



**Goodlife Pharmacy Limited v Odhiambo (Appeal E069 of 2024)
[2025] KEELRC 1423 (KLR) (14 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1423 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E069 OF 2024
NZIOKI WA MAKAU, J
MAY 14, 2025**

BETWEEN

GOODLIFE PHARMACY LIMITED APPELLANT

AND

SOSPETER OUKO ODHIAMBO RESPONDENT

*(Being an appeal from the judgment and decree of Hon. E. A. Obina (PM)
in KISUMU CMELRC NO. E071 OF 2022 delivered on 4th August 2022)*

JUDGMENT

1. The Respondent (Sospeter Ouko Odhiambo) in the Appeal sued the Appellant (Goodlife Pharmacy Limited) before the Chief Magistrates Court, alleging unfair termination of employment.
2. In a judgment delivered on 4th August 2022, the Honourable Principal Magistrate found that the Respondent's termination of employment was unlawful, irregular and unprocedural and awarded him:
 - a. Kshs. 360,000/- in damages for unlawful termination;
 - b. Kshs. 20,932/- in refund for the amount deducted due to absenteeism;
 - c. Kshs. 97,464/- in refund of the surcharged amount;
 - d. A certificate of service
 - e. Costs and interests of the suit from the date of judgment till payment in full.
3. Aggrieved by this decision, the Appellant lodged a Memorandum of Appeal with the Court contending that:



- i. The Learned Magistrate erred in law and fact in finding that the Respondents termination was not explained and it was unlawful, irregular and unprocedural.
 - ii. The Learned Magistrate erred in law and in fact in finding that the Applicant did not issue the Respondent with a show cause letter and proceeded to surcharge the Respondent a total of Kshs. 97,464/-.
 - iii. The Learned Magistrate erred in law and in fact in awarding the Respondent damages for the unlawful termination of Kshs. 720,000/-
 - iv. The Learned Magistrate erred in law and fact in ordering the Applicant to pay the Respondent their salary for two months totaling to Kshs. 120,000/-;
 - v. The Learned Magistrate erred in law and fact in ordering the Appellant to refund the surcharged amount of Kshs. 97,464/- and amount deducted due to the Respondent's absenteeism totaling to Kshs. 20,932/-
 - vi. The Learned Magistrate erred in law and fact in failing to determine the Appellant's case on merit.
4. Consequently, the Appellant sought to have the Magistrate's Judgment set aside. Additionally, it sought to be awarded costs of this appeal.
 5. The Appeal was disposed of by way of submissions. The Appellant and the Respondent filed submissions on the same day.

Appellant's Submissions

6. The Appellant submitted that the challenge to the decision of the Magistrate's Court was on account of errors of law and fact wherein the Court found that the Respondent was unlawfully terminated from employment and unjustifiably awarded him reliefs he was not entitled to. It was submitted that the Respondent was employed as a pharmaceutical technologist at its Tuffoam Branch, Kisumu from 1st March 2018 earning Kshs. 45,000/- a month. The Respondent submitted that a stock audit carried out in January 2021 revealed an accrual of expired discounted stock valued at Kshs. 29,125.81 at the store. The Appellant submitted that pursuant to clause 2.6 of its staff handbook, the Respondent was served with a letter dated 29th January 2021 informing him that the financial liability would be apportioned among the store employees and that a sum of Kshs. 6,844.16 was deducted from the Respondent's salary over 2 months. It was submitted that the Respondent did not contest the deductions nor invoke the grievance procedure under clause 6.7 of the staff handbook.
7. The Appellant submitted that despite the deductions, instances of expired stock, stock variances and losses escalated in the subsequent months and gave the example of July 2021 where the expired stock value was detected to be Kshs. 71,823/-. The Appellant submitted that subsequent stock audits attributed these losses to the Respondent prompting further salary deductions and the Respondent, once again, never objected to these deductions. The Appellant submitted that despite these deductions, stock losses persisted and rose. It was submitted that multiple stock reconciliations at the Tuffoam Branch revealed irregularities directly linked to the Respondent's handling of stock.
8. The Appellant submitted that in previous instances where stock losses had been established, it did not subject the Respondent to any disciplinary process electing instead to recoup the losses through salary deductions. The Appellant submitted that however, before the Magistrate's Court, the Respondent misrepresented facts by stating that salary deductions amounting to Kshs. 94,464/- were the reason



for his suspension, issuance of notice to show cause dated 17th November 2021 and his subsequent termination.

