his evidence in chief and exhibits.
44. CW1 testified that in the 2015 evaluation, he exceeded expectation and it was commented that he completed his targets ahead of schedule. In 2016, he was evaluated by Ali Abdulla who had worked with him for only 3 months from September to December; the evaluation report that he completed the objectives ahead of the targeted time. If he was not performing, he would not have been ahead of schedule.
45. CW1 testified that Mr. Abdulla introduced a new objective being HR targets which he rated the Claimant as failed to meet expectation but he gave no reason. When he questioned him, he did not receive any response.
46. CW1 testified that in 2017, he was evaluated and performed his duties well. The employees were to set their target with their supervisor, however, Abdulla did not do that with him; he used the 2016 parameters and grew them by 100%. When doing midterm reviews for other staff, he asked why he was not evaluated with no response.
47. CW1 testified that in 2017, he grew the Respondent's sales from 1.6 Billion to over 3.5 Billion, there were no complaints but he was not evaluated. He was further commended by the Respondent for tax compliance.



48. CW1 testified that on 18th March 2018, Abdullah called him to his office and asked him to resign to which he declined as he had no reason to. He continued working for the Respondent until Easter; when he reported back from holidays he found a suspension letter from Saudi Arabia with no reason for suspension given.
49. During cross examination, CW1 testified that the evaluation document is online generated and input is generated online.
50. CW1 testified that he had no peers to seek feedback but had people he supervised. The 2016 evaluation noted there were no developmental needs and he felt unchallenged.
51. CW1 testified that he was not familiar with the 2017 evaluation as it was done in September 2018 when he had already left and it was printed when he left. He put his comments in the system which was picked in September.
52. CW1 testified that evaluation which was to be agreed upon before 31st March, the 2017 shows no dates as it was not closed and he never accepted the 2017 appraisal.
53. CW1 testified that in March 2017, he requested a meeting discussing performance as he had not agreed with the 2016 rating. It was not agreed that he needs to improve his communication with vendors. During the meeting, there was a comment on flow chart but it was brought about by him requesting a meeting.
54. CW1 testified that although the suspension letter speaks of poor performance, he had never been accused of poor performance.
55. CW1 testified that he was invited to attend the disciplinary hearing but the Respondent did not send him materials to rely on. He did not ask the Respondent for the annexures as he expected it to table them.
56. CW1 testified that the in respect to the email dated 29th September 2017 which is complaint by one Gladys Ogallo from Virtual HR, the lady apologised vide an email dated 30th November 2017 when the issues raised were found to be a miscommunication.'
57. CW1 testified that he always transferred statutory deductions on time after the 9th of every month.
58. CW1 testified that during the disciplinary hearing he took a witness and he was heard by the committee which was chaired by the Respondent's director.
59. CW1 testified that he never received a motor vehicle from the Respondent but used one of the company vehicles. The motor vehicle benefit was payable by the employer to be deducted from his pay but it was never deducted. Although he was in charge of HR, the back stopped with the company.
60. CW1 testified that the employment contract did not provide for severance pay.
61. The Respondent's witness (RW1) Ahmed Al-Atni testified that he joined the Respondent Company on 1st November 2023 and was working at SABIC Saudi Arabia before that. He adopted his witness statement dated 22nd December 2023 as his evidence in chief and produced his bundle of documents filed together with the Memorandum of Defence as his exhibits 1-17 and the Respondent's supplementary list of documents dated 19th November 2019 as his exhibits 1-12.
62. During cross examination, RW1 testified that he joined the Respondent Company in 2003, therefore, he was not present in person.



63. RW1 testified that the Respondent raised major issues with the Claimant's evaluation based on its values and his performance. employees were expected to share how they meet company values and demonstrate team engagement and commitment.
64. RW1 testified that in 2017, the Claimant communicated that Mr. Khalid refused to meet him to input evaluation.
65. RW1 testified that the Claimant was terminated in May 2018 whereas the evaluation was done in September 2018.
66. RW1 testified that on late payment of NSSF and NHIF, the Claimant was not a signatory to the cheques but his role was only to process the payments. Any payment was attributed to the signatory. The Claimant made payments for February and March 2016 which were processed on 9th of each month.
67. RW1 testified that the Respondent's HR Policy states for disciplinary issues it is not mandatory to give warnings.
68. RW1 testified that the Claimant made payments in good time.
69. The Respondent second witness, Gladys Ogallo (RW2) adopted her witness statement dated 24th October 2018 as her evidence in chief and adopted the Respondent's documents 18-25 as her exhibits G01- G08.
70. During cross-examination, RW2 testified that the Claimant was her contact person at the Respondent company and that he used to remit employee payments late. She cannot remember if he explained the reason for the delay.
71. RW2 testified that she had access to the Respondent's General Manager, Mr. Khalid, and if remittances were done late over a long period of time, they would report to him.
72. RW2 testified that the signature of payments is unknown to her.
73. RW2 testified that their bank was Chase Bank which had issues and monies would be processed through other banks. However, payments by other vendors never came late.
74. RW2 testified that they had earlier complained vide an email dated 29th September 2017 that the Claimant submitted an incorrect calculation, however, they later confirmed that the employee, Chitabwa, had taken an advance salary. They subsequently apologised for the erroneous complaint made.
75. RW2 testified that they have no evidence that KRS penalised them for late payment of withholding tax.
76. RW2 testified that the Claimant did not threaten her husband, Julius Ogallo, but he only approached him asking him to withdraw her complaint and she reported to the General Manager.
77. RW2 testified that the complaints against the Claimant started in 2017; since 2015, there were no complaints against him.

