



Kenya Plantation & Agricultural Workers Union v Kenya Tea Development Agency (Management Services) Limited (Ndima Tea Factory Company Limited (Cause E016 of 2023) [2025] KEELRC 1465 (KLR) (16 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1465 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E016 OF 2023
ON MAKAU, J
MAY 16, 2025**

BETWEEN

KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT

AND

**KENYA TEA DEVELOPMENT AGENCY (MANAGEMENT SERVICES)
LIMITED (NDIMA TEA FACTORY COMPANY LIMITED RESPONDENT**

JUDGMENT

1. This is a case of an alleged unfair and unlawful termination of employment of Mr. Anthony Mwangi Gathu (herein after called “The grievant”). The claimant is a registered trade union which has a Recognition Agreement and CBA with the Respondent. The claimant filed a Memorandum of Claim dated 20th June 2023, on behalf of the grievant seeking the following reliefs: -
 1. An order directing the Respondent to: -
 - a. To unconditionally reinstate the grievant herein;
 - b. To pay the grievant his salary arrears accrued for the entire period within which he was suspended and being paid half his monthly salary.
 - c. To pay the grievant for the entire period he remained unjustifiably dismissed.
 - d. To pay the grievant in respect of all the leave days due to him at the time of reinstatement.
 - e. To pay the grievant leave and travelling allowance.
 2. Should prayer 1 above fail, an order directing, the respondent to: -



- a. Pay the grievant gratuity for the 31 years he has served with the Respondent at the rates provided for in the CBA;
 - b. Pay the grievant severance pay for the 31 years he has served the Respondent at the rates provided for in the CBA;
 - c. Pay the grievant 2 months salary in lieu of notice of termination;
 - d. Pay the grievant accrued leave earned and not utilized for the years that he was in employment;
 - e. Pay the grievant unpaid salary earned during his unjustifiable suspension;
 - f. Pay the grievant 12 months' salary as compensation for wrongful termination;
 - g. Pay the grievant damages for unlawful, illegal and unfair suspension for the over 6 months that he remained suspended unjustifiably;
 - h. Issue the grievant with a certificate of service;
 - i. Pay the grievant the cost of the cause;
 - j. Interest on (a), (b), (c), (d), (e), (f), (g) and (i) above;
 - k. Any other relief this Honorable court deems fit to grant
2. The respondent admitted that it had concluded a CBA with the claimant but averred that the grievant was employed from 1st April 1990 by Ndima Tea Factory Company Limited, a separate legal entity. For that reason, it denied liability and averred that it was wrongly sued. However, without prejudice basis, it averred that the grievant committed gross misconduct and he was afforded a disciplinary hearing before the termination. Therefore, it averred that the termination was fair and the suit should be dismissed with costs.

Facts of the case

3. By letter dated 21st October 2021, he was accused of leaving behind Green Tea from Nguguine Buying Centre contrary to the Standard Operating procedures and he responded by the letter dated 23rd October 2021. Again, he was issued with a letter dated 19th November 2021 accusing him of poorly suspending the weighing scale and fastened it with rubber band and thereby caused a loss of 0.3 grams for every 10kgs. He responded by the letter dated 20th November 2021 denying the accusation.
4. By a letter dated 23rd November 2021, he was suspended on allegation of improper handling of Greenleaf Weighing Scale. The suspension was to pave way for thorough and speedy investigations. During the period of suspension, he was paid half salary, which according to the claimant was illegal and disregard to his labour rights.
5. The claimant protested against the suspension to the factory manager Ndima Tea Factory and requested for a meeting. The Factory Manager responded by letter dated 3rd February 2022 and a meeting was held on 4th February 2022 at Ndima Tea Factory Office.
6. No resolution was reached and by letter dated 3rd March 2022 the claimant wrote to the Factory Manager, Ndima Tea Factory demanding unconditional reinstatement of the grievant because he had worked for 30 years without any warning letter. The letter indicated that there was a ROGUE DIRECTOR who had framed the grievant with strange allegations. The Factory Manager responded



