



**Sirari v British Broadcasting Corporation & 2 others (Cause
287 of 2019) [2025] KEELRC 1293 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1293 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 287 OF 2019
CN BAARI, J
MAY 8, 2025**

BETWEEN

FRED ODEO SIRARI CLAIMANT

AND

BRITISH BROADCASTING CORPORATION 1ST RESPONDENT

TOM KELLY 2ND RESPONDENT

AMERICO MARTINS 3RD RESPONDENT

JUDGMENT

1. This suit was initially filed before the Employment and Labour Relations Court in Nakuru and registered as ELRC Cause Number 251 of 2018, but was subsequently transferred to the ELRC Court in Nairobi and registered as ELRC Cause Number 287 of 2019.
2. In the Statement of claim dated 28th September, 2018, the Claimant contends that he was unlawfully, wrongfully and unfairly terminated from the service of the 1st Respondent. He proceeds to seeks an order declaring his termination unfair and unlawful, compensation for loss of income, payment of annual leave, salary in lieu of notice and general and exemplary damages amongst other reliefs.
3. The Respondent filed a Memorandum of Defence dated 25th October, 2018, wholly denying the Claimant's claim.
4. The Claimant's case was heard on several occasions before Hon. Justice Rika, with the first hearing conducted on 4th July, 2023 and subsequently on 14th November, 2023. The Respondents' case was heard by this court on 29th October, 2024 and concluded on 4th February, 2025 paving way to filing of submissions.
5. Submissions were filed for both parties.



The Claimant's Case.

6. The Claimant states that he was first engaged by the 1st Respondent under a 12 months Fixed Term Contract of Employment dated 17th January, 2011, as a Broadcast Journalist, BBC East African Bureau, Africa and Middle East Region. He states that his salary under the said contract was Kshs.1,497,600, gross per annum.
7. It is his case that on 17th January 2012, he was offered another 12 months Fixed Term Contract in the same capacity as a Broadcast Journalist, BBC East African Bureau, Africa and Middle East Region, on a salary of Kshs. 131,040 gross per month, inclusive of house allowance. He avers that on 25th July 2012, under a pay review, he was awarded a pay increase of 7.5% representing an increase to Kshs. 140,868 gross per month inclusive of house allowance.
8. The Claimant states that again on 16th January 2013, he was offered a continuing contract of employment in the capacity of a Multi-Media Broadcast Journalist, BBC East African Bureau, whose start date was 17th January 2014. He avers further that the 1st Respondent recognized his continuity of service since 17th January 2011.
9. The Claimant states that he was assigned the BBC coverage on the pre-elections in Kisumu from 24th July, 2017. He avers that he wrote an email to Caroline Karobia on 27th July 2017, indicating the budget for the Kisumu work trip.
11. He further states that on 28th July 2017, Caroline Karobia replied to his email, stating that the accommodation was expensive and requested if they could secure an alternative hotel. The Claimant states that due to the anticipated uncertainty of the security situation during the elections, it was not possible to secure an alternative facility with the same security level as Imperial Hotel Kisumu.
12. The Claimant states that he submitted receipts of their expenses based on the approved budget. He avers that on 11th March 2018, he received a letter through email and was further notified by text message of a disciplinary meeting which he was required to attend to discuss allegations of fraudulent claims. That the letter notified him to attend the meeting with a trade union representative or a BBC Colleague, with no connection to the case, and that a hearing pack had been produced for the said disciplinary meeting.
13. It is his case that he was alleged to have on 18th August 2017 committed an act of attempted or actual fraud against the BBC by submitting a false expense claim and a forged invoice for the sum of Kshs. 212,000 against a cash advance of Kshs. 419,000.
14. The Claimant states that on 13th March 2018, the 2nd Respondent sent him an email stating that he would not be accompanied into the alleged disciplinary meeting with anyone external to the 1st Respondent.
15. The Claimant further avers that the International Federation of Journalists also held discussions with the BBC and registered their dissatisfaction in the manner in which the BBC handled the matter in breach of mandatory principles and basic tenets of justice.
16. It is his case that the Respondents declined to allow him to be represented by a representative from the KUJ, despite him giving the Respondents adequate notice and acknowledgement letter.