Claimant's Submissions

78. The Claimant submitted on three issues: did the Respondent have valid reasons to base its termination on poor performance; was the proper procedure both under the Respondent's policies and the law followed in terminating the Claimant for alleged poor performance; and is the Claimant entitled to the prayers under the Claim.



79. On the first issue, the Claimant submitted that he was compelled to attend a disciplinary hearing on account of poor performance whereas the Respondent had not set out parameters within which the Claimant would be measured.
80. The Claimant submitted that he demonstrated Mr. Khalid's malice by producing the 2016 evaluation report where it indicated that he was 'ahead of schedule' in all his objectives the previous year earning him the rating of exceeding expectation. However, despite application of the same objective matrix, Mr. Khalid proceeded to rate him as 'failing to meet expectations'.
81. To bridge the gap, the Claimant had on several occasions requested Mr. Khalid to set down his job targets for the year 2017 to ensure he was working towards meeting the Respondent's expectations which the Managing Director declined to meet him. This left on in darkness of the Respondent's expectation.
82. The Claimant submitted that it is well established that for an employer to prove poor performance there must be clearly set out targets within which the employee is measured against as set out in *Peter Kamau Mwaura & another v National Bank of Kenya* [2020] KEELRC 291 (KLR).
83. The Claimant submitted that he was required to defend himself on the allegations of poor performance yet he had not been given an opportunity to set down targets and performance indicators against which he would be adjudged from the year 2017. He relied on the provisions of Section 41 of the *Employment Act* as applied in *Wanjala v Devyani Food Industries (K) Limited* [2024] KEELRC 1238 (KLR) where the Court opined that it is unfair to terminate one's employment based on poor performance where the employer failed to provide clear targets.
84. The Claimant submitted that the Respondent went against the provisions of Section 43(2) of the *Employment Act* that provides that reason given for termination should be matters the Respondent genuinely believed to have existed. However, despite providing irrefutable evidence negating all the Respondent's allegations of poor performance, the Respondent unlawfully proceeded to terminate his employment.
85. On the second issue, the Claimant submitted that the Respondent's HR Manual laid down the procedure to be followed in instances of violations including poor performance under chapter 11 which provides for a notice not exceeding 30 days of an occurrence of a violation; formal discussions with the supervisor to be held, if it fails the supervisor to give a formal grievance statement to the HR Manager to resolution. As the Claimant was the HR Manager, this ought to have been handled by the Managing Director and Country Manager; and the disciplinary procedure would involve the issuance of 3 warning letters prior to the final decision being undertaken.
86. The Claimant further submitted that an Individual Development Plan had been developed for situations such as this to assist any employee address specific behaviours that would assist in improving values and competencies. He was never given an opportunity to implement the sets on the plan prior to the suspension and subsequent termination of his employment on grounds of poor performance.
87. It is the Claimant's submission that the Respondent failed to consider and/or follow laid down procedures prior to the decision to terminate his employment contrary to the provisions of Section 41 of the *Employment Act* and the Respondent's Employee Handbook.
88. On the third issue, the Claimant submitted that the Respondent in the guise of poor performance proceeded to unfairly and unprocedurally terminate his employment to his loss and detriment. He therefore prays the court awards him full damages under Section 49 of the *Employment Act* together with costs and interest accruing.