- by letter dated 29th March 2022 inviting the grievant to a disciplinary hearing on 6th April 2022 at the factory Boardroom.
7. After the disciplinary hearing, no decision was made as there were gaps noted in the evidence and further investigation was recommended. By letter dated 11th July 2022, the claimant reported a trade dispute and a conciliator was appointed to help the parties resolve the issue of the grievant's unlawful suspension. Conciliation meetings were held on 4th October 2022, 1st and 4th November 2022 where the grievant was offered a voluntary early retirement package but he declined. By letter dated 18th November 2022, the claimant's services were terminated.
 8. The claimant averred that the termination was unfair because the grievant was not given an opportunity to be heard. As at the time of the separation, the grievant's monthly salary was Kshs.73,920.
 9. However, the respondent averred that the termination was fair because the grievant committed gross misconduct and he was accorded a fair hearing as required by the law. Besides, the infraction committed warranted summarily dismissal but Ndima Tea Factory Company Limited lowered the penalty to a normal termination and offered to pay him salary in lieu of notice, accrued leave, service gratuity less debts to the company.
 10. During the hearing, both sides adopted written statements and produced bundles of documents as evidence. The claimant called the grievant who testified as CW1 while the respondent called two witnesses.
 11. In brief, the grievant testified wherever he went to pick tea from the buying centers, he hooted loudly to alert farmers to bring their tea before leaving. As regards the weighing scale, he contended that he used to do a test weight and send the receipt online to the server. Further, the farmers confirmed the weighing scale was fine.
 12. He testified that on 19th October 2021 a farmer was late to bring tea to the Center and it was only after he had delivered the tea at the factory when his immediate boss called him and told him that there was a farmer who was left at the center. Since he had closed his work ticket, his supervisor sent another person to collect the tea from the said farmer.
 13. He contended that for 31 years he was never involved in indiscipline case. He faulted the employer for suspending him for a whole year before terminating his employment. He contended that he was receiving half salary during the suspension period except in November 2022 when he received nothing. He prayed for damages plus terminal benefits.
 14. On cross-examination, he denied that he tampered with the weighing scale with a rubber band. He denied that the rubber band tampered with calibration and contended that it was used to fasten the hook of the weighing scale. He contended that his problems were due to a bad blood with one Director.
 15. He contended that he left the buying Centre after 3 pm and after hooting to ensure that no one was left. However, after 4pm, he was told that a farmer was left at the collection Centre with tea and the supervisor sent another driver, one Gichange to collect the tea. He contended that a driver collects tea from various centres and when he reaches there, he hoots to alert the farmers to bring their tea for weighing.
 16. He admitted that he was invited to disciplinary and thereafter he was offered terminal dues but declined because it was little.



17. In re-examination, he maintained that he used the rubber band to hold the weighing scale from falling down. He contended that the rubber band was used in all buying centres. He contended that he had done the same thing for 15 years and there was no complaint. He clarified that the new weighing machines have good looks to support the machine from falling.
18. He further clarified that it was normal for farmers to be late at the collection Centre's and all what they are supposed to call the driver or call the office and the driver is called to return to the collection Centre. He reiterated that he had problem with one Board member who was against him.
19. He testified that the matter went to the labour office for conciliations and he was offered an early retirement but when he asked for more time, he was served with a termination letter offering terminal dues which he also declined.
20. RW1 was Geoffrey Watari, the Factory Manager Ndima Factory Unit Manager. He testified that weighing scales have a hook and it is not supposed to be tied anywhere. He stated that the weighing scale has a ring on top and weighing centres have a permanent hook where the weighing scale is hanged. He contended that using a rubber band on the hook tampered with the weight and the farmers complained and the hook was provided.
21. He confirmed that the accuracy of the weighing scale is verified in the office before the driver goes to the collection Centre. He stated that when the farmers complained against the claimant they stopped him from going to weigh tea and also banned the use of rubber band.
22. He further testified that the grievant was served with show cause letter and he admitted that he fastened the weighing scale with a rubber band. He explained that the rubber band used was from motor vehicle tubes.
23. As regards the issue of leaving a farmer with tea at Centre NM 10 (Nguguine), he testified that the farmer arrived at the Centre but the claimant drove away and ignored his pluckers who were waving on him. The farmer then called the supervisor who sent another vehicle to collect the tea.
24. He contended that a driver is supposed to collect 9000kgs of tea by 6pm in order to earn a day's wage. He clarified that during the peak season, the driver can reach 9000kg early in the day. He confirmed that the relation with grievant was good until October 2021.
25. He further stated that the grievant was accorded a disciplinary hearing and thereafter he was offered an option of early retirement during conciliation process. He declined and thereafter his services were terminated but he was offered terminal dues in the termination letter.
26. On cross-examination, he confirmed that he had not filed any document to prove that the grievant had a history indiscipline issues. He further confirmed that only one farmer had his tea left behind and he never recorded statement about the incidence. He also confirmed that no farmer was invited to testify against the grievant during the disciplinary hearing.
27. He admitted that the company has no standard operations procedures. He reiterated that the supervisor sent another driver to collect the tea left behind by the grievant. As regards the fastening of weighing scale with rubber band, he testified that they never verified the accuracy of weights when the machine was fasted with the rubber band and when it was not fastened with the same.
28. He confirmed that the weighing scale is digitally connected to the Server. He further confirmed that there was no evidence that the grievant was benefiting from the tampered weights.