17. The Claimant states that on 5th April 2018, he received a letter of summary dismissal from the 1st Respondent, delivered by hand, and that the 1st Respondent immediately and before hearing the Claimant's appeal, published the notice of dismissal on its Notice Board.
18. The Claimant states that he faithfully worked for the 1st Respondent for 7 years and 4 months, and that during this time, he never faced any disciplinary action or given any warning or suspension for misconduct.
19. The Claimant avers that he was a registered member of a trade union - Kenya Union of Journalists (KUJ) and that the 1st Respondent was informed of this fact through a letter from the KUJ dated 15th September 2015 together with a form for union deductions.
20. The Claimant states that his registration and involvement in the Trade Union created unease to the 1st Respondent that he started being treated unfairly. He states that his role as a trade unionist put him in a collision course with the local BBC Management.
21. It is the Claimant's case that the investigation into the alleged fraud was conducted in contravention of the 1st Respondent, BBC-KUJ Collective Bargaining Agreement and the BBC Kenya Employment Handbook of 1st April 2014.
22. The Claimant states that the procedure adopted by the disciplinary committee breached both the BBC Employee Handbook, the *Employment Act* and the CBA agreement between BBC and KUJ. He avers that the actions amount to unfair labour practices.
23. He states that the Imperial Hotel staff admitted on a letter that they misled the BBC since they asked for details using the Claimant's real name, while the Claimant used a pseudonym due to the sensitive nature of the feature he was working on.
24. The Claimant states that he was not given an opportunity to state his case as the committee had already done their investigations and only called him to a hearing with a conclusion. He states further, that he was not able to face his accusers or cross-examine them on the allegations.
25. It is his case that he was subjected to discrimination, inequality and unequal treatment before the law in breach of his rights under Article 27 of *the Constitution*.
26. The Claimant states that the Respondents unfairly terminated his contract without duly following the procedures laid down by the *Employment Act* and without any reason.
27. The Claimant states that he filed his appeal and that the same was considered by the 3rd Respondent who failed to allow him to have a representative, and this denied him a fair hearing at the appeal. He states that the 3rd Respondent after conducting the hearing unfairly, communicated the outcome of the appeal, dismissing his appeal.
28. It is his case that due to the actions of the Respondents, he has suffered direct financial loss, being the earnings due to him calculated until expiry of the contract after 21 years, having been 39 years at the time of dismissal.
29. It is his prayer that the Court awards him the reliefs listed in his claim.



The Respondents' Case.

30. The Respondent's case is that the Claimant was initially employed by the 1st Respondent on a fixed term contract of 12 months, as a Broadcast Journalist, BBC East African Bureau, Africa & Middle East Region from 17th January 2011. They aver that upon the expiry of this contract, the Claimant was employed as a Broadcast Journalist, BBC Africa. Swahili Service from 17th January 2012 until 16th January 2013, and again on 16th January 2013, the Claimant was employed as Multi-Media Broadcast Journalist based at the BBC East Africa Bureau.
31. It is the Respondents' case that the Claimant was assigned to cover the pre-elections in Kisumu from 24th July 2017 for a two-week period together with Job Egalaha, a driver for the BBC. The Respondents further state that on 27th July 2017, the Claimant sent an email to his line Manager informing her that he will be staying at the Imperial Hotel in Kisumu.
32. It is the Respondents' case that on 18th August 2017 the Claimant submitted an expense claim sheet for the sum of Kshs.212,000 for accommodation, meals and laundry, and that in support of that claim, he submitted an invoice from the Imperial Hotel, also for Kshs.212,000.
33. The Respondents state that the invoice comprised two pages, with the first page of the invoice listing the room charges for 30th July to 12th August 2017, and the second page was for 'Meals & Drinks' for Kshs.27,000 and 'Laundry' for Kshs.5,000.
34. They aver that a Finance Manager at the 1st Respondent's offices during this time, became suspicious of the validity of the invoice as it contained the same reference numbers for the daily room rates that were identical to the invoice submitted by Job Egalaha, the Claimant's driver. They state that they expected the numbers to be different and also that the formatting of the two invoices were slightly different, including the hotel logo.
35. The Respondent states that the expenses were given to the Claimant's line manager, who spoke to the Claimant about the invoices and that the Claimant insisted that the invoices were genuine.
36. It is the Respondents' case that on 22nd January 2018, the 1st Respondent's accountant sent an email to the Accounts Department at the Imperial Hotel, to find out if they have the two invoices on their database, and further requested that the hotel itemises the invoices as the 'Meals and Drinks' and 'Laundry' entries were not itemised.
37. The Respondents further aver that an employee of the hotel later that day sent an email forwarding an email from the General Manager of the hotel, which stated that the invoices were fake. That the email chain also included an email from another member of staff at the hotel who stated that the invoices were not in their database.
38. The Respondents state that they carried out investigations into the matter between the end of January, 2018 and the beginning of March, 2018 and that on 5th March 2018, the 2nd Respondent, who was a HR Manager employed by the 1st Respondent, sent the Claimant an email to request his attendance at a fact finding meeting on 6th March 2018 to discuss the invoices.
39. The Respondents aver that this meeting was not a formal disciplinary meeting, and that its purpose was not for the Claimant to be asked specific allegations, but for the 1st Respondent to assess whether he would have a disciplinary case to answer. They aver that the meeting on 6th March, 2018 was attended by the Claimant and Wanyama Chebusiri (Senior Broadcast Journalist) who was accompanying the Claimant.