Respondent's Submissions

89. The Respondent submitted on three issues: whether the Respondent terminated the Claimant's employment on valid grounds; whether the procedure adopted in the Claimant's termination was fair; whether the Claimant is entitled to the reliefs sought in the Statement of Claim; and whether the Claimant in the counterclaim is entitled to the reliefs sought in the Counter Claim.
90. On the first issue, the Respondent submitted that the Claimant confirmed during the hearing that he received a letter dated 29th March 2018 which was signed by his supervisor. The letter communicated the Respondent's intention to terminate his employment citing poor performance and it further notified the Claimant of his immediate suspension pending scheduling of a formal hearing. He was later invited to attend a disciplinary hearing on 7th May 2018 and the hearing notice cited 16 charges against the Claimant and attached corresponding evidence supporting each charge.
91. The Respondent submitted that the Claimant acknowledged the NHIF and NSSF deductions late payments but asserted these delays are not attributable to him. However, the evidence unequivocally demonstrates that the Claimant consistently initiated the payment process late, often doing so only shortly before the payment deadline; this conduct directly contributed to the delays.
92. The Respondent strongly denies the Claimant's assertion that no performance indicators or targets were established to assess his performance. It is his submission that one recurring and clearly defined performance objective in the Claimant's performance appraisal forms was the imperative to ensure full legal, tax and regulatory compliance.
93. It is Respondent's submission that it had valid grounds for commencing disciplinary proceedings against the Claimant in accordance with the provisions of Section 43 of the *Employment Act*, which it followed.
94. On procedural fairness, the Respondent submitted that the Claimant acknowledged that the disciplinary process leading to his termination was observed by the Respondent.
95. The Respondent submitted that the Claimant's assertion that the chairperson of the disciplinary panel was junior in rank to his supervisor, who was also his accuser, is baseless. The disciplinary panel was chaired by Mr. Iyad Al Garawi, the Respondent's Director, Global Banks & Investments, Corporate Finance; a rank clearly higher than that of Mr. Al-Rumaihi, the Claimant's supervisor.
96. The Respondent submitted that the Claimant resigned without following due process which would have entailed issuance of one month's notice or payment of Kshs. 155,356 being payment in lieu of notice.
97. On the second issue, the Claimant/Respondent submitted that the Claimant's termination was substantively justified and procedurally fair in compliance with the *Employment Act* and Respondent's HR Manual, therefore, there is no basis for the court to grant the prayers sought.
98. On the third issue, the Claimant/Respondent submitted that the Respondent/Claimant acknowledged that he was provided a company car which he was obligated to pay tax but failed to do so. As the Head of Finance and Human Resource Administrator, it was the responsibility of the Respondent in the Counterclaim to ensure the timely and proper payment of all taxes and statutory deductions.
99. I have examined all the evidence and submissions of the parties herein. The Claimant herein was terminated by the Respondent for reason of poor performance. The Claimant has averred that he was always rated as performing well and the allegation of poor performance was not true.



100. He averred that allegation of a complaint by one Gladys Ogallo was also not true as the lady apologised vide an email of 30th November 2017 when the issues raised were found to be a miscommunication.
101. The Respondent witnesses testified on the issue of the Claimant's performance being Respondent witness 1 testified that in 2017, the Claimant communicated that Mr. Khalid refused to meet him to input evaluation. He also testified that the Claimant was terminated in May 2018 but the evaluation was done in September 2018.
102. On the issue of Claimant transmitting NSSF and NHIF remittances late, the RW1 admitted that the Claimant was not a signatory to the Respondent's account and so any late payments were attributed to the signatory. RW 2 Gladys also confirmed that they had apologised for the error made by them vide an email of 29th September 2017.
103. Section 41 of *Employment Act* 2007 states as follows:
- 41.
- (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.
104. In view of the fact that the Claimant was terminated for poor performance and in view of no findings that he was solely to blame for rate remittances not being a signatory to Respondent account and also a complainant Gladys having admitted that they apologized to Respondents and withdrew a complaint made in error, it then follows that there were no valid reason to warrant the Claimant's dismissal.
105. On the disciplinary procedure meted out against the Claimant, the Claimant submitted that the Respondents did not follow their own procedure set out in their Human Resource Manual. The Claimant stated that the manual had strict timeline to be followed including 3 warning letters which the Respondent failed to adhere for.
106. The Claimant also avers that he was not given an opportunity to implement the set plan prior to suspension and subsequent termination. The Respondents submitted that they followed the laid down procedures. They aver that the Claimant resigned without following due process which would have entailed issuance of 1 month notice equivalent to 155,356/-.
107. The case before me is not about a resignation but a termination. The Respondents did not produce any evidence that the Claimant resigned. That as it may be, the Claimant was invited for a disciplinary hearing which proceeded and evidence was called. However, prior to the disciplinary hearing, the Respondents failed to adhere to their own manual which provides timelines to be adopted including 3 warnings before any disciplinary hearing.
108. The Respondents therefore breached the provision of section 41 of the *Employment Act* on proper hearing procedures. Section 45(2) of the *Employment Act* 2007 states as follows:



- (2) A termination of employment by an employer is unfair if the employer fails to prove-
- (a) that the reason for the 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.
109. Given that the Claimant failed to prove existence of valid reason to warrant Claimant's termination and also failed to follow due process, I find the termination of the Claimant was unfair and unjustified.
110. In terms of the counterclaim, the Respondents aver that the Claimant left with their property for which they claim compensation. The Claimant denied leaving with any property of the Claimant and the Respondents failed to prove they also issued the Claimant with the said property. The counterclaim must therefore fail.
111. Having reached this conclusion, on issue of remedies, I find for Claimant and I award him as follows:-
1. 1 month pay in lieu of notice = 155,356/=
 2. I also award her compensation equivalent to 10 months salary for the unlawful termination given the failure of the Respondents to adhere to their rules and terminating the Claimant unfairly;
= 155,356 x10 = 1,553,560
Total awarded = 1,708,916/=
Less statutory deduction.
 3. The Respondents will pay cost of this suit plus interest at court rates with effect from the date of this judgment.

READ, DELIVERED AND SIGNED THIS 19TH DAY OF MAY, 2025.

HELLEN WASILWA

JUDGE