29. He admitted that the grievant was suspended for one year before the termination. He stated that the grievant was receiving half salary and he was also paid bonus for December 2021. He contended that the basis of paying half salary was clause 21 (g) of the CBA. He contended that the suspension was extended due to the conciliation proceedings at the labour office. He admitted that the grievant is entitled to gratuity but contended that he never did clearance after the termination.
30. RW2, Joseph Wachira is a Factory Accountant and he was member of the Disciplinary Committee that heard grievant's case. The complaint was about fastening the weighing scale with a rubber band and thereby causing a loss of 300g in every 10kgs of tea. The said loss was proved during the disciplinary hearing. There was also allegation of failure to collect tea from one farmer. He confirmed that the grievant had good work relationship but later it became bad and irretrievable.
31. On cross-examination, he confirmed that his duties are done in the office and as such he rarely went to the field. He knew how weighing scale operates but he is never involved in the inspection of the machines. He admitted that he never verified that there was loss of 300g in every 10kgs of tea weighed but he relied on reports from the farmers at the collection centers.
32. As regards the uncollected tea, he contended that several farmers were left behind but only one was patient to wait for alternative transport. He contended that the company lost financially due to the uncollected tea that went to waste.
33. He admitted that the disciplinary committee acquitted the grievant for the allegations but then he was dismissed because the farmers rejected him.

Determination

34. After the hearing, both sides filed written submissions. I have considered the pleading, evidence and the written submissions presented to the court, and the following issues fell for determination: -
 - a. Whether the grievant was employed by the respondent.
 - b. Whether the termination of the grievant's contract of employment was unfair and unlawful.
 - c. Whether the reliefs sought are merited.

Employment Relationship

35. The respondent denied that the grievant was its employee and averred that he was employed by Ndima Tea Factory Company Limited which is a separate legal entity. However, there is evidence that the two entities are related. First, the CBA produced indicates that Tea Factories involved are managed by the respondent. Second, the minutes of the Tea Factory dated 14th June 2022 referred the claimant's case to the respondent's HR for further investigations. Third, the termination letter was written by the respondent's Group General Manager HR & Administration and addressed to the grievant through the Factory Unit Manager Ndima Factory Company Limited.
36. The author of the said letter never testified or any other officer of the respondent. Consequently, I find that the claimant has proved on a balance of probability that the grievant was employed by the respondent and that is why it dismissed him from employment by the letter dated 18th November 2022.



Unfair and unlawful termination

37. Section 45 (1) and (2) of the [Employment Act](#) provides that: -

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

38. The above provisions set out two key elements for determining whether termination of employment is unfair, namely lack of a valid reason and failure to follow a fair procedure.

Reason

39. The termination letter dated 18th November, 2022 stated as follows: -

“Mr. Anthony Mwangi Gathu

Logistics Assistant

Roll No. 8769

Thro’

Factory Unit Manager

Ndim Tea Factory Co. Ltd

O Box 831

KARATINA

RE: TERMINATION OF SERVICES

Reference is made to a letter from the Factory Unit Manager Ref: NDI/ATTACHMENT/O4/2021 dated 22nd October 2021 wherein you were asked to show cause why disciplinary action should not be taken against you for failure and/or refusal to do your official work as Logistics Assistant whereby you left growers unattended at NM 10 (Nguguine) tea buying Centre facts of which are well within your knowledge.

You were subsequently placed on suspension vide the Factory Unit Manager’s dated 23rd November 2021 after the contents of your defence/explanation letter dated 23rd October 2021 was found not convincing and hence unacceptable.