40. It is the Respondents' case that at the beginning of the meeting, the 2nd Respondent explained to the Claimant that they are investigating concerns relating to his expense claims when he was working on the 2017 general election in Kenya. That the Claimant was informed that he was not being asked to respond to any specific allegations, and that it was just a fact finding meeting.
41. The Respondents aver that during the meeting, the Claimant was shown the expense claim form and that he confirmed that he had signed it and paid the Kshs.212,000 by cash. They aver further that the Claimant was also shown the invoice from the Imperial Hotel in Kisumu and confirmed that the Kshs.212,000 shown on the invoice was the Kshs.212,000 that he paid.
42. The Respondents state that when asked for the actual receipt of the sums he spent at Imperial Hotel for accommodation and meals, the Claimant replied that what he presented was the receipt he was issued by the hotel.
43. The Respondents aver that when the Claimant was informed that the hotel had no record that he had resided at the hotel, his response was that as far as he is concerned, he stayed at the hotel and that it was for the hotel to prove that he did not.
44. The Respondents further state that on 8th March, 2018 the 2nd Respondent contacted the General Manager of Imperial hotel who confirmed that the invoices were indeed fake. It avers that he further explained that he could tell that the documents were fake as 'Laundry' was not itemised in the invoice as it usually is, and neither were 'Meals and Drinks.'
45. The Respondents aver that the hotel's General Manager sent a copy of a genuine invoice for another BBC employee, and that in this invoice, the laundry items are broken down into separate entries- each entry states 'Laundry-Manual Posting' and the date and the entries relating to meals are itemised by category.
46. It is the Respondents' case that again on 10th March, 2018, the 2nd Respondent sent an email to the General Manager of Imperial Hotel, requesting confirmation on who was the occupants of room 415 from 30th July 2017 to 14th August 2017 were, and in particular ,whether the Claimant was one of the occupants. That the General Manager reply was that the Claimant was not an occupant and as a result of this, the 1st Respondent decided to commence a disciplinary process.
47. The Respondents state that the 1st Respondent issued a notice to show cause letter dated 11th March, 2018 to the Claimant inviting him to attend a disciplinary meeting on 14th March, 2018 to discuss the allegations of fraudulent expense claims. They aver that Claimant was informed that he could be accompanied by a trade union representative or BBC colleague who has no connection to the case.
48. The Respondents state that on the night before the disciplinary hearings, on 13th March 2018, the Claimant sent an email to the 2nd Respondent and others which stated that Anthony Githinji from the KUJ (Kenyan Union of Journalists) will be accompanying him (and Job Egalaha) to the hearings, and that Mr. Githinji is external to the BBC.
49. The Respondents state that the 2nd Respondent responded that the Claimant may not be accompanied by anyone external to the BBC.
50. The Respondents state that the Collective Bargaining Agreement executed between BBC and the KUJ provides that the disciplinary procedure is contained in the BBC Kenya Employment Handbook and that the disciplinary policy provides that only a fellow employee or a shop floor steward can attend, and that Mr. Githinji was not a shop floor steward. They aver that the Claimant was informed that



there were two other shop floor stewards at the 1st Respondent's office in Nairobi who would be able to attend.