9. The Appellant submitted that contrary to the Magistrate Court's finding and the misrepresentations of the Respondent in his claim, the termination was not occasioned by the earlier stock losses which led to salary deductions of Kshs. 97,464/-, but rather, was precipitated by the substantial stock loss of Kshs. 917,030/- in November 2021. The Appellant submitted that the Magistrate's Court failed to properly appreciate and distinguish the difference.
10. The Appellant submitted that the discrepancy was brought to its attention by the Tuffoam Store Manager Mr. Robinson Achok who reported the same vide email. The Appellant submitted that investigations revealed there were 2 packs of medicine missing which the Respondent initially denied knowledge of but subsequently admitted that the items had been issued to another branch without a formal request in the Appellant's inventory and management system.
11. The Appellant submitted that it established there had been unapproved stock adjustments totalling Kshs. 985,242/- including Atripla tabs 30 and a microlife blood pressure monitor machine legitimately transferred from the Westend Mall Store but were subsequently removed from the system without proper authorisation. The Appellant submitted that a forensic review undertaken by its inventory accountant and head of IT revealed that stock adjustments had been processed through fraudulent admin accounts which had been created without proper accounting rights thereby permitting unauthorised users to manipulate inventory data across multiple stores.
12. The Appellant submitted that biometric records and the statement of the West End Mall manager confirmed the Respondent had personally collected the missing Atripla 30 tabs on 28th October 2021. The Respondent was issued a suspension and show cause letter on 17th November 2021 and granted 5 days to respond. The Appellant submitted the Respondent gave his response via email on 22nd November 2021 but failed to substantively address the stock losses or provide a satisfactory response. The Appellant submits the Respondent repeatedly deviated from addressing the stock variances.
13. The Appellant submitted that the Respondent was called for a stock-taking exercise to verify the losses and he appeared for a virtual meeting on 10th December 2021 and during the meeting the Appellant and Respondent agreed that they would undertake a joint stock-taking exercise on 15th December 2021. The Appellant submits that on the date of the stock taking exercise, after one hour of the exercise, the Respondent excused himself citing a personal emergency and never returned on 16th December 2021. The Appellant submits it completed the exercise his absence notwithstanding and found the Respondent solely responsible for the loss of Kshs. 917,030/-.
14. The Appellant submits that the dismissal of the Respondent was lawful in terms of section 43 as it followed due process. It submitted there were valid reasons for the termination of the Respondent's dismissal. The Appellant cited the case of *George Musamali v G4S Security Services Kenya Ltd [2016] eKLR* where the Court stated
 14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers' human resource manual or as set out in the *Employment Act* or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee's guilt is apparent on the face of the record. He or she must be heard no matter how



weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.

[Emphasis supplied]

15. The Appellant submits that the Respondent bypassed the stock controls of the Appellant through manipulation of the system leading to loss and that the Respondent deliberately declined to make any reference to the Kshs. 917,030/- loss in his pleadings despite being aware that this was the reason for the suspension and ultimate termination. The Appellant submits it was not practical to hear the Respondent before suspension and cited the case of *Luka Korir v Moi Teaching Referral Hospital* [2022] eKLR.
16. The Appellant submits that the Learned Magistrate erred in law and fact by finding that the salary deductions imposed on the Respondent were unlawful by failing to appreciate the deductions were consistent with company policy. The Appellant submitted the recoups were not arbitrary and within its right to recover the financial loss occasioned by the Respondent's conduct.
17. The Appellant submits that under section 19(1)(d) of the *Employment Act*, an employer is permitted to recover the loss occasioned by an employee. It cites in support the case of *Liech v Sameer Agricultural & Livestock (K) Ltd (now) Devyan Food Industries (K) Limited (Cause 7 of 2020)* [2022] KEELRC 24 (KLR) (5 May 2022) (Judgment) where the court held
 60. Section 19(1)(d) of the *Employment Act* permits an employer to deduct from an employee's salary the following:

“an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically or his being entrusted with receipt, custody and payment of money.”
 61. The foregoing provisions of the law permits an employer, where there exists credible and factual evidence that the loss of money or property is attributable to the negligence or willful action of an employee, to make reasonable deductions from such employee's salary. Such deductions however must not exceed two thirds of the employee's salary as per section 19(3) of the Act.
18. The Appellant submits that the deductions were thus made in line with the law and the clauses of the employee handbook thus lawful. The Appellant urges the reversal of the Magistrate's Court decision.

Respondent's Submissions

19. In his submissions the Respondent proposes to address each ground of appeal as presented. On the first ground the Respondent submits that his termination of employment was procedurally and substantively unfair. Regarding the procedure applied in the termination he asserts that his termination was carried out without the benefit of a disciplinary hearing contrary to section 41 and 45 of the *Employment Act*. Specifically, he submits that no hearings occurred on 23rd November 2021 and 14th December 2021 as scheduled and further that there were no minutes to prove that disciplinary hearings took place on 10th December 2021, 16th December 2021 and 17th January 2022 as alleged by the Appellant.
20. In support of the position that proof of a disciplinary hearing is vital the Respondent cites the decision in the case of *James Mogaka v KCB Bank Kenya Ltd* [2021] eKLR, in which the Respondent's failure



to provide evidence of a disciplinary hearing was adjudged as unfair termination. Further he refers to the decision in the case of Omondi & 2 others v Hatari Security Guards Limited (Cause 2424 of 2017) [2022] KEELRC 1313 (KLR) (14 JULY 2022), in which it was held that failure to provide proof of a disciplinary hearing demonstrated lack of conduct of the same rendering the termination process unfair.

21. The Court has considered the appeal in the prism of *Selle & another v Associated Motor Boat Co. Ltd & others* [1968] EA 123 which is that this 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. The Respondent herein was accused of mismanagement of stocks. He was thereafter dismissed for the same. He sought relief including in his claim a prayer that this Court finds the deduction of wages was unlawful.
22. Under the *Employment Act*, an employer is permitted under section 19(1)(b) to deduct wages for any damage done to, or loss of any property lawfully in the possession or custody of the employer occasioned by the wilful default of the employee. In this case, the Appellant asserts the Respondent caused it loss through the mishandling of the medical supplies in the Tuffoam Branch. The Court agrees the employer has a right to have deductions of wages as permitted and as such it is my finding that the sum of Kshs. 97,464/- deducted was properly so deducted. I would reverse the finding of the Magistrate on this score.
23. The Appellant attacked the finding of the Learned Magistrate in as far as the award of damages for unlawful termination and it is clear from the testimony adduced and the evidence before the Learned Magistrate that the Appellant did not accord the Respondent the benefit of section 41 of the *Employment Act*. No evidence was adduced that there was a hearing, there was no evidence that procedural and substantive fairness were meted out. I would therefore uphold the finding of the Learned Magistrate in regard to the award of damages and the payment of wages for work done. The Court similarly upholds the determination that notice period was not payable as it was actually paid to the Respondent.
24. In the final analysis, the Court upholds the decision of the Learned Magistrate save for the reversal of the surcharge of Kshs. 97,464/-. As the Appellant has been partly successful to a very limited extent, the parties before this Court on appeal will bear their own costs.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 14TH DAY OF MAY 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