Further reference is made to your defence/explanation letter dated 23rd October 2021 and your presentation at the Ndima Tea Factory Company Staff Disciplinary Committee meeting held 6th April 2022.

It has been noted with concern that on 19th October 2021, you failed and/or refused to buy farmers green leaf at NG 10 (Nguguine) Tea Buying Centre and sped off despite their pleas to you. The uncollected green leaf from the farmers on that day went to waste and the Factory Company thereby incurred loss.

Failure and/or refusal to collect leaf constitutes an act of gross misconduct. Without prejudice to the Company's right to dismiss you summarily for your above-mentioned act of gross misconduct, your services with Ndima Tea Factory Company Limited are hereby terminated with effect from of this letter.

Upon compliance with the normal clearance procedure you will be paid your terminal dues as follows: -

- a. Two (2) months' salary in lieu of notice.
- b. Pay in lieu of accrued annual leave on pro-rata basis.
- c. Service gratuity.
- d. Less any monies that you may be owing the Company.

S.KAROKI

FOR/GROUP GENERAL MANAGER -HR & ADM

CC:ZQAM-5”

40. The reason for the termination according to the above letter was failure or refusal to do his official work at NM 10 (Nguguine) Tea Buying Centre by failing or refusing to buy green tea from farmers and sped off despite their pleas. As a result, the uncollected green tea leaf went to waste and the factory company incurred loss.
41. The grievant denied the said offence. He maintained that only one farmer's tea was not collected because it was brought to the Centre late. RW2 admitted that the claimant was acquitted by the disciplinary committee but he was dismissed because the farmers had rejected him.
42. I will not belabor the point but just put the record straight. The grievant was suspended vide letters 23rd November 2021 in connection with a charge in the letter dated 19th November 2021 and his response dated 20th November 2021. The charge letter accused him of poorly suspending the weigh scale and fastening it with rubber band at the leaf buying Centre NM28 on 19th November 2021 leading to loss of 0.3 grams for every 10kgs of tea. The suspension had nothing to do with uncollected tea leaf at Nguguine.
43. By letter dated 29th March 2022, he was invited to disciplinary hearing on 6th April 2022 the outcome of which would impact on his suspension. The minutes of the disciplinary hearing of 6th April 2022 were not produced in court but from the minutes of 14th June 2022, the committee had noted that there were gaps in the evidence received during the hearing on 6th April 2022 about the impact of fastening the machine with a rubber band on the calibrations in the weighing scale.



44. The committee then recommended for further investigation by KTDA HR. However, as at 14th June 2022, there was no new information received from the HR and the committee made a conclusion that the grievant had committed a serious offence by using a rubber band to fasten the weighing scale.
45. Assuming that the grievant was dismissed for the offence charged, I would hold that the reason for dismissal was invalid because the committee had found gaps in the evidence and recommended for a further investigation which was never done. Turning around and finding the grievant guilty on the insufficient evidence was irrational and capricious.
46. However, as it is clear from the termination letter, the reason for the termination was failure to buy coffee from Nguguine Centre. The said charge had been dropped after the grievant responded to the show cause letter. He was never suspended on ground of that charge and was never called to answer the same during the disciplinary hearing on 6th April 2022 and 14th June 2022. It follows that the grievant was dismissed for an offence which was never established during the disciplinary hearing.
47. As admitted by RW1, the farmer whose tea was allegedly rejected by the grievant never gave evidence during the disciplinary hearing. The reason for the dismissal was therefore not failure to buy tea from a farmer.
48. RW2 alleged that the reason for the dismissal was because farmers rejected the grievant which is also not true since no farmer testified during the disciplinary hearing or before this court. Consequently, I find that the grievant was dismissed from employment for no valid reason and as such under section 43 of the [Employment Act](#) the termination was unfair within the meaning of section 45 of the [Employment Act](#).

Procedure

49. Section 41 of the [Employment Act](#) provides that: -
 - “(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.”
50. In this case, the claimant was served with a show cause letter dated 23rd October 2021 charging him with disrespect of farmers on 19th October 2021. He responded on the same day denying the offence and explaining that the uncollected tea leaf was brought to the buying Centre late after he had left the Centre. No suspension was done after the response and no disciplinary hearing was conducted thereafter. However, the termination of his employment ten months’ thereafter, was grounded on that offence.
51. As observed earlier, the grievant was served with another charge letter dated 19th November 2021 accusing him of improper handling of green leaf weighing scale by fastening it with a rubber band. He



responded on 20th November 2021 and he was suspended vide letter dated 23rd November 2021 and he was invited to a hearing on 6th April 2022.