51. It is the Respondents' case that the disciplinary hearing with the Claimant took place on 14th March, 2018, and that a full note of the meeting was taken. They aver that during the hearing, the Claimant was informed that on 17th August 2017, he committed an act of attempted or actual fraud theft against the 1st Respondent by submitting a false expense claim and a forged invoice for the sum of Kshs.212,000 against a cash advance of Kshs.419,000, and that the Claimant maintained that the invoice was genuine.
52. It is the Respondents' case that after fully considering all of the evidence presented, the 1st Respondent reached the decision that the Claimant should be summarily dismissed.
53. The Respondents state that on 10th April, 2018, the Claimant submitted an appeal by an email sent to the 1st Respondent, and that the 3rd Respondent who is the Head of Journalism, Europe and Americas, was appointed to hear the appeal. It is their case that on 4th May 2018, the 3rd Respondent invited the Claimant to attend an appeal hearing on 10th May 2018, and that the hearing took place as schedule during which, the Claimant asserted that he had asked the Imperial Hotel staff to use the pseudonym "Bernard Juma" when registering him at the hotel computer system. They aver that this was the first time the Claimant had raised this defence.
54. The Respondents aver that the 1st Respondent contacted the hotel regarding this assertion, and was told that no guest called Bernard Juma stayed in room 415 (which was the room number on the invoice submitted by the Claimant). That the hotel also confirmed that if a person uses a pseudonym to be registered on the hotel system, the invoice for the stay must be provided under the name registered in the system, yet the Claimant's name was on the invoice that he presented to the 1st Respondent.
55. That as a result, the 1st Respondent did not uphold the Claimant's appeal, and the findings were detailed in a letter dated 20th June 2018 sent to the Claimant.
56. The Respondents state that they at all times followed BBC Kenya Handbook, and that the Claimant had the time between the first fact finding meeting (6th March) and the end of the appeal process (10th May) to assess the allegations, to state his case, and to provide proof and evidence that he stayed at the Imperial Hotel and explain the issue with Acacia Premier Hotel.
57. The Respondents state that the Claimant's claim for compensation for loss suffered and damages is unjustified. They aver further that this Court does not have the jurisdiction to award the excessive sums claimed.
58. The Respondent avers that the Claimant was summarily dismissed and is thus not entitled to notice pay and further that he had taken all of his leave days and was not entitled to payment of the same.
59. The Respondents aver that the Claimant had sufficient time to state his case and that they complied with the laws of Kenya and *the constitution*.

The Claimant's Submissions.

60. It is submitted for the Claimant that the 1st Respondent's Employee Handbook outlines a clear and mandatory disciplinary procedure that requires that the employee must first be informed of the fault alleged, followed by an investigation, a hearing, and a written communication of the outcome. That additionally, the employee is entitled to representation by a colleague during the process.
61. It is submitted that the Respondents forthrightly disregarded these procedural safeguards. The Claimant was subjected to an investigation before being informed of the allegations against him,



- denying him the opportunity to respond meaningfully or prepare an adequate defense. He submits further that the time provided to the Claimant to present his case was so unreasonably short that it undermined his ability to mount a fair and informed defense.
62. It is further submitted that the Claimant was not afforded an opportunity to be represented by a colleague, in clear violation of procedural and statutory requirements.
 63. It is the Claimant's submission that the procedural lapses reveal a deliberate attempt to bypass due process and achieve a predetermined outcome, and that the Respondents' actions were not only procedurally flawed, but also in direct contravention of the law and their own policies.
 64. The Claimant urges this Court to find that the disciplinary process was fundamentally unfair and to grant the relief sought.
 65. On the issue of substantive justification, the Claimant submits that the Respondents cited attempted or actual fraud as the reason for terminating the Claimant's employment, but the allegation lacks credibility and was not supported by an impartial and thorough investigation. He submits that the evidence reveals that the real motive behind the termination was the Claimant's active involvement in trade union activities and that the claim of fraud appears to have been conveniently fabricated to mask the Respondents' underlying objective of removing the Claimant from his position due to his union affiliations.
 66. It is submitted for the Claimant that his termination constitutes a gross abuse of the employer's authority and is a clear violation of the principles of fairness, justice, and the constitutional protections against discrimination. He submits that the purported reason for termination was not only unfounded, but also tainted by ulterior motives, rendering the process inherently unfair and the decision unjustifiable.
 67. The Claimant submits that the process leading to the termination of his employment was discriminatory and in clear violation of Article 27 of *the Constitution* of Kenya, which guarantees equality and freedom from discrimination, and this is evident in how the hearing process was conducted.
 68. It is his submission that during the investigation process, the Respondent relied primarily on the testimony of a hotel attendant named Mr. Kamau, who later admitted that their testimony was ill-advised. He submits that the Respondent failed to give due consideration to his version of events, demonstrating a lack of impartiality and fairness in their approach.
 69. The Claimant prays that this Court grants the order as prayed.

The Respondents' Submissions.

70. It is submitted for the Respondents that the statement of claim is a misrepresentation of the facts and the contents thereof are misleading and incorrect. They submit that the Claimant was terminated for inter alia, his deliberate breach of the clear terms of his contract of employment as well as the 1st Respondent's internal policies.
71. The Respondents submit that in disciplinary proceedings, the burden of proof in such a case is not based on proof beyond reasonable doubt, but rather on a balance of probabilities. In this regard, the Respondent relies on the Court of Appeal decision of *British American Tobacco (K) Ltd v Kenyan Union of Commercial Food and Allied Workers (Kucfaw)* [2019] eKLR which quoted with approval



the decision of Anthony Mulaki V Addax Kenya Limited, Cause No. 822 of 2012 where the Court held as follows: -

“In examining validity of reasons, the court was correctly directed by the Respondent to the case of BRITISH HOME STORES LTD v BURCHELL (1980) LC.R. 303 E.A.T. where it was held that for the court to uphold the decision by the employer as being fair, it must be shown that:-

- a. The employer must believe at the time of termination, that the employee is guilty of the allegations against him/her
- b. The employer had reasonable grounds upon which to sustain that belief; and
- c. The employer carried out as much investigation as reasonable in the circumstances the employer need only be satisfied on the balance of probability.”

72. It is the Respondents’ submission that the facts of the case against the Claimant support the 1st Respondent’s decision to summarily dismiss him from employment, as the acts complained of amounted to gross misconduct on the part of the Claimant. Reliance was had on the case of Agnes Kavata Mbiti v Housing Finance Company Limited [2017] eKLR to support this position.
73. The Respondents submit, in the circumstances, that the Court should not countenance such misconduct from an employee, as the lack of trust and respect for the Respondent’s Policies goes to the substratum of the relationship between an employer and its employee.
74. The Respondents submit that there was no evidence presented before the Court in support of the allegation that the Claimant had been targeted or victimized on account of his alleged union activities. That the allegations raised against the Claimant were unique to him, and a fellow employee who had been implicated.
75. The Respondents submit that the Claimant failed to mount a credible defence and has resorted to the allegation of victimization, which does not in any way exonerate him from the allegations levelled against him.
76. It is the Respondents’ submission that inhibiting the 1st Respondent’s right to keep a check on such gross misconduct would be a grave miscarriage of justice, and would send the wrong signal to other employees. The Respondents further submit that Section 43 (2) of the Act provides that the reasons for termination are the matters that the employer at the time of termination genuinely believed to exist and which caused the employer to terminate.
77. The Respondents submit that it has proved that the reasons for the Claimant’s dismissal were reasonable, valid, fair and justified.
78. The Respondents submit that they have demonstrated that in arriving at its decision to summarily dismiss the Claimant, they adhered to procedural fairness as provided in the decision of Oyombe v Eco Bank Limited (Civil Appeal 185 of 2017).



79. The Respondents further sought to rely in the case of Nazareno Kariuki v. Feed The Children Kenya [2013] eKLR where the court held that: -

“the role of the Court is not to reconstruct the internal disciplinary procedures adopted by an employer or to improve on the decision by the employer but to check whether in the particular circumstances of the case, the employer acted in a reasonably fair manner.”

80. The Respondents urge this Court to find that the Claimant's dismissal was justified as it had, on a preponderance of probability, sufficient reason to believe that the accusations levelled against him were true.

Analysis and Determination

81. Upon careful consideration of the pleadings, the witnesses' oral testimonies, and the rival submissions, the issues that present for determination are: -

- i. Whether the Claimant's summary dismissal was fair
- ii. Whether the Claimant is entitled to the reliefs sought

Whether the Claimant's termination was fair.

82. The question of whether or not a dismissal or termination is fair, is dependent on the employer's adherence with the tenets of fair procedure and the substantive justification test. Sections 41, 43, 45 and 47 of the *Employment Act*, 2007, demand that an employer, in dismissing the services of an employee, must submit to the requirements of fair process and prove fair, justified and reasonable grounds for the dismissal.

83. Section 41 of the *Employment Act*, 2007, provides thus on the tenets of fair process: -

“(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.”