52. The disciplinary committee found gaps in the evidence and recommended for further investigations by HR of the respondent. No further evidence was availed and the committee recommended for termination of the grievant's employment for the offence of disrespect to farmers as opposed to mishandling of weighing scale which he was facing during the disciplinary hearing.
53. Having considered the above matters, I find that the grievant was dismissed for the offence of disrespecting farmers without being accorded a fair hearing as contemplated under section 41 of the [Employment Act](#). According to RW2, who sat in the disciplinary committee, the termination was because farmers had rejected the claimant.
54. The law prohibits an employer from dismissing an employee for a cause without affording the employee a hearing. I dare add that where an employer charges an employee by a show cause letter and the employee makes his response denying the offence, the employer must invite the employee to a disciplinary hearing within a reasonable time as contemplated under section 41 of the [Employment Act](#) and in default the employee will be presumed to have defended himself fully and the disciplinary process closed.
55. In this case, the grievant responded to the show cause letter and thereafter the employer forgot about that charge of failure to buy tea at Nguguine and charged him with another different offence which went through disciplinary hearing. In the circumstances, the employer was wrong to dismiss the grievant for the offence which it had abandoned.
56. Having found that the termination was not grounded on a valid reason and that a fair procedure was not followed, I hold that the termination was unfair within the meaning of section 45 of the [Employment Act](#). The respondent offered to pay grievant salary in lieu of notice but that did not meet the requirement of procedural fairness. I gather support from *Kenfreight (EA) Ltd v Benson K Nguti* [2016] eKLR, the Court of Appeal held that: -

“It is considered unfair to terminate contract of service if the employer fails to demonstrate that the reason for the termination is valid and fair, that reason related to the employee's conduct, capacity and compatibility or is based on the operational requirements of the employer. The employer must also prove that the termination was in accordance with fair procedure...

Apart from issuing proper Notice according to the contract (or payment in lieu of Notice as provided), an employer is duty-bound to explain to an employee in the presence of another employee or union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition, an employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service.”

57. Besides, the length of suspension was unreasonably long. although the respondent alleged that the delay was due to the conciliatory proceedings, that was not true. It was due to the recommendation for further investigations that were never done.

Reliefs sought

58. In view of the foregoing conclusion, I find that the claimant is entitled to compensation for unfair termination plus salary in lieu of notice. Considering his long service of 31 years without any warning



letter, I award him 12 months' gross salary for the unfair termination equaling to Kshs.73,995 x 12 =Kshs.887,940.

59. Under clause 15 of the CBA, an employee who works for over three years is entitled to two months' notice before termination or payment of salary in lieu of notice. He worked for 31 years and therefore I award him two months salary in lieu of notice. Hence Kshs.73,995 x 2 =Kshs.147,990.
60. The prayer of gratuity for 31 years is granted. Clause 16 of the CBA provides for 30 days basic pay for each completed year of service. Hence 31 years x Kshs.73,995 =Kshs.2,293,845.
61. The claimant was paid half salary during suspension period from November 2021, to November 2022. Hence Kshs.39,177.60 x 12=Kshs.470,131.20 as per the pay slips produced.
62. The rest of the prayers are rejected for lack of particulars, evidence or they are alternative or they are covered under the compensatory damages granted above.

Conclusion

63. I have found that the grievant was an employee of the respondent. I have further found that the grievant was dismissed by the respondent unfairly and unlawfully. Finally, I have found that he is entitled to salary in lieu of notice, compensation for unfair termination, gratuity and salary withheld during the suspension period. Consequently, I enter judgment for the claimant against the respondent as follows:-

- a. Notice.....Kshs.147,990.00
- b. Compensation.....Kshs.887,940.00
- c. Gratuity.....Kshs.2,293,845.00
- d. Salary arrears.....Kshs.470,131.20
Kshs.4,122,047.4
- e. The award is subject to statutory deductions.
- f. The claimant is awarded costs plus interest at court rates from the date of filing suit the award is pre-dominantly based on a liquidated claim.

DATED, SIGNED AND DELIVERED AT NYERI THIS 16TH DAY OF MAY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