84. The Claimant's position is that though the 1st Respondent's Employee Handbook outlines a clear and mandatory disciplinary procedure that requires that the employee must first be informed of the fault alleged, followed by an investigation, a hearing, and a written communication of the outcome, the Respondents disregarded these procedural safeguards. It is his further assertion that both the law and the said employee handbook entitled him to representation by a colleague during the process.

85. The Claimant further contends that he was subjected to an investigation before being informed of the allegations against him, denying him the opportunity to respond meaningfully or prepare an adequate defense, and that the time provided to present his case was unreasonably short.

86. On their part, the Respondents assert that the Claimant was accorded sufficient opportunity to prepare his defense, and that the disciplinary process was conducted in accordance with the BBC Kenya Handbook. The Respondents further argue that the Claimant had the time between the first fact finding meeting that took place on 6th March, 2018 and the end of the appeal process on 10th May,



2018 to assess the allegations, state his case, and to provide proof and evidence that he stayed at the Imperial Hotel in Kisumu.

87. In the case of Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd [2013] eKLR, the Court had this to say on procedural fairness: -

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee.

Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible.”

88. Parties are in agreement that an initial meeting was mounted by the Respondents on 6th March, 2018, ostensibly to conduct a fact finding on the subject invoices. It was also confirmed that the Claimant was invited to the meeting and that he indeed attended, accompanied by a Mr. Wanyama Chebusiri, who was said to be a senior journalist.
89. This meeting, the court further heard, was not a formal disciplinary meeting, but that the Respondents intended to assess whether the Claimant would have a case to answer, after which a notice to show cause was issued. The Claimant was then invited for a disciplinary hearing and informed to attend the hearing with a representative.
90. It is the Claimant’s evidence that he attended the disciplinary hearing, but without a representative. The Respondents told court that Claimant was informed that he could be accompanied by a trade union representative or BBC colleague who has no connection to the case, but on the night before the disciplinary hearings, the Claimant sent them an email indicating that a Mr. Anthony Githinji from the KUJ (Kenyan Union of Journalists) will be accompanying him and Job Egalaha to the hearings.
91. It is the Respondents’ position that the 2nd Respondent wrote informed the Claimant that he cannot be accompanied by anyone external to the BBC, and that Mr. Githinji is external to the BBC. The Respondents further told court that the Claimant opted to appear by himself via video link, even though there were four shop floor stewards who met the criteria under both Section 41(1) of the [Employment Act](#) and the BBC Kenya Employment handbook, including Mr. Wanyama Chebusiri who had accompanied the Claimant to the fact finding meeting.
92. The Respondents’ further evidence is that a copy of the disciplinary briefing pack which contained the investigation meeting notes, and relevant documents to be considered in light of the allegations against the Claimant were supplied to the Claimant.
93. It is also not disputed that the Claimant lodged an appeal which was heard, but was disallowed, and the decision to dismiss the Claimant upheld, and which decision the Claimant admitted was communicated to him in writing.
94. The foregoing chronology of events leading to the Claimant’s dismissal, are clear that the Claimant was informed of the charges against him, allowed opportunity to make representation, and although he was informed of his right to appear with a representative, he opted to appear without one.



95. The Court in the case *Hosea Akunga Ombwori v Bidco Oil Refineries Limited* (2017)eKLR expounded on the provisions of Section 41 thus:-

“To satisfy the requirements of Section 41 of the *Employment Act*, 2007, an employer issues what is called in ordinary parlance a show cause notice/letter. Such a letter or notice should outline the allegations or charges against the employee and also request him to respond within a reasonable time.

The notice also ought to inform the employee that disciplinary action which might lead to termination of employment is under consideration. In other words, the notice should be set out in clear terms”.

96. Further in the case of *Silvester Malei Kyengo v Kenya Meat Commission* (2019) eKLR the Court had this to say on procedural fairness: -

“In this case the Claimant was first served with a show cause letter stating the charges against him, interdicted pending investigation, accorded on oral hearing in the company of another employee of his choice and finally served with a termination letter confirming that his defence was considered but his services terminated for reasons cited in the letter. Such procedure in view passes the test of procedural fairness and I so hold.”

97. Guided by the cited decision of superior courts, I reach the conclusion that the Claimant was accorded fair procedure, hence his dismissal is procedurally fair, and so I hold.

98. On whether the Respondents had fair, reasonable and justified grounds to dismiss the Claimant, the Respondents’ position is that the Claimant was dismissed on the ground of fraudulent expense claims for submitting a false expense claim and a forged invoice for the sum of Kshs.212,000 against a cash advance of Kshs.419,000.

99. The Respondents further told court that when the Claimant was informed that the hotel had no record that he had resided at the hotel, his response was that as far as he was concerned, he stayed at the hotel and that it was for the hotel to prove that he did not.

100. The Claimant’s position is that the allegation lacks credibility and was not supported by an impartial and thorough investigation. He contends further, that the evidence reveals the real motive behind his termination was his active involvement in trade union activities and that the claim of fraud appears to have been conveniently fabricated to mask the Respondents’ underlying objective of removing the Claimant from his position due to his union affiliations.

101. Reasons for termination/dismissal have generally been said to be the reasons the employer believed to exist at the time of dismissal.

102. The Respondents aver that when the Claimant was informed that the hotel had no record that he had resided at the hotel, his response was that as far as he is concerned, he stayed at the hotel, and that it was for the hotel to prove that he did not.

103. Section 43 of the *Employment Act* states: -

“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.



- (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”

104. In Nyeri Civil Appeal No. 79 of 2016 Kenya Power and Lighting Company Limited vs. Agrey Lukorito Wasike, in underscoring the proviso of Section 43, the court held that: -

“Under Section 43 of the Act, the onus is on an employer to prove the reason or reasons for the termination, failing which the termination shall be deemed to be unfair. The test is, however, a partly subjective one in that all an employer is required to prove are the reasons that he “genuinely believed to exist,” causing him to terminate the employee’s services. “

105. Further in Charles Musungu Odana v Kenya Ports Authority [2019] eKLR the Court stated: -

“It is now clear that the burden placed on an employer by Section 43 of the Employment Act, is to establish a valid reason that would cause a reasonable employer to terminate employment.”

106. The Court’s view is that the Claimant did not make effort to defend himself against the allegation of fraud, but instead, decided to digress and introduce issues of his involvement in union activities as the reason he was being disciplined and subsequently dismissed. In my view, and contrary to the Claimant’s assertion, I have not come across any evidence pointing to the Claimant’s involvement in union activities as the reason for his dismissal.

107. Further, the Claimant did not try to explain the alleged fraudulent invoices that formed the basis for his dismissal, and only maintained that the invoices were genuine, even when the supposed issuer had disputed issuing them to him, or other evidence indicating that he had stayed at hotel during the period he purports to have stayed.

108. The hotel being in the hospitality industry, would in my view have no reason to lie about the Claimant staying with them or confirming that it issued the subject invoices or supplying any receipts if indeed, the Claimant stayed with them.

109. In my respective view, the burden to prove that the Claimant stayed at the hotel rested solely with him, and he could thus not be heard to shift the burden to the hotel.

110. In the end, I find and hold that the 1st Respondent has proved on a balance of probability, that the reasons for the Claimant’s dismissal are valid reasons, and which caused it to dismiss the Claimant.

111. The Claimant’s dismissal is therefore found to be both procedurally and substantively fair.

hether the Claimant is entitled to the reliefs sought.

112. The Claimant’s claim is for the following reliefs: -

- i. An Order that the entire process leading to the dismissal of the Claimant was unlawful, contrary to procedure, unconstitutional and therefore null and void ab initio.
- ii. Loss of employment income amounting to the sum of Kshs. 68, 227,528 at the rate of Kshs. 270,744.16 per month to the age of retirement at 21 years.
- iii. Loss of income for year 2018 at Kshs.270,744.16 for 12 months at Kshs.3,248,929.92
- iv. Compensation for Annual leave (30 days) amounting to Kshs.386,777.37.



- v. One-month salary in lieu of Notice Kshs. 270,744.16.
 - vi. Reimbursement of illegally deducted amounts of Kshs. 47,000.
 - vii. General and exemplary damages for tort of malice.
 - viii. Costs of the suit.
 - ix. Interest on (b) (c) and (d) at Court rates.
113. All the prayers sought herein, are only tenable on a finding of an unfair dismissal. The prayers thus fail on account of a finding of a fair dismissal.
114. The upshot is that the Claimant's claim is dismissed in its entirety with costs to the Respondents.
115. Judgment of the Court.

**DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
8TH DAY OF MAY, 2025.**

**C. N. BAARI
JUDGE**

