



**John v African Gas and Oil Limited (Cause E087 of 2022)  
[2025] KEELRC 2023 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2023 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E087 OF 2022  
K OCHARO, J  
JUNE 30, 2025**

**BETWEEN**

**JOSEPH NYAMAI JOHN ..... CLAIMANT**

**AND**

**AFRICAN GAS AND OIL LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By a memorandum of claim filed on 7<sup>th</sup> November 2022, the Claimant sued the Respondents for the following orders and reliefs;
  - a. That this Honourable Court finds the termination of the grievant by the Respondent to be unfair and awards general damages.
  - b. 2 months' salary for the entire period he was on suspension pending the hearing of his appeal, KShs. 265,004.00
  - c. One month's salary in lieu of notice, KShs. 132,502.00.
  - d. 12 months' salary as compensation for unlawful termination, KShs. 1,590,024.00
  - e. Costs of this claim and interest thereon.
2. The Respondent resisted the claim by a Response to the Memorandum of Claim, dated 30<sup>th</sup> November 2002, denying the Claimant's cause of action and entitlement to the reliefs sought.
3. At the full hearing of the parties' respective cases, this Court directed the filing of written submissions within specific timelines. They obliged. Their submissions are on record.



4. It is imperative to state from the outset that this Court [Ocharo, J] took over the hearing of this matter after the Claimant had fully testified on his case. On the 16<sup>th</sup> of October 2024, by consent of the parties, the following directions were taken:
  - i. That the Respondent's case is canvassed based on the witness statement of the two mentioned witnesses, which are hereby admitted as their evidence in chief.
  - ii. The Respondent's documents herein under the list of exhibits dated 30<sup>th</sup> November 2024, are admitted as its exhibits 1-30 in their order in the list.
  - iii. The Claimant to file and serve written submissions within 21 days of today.
  - iv. The Respondent to file and serve response submissions within 21 days of service of the Claimant's submissions.

### **The Claimant's Case**

5. At the hearing of the case, the Claimant urged this Court to adopt his witness statement dated 7<sup>th</sup> November 2022, as part of his evidence in chief, and to admit the documents he filed herein concurrently with the memorandum of claim as his documentary evidence. He then briefly testified orally to clarify matters related to his pleadings, witness statement, and the documents, before being cross-examined by Counsel for the Respondent.
6. The Claimant stated that at all material times, he was an employee of the Respondent Company, having been appointed by the Respondent through a letter dated 8<sup>th</sup> November 2017, as Stores Clerk.
7. He stated that on or about 16<sup>th</sup> July 2022, he was suspended from duty on the grounds of misappropriating the Respondent's funds.
8. On 29<sup>th</sup> July 2022, the Respondent summarily dismissed him on the grounds of attempting to misappropriate its funds.
9. During the time he was on suspension [July 2022-August 2022], he was not being paid any money.
10. He asserted that at all material times, he worked in compliance with the Respondent's procedures. At no point did he harbour any intention to steal from them.
11. On 29<sup>th</sup> June 2022, an order was placed for 200 metres of wire and 40 pieces of Bulldog Crips. A Store Officer, Mr. Ngale, placed the order. The order was brought to him so that he could buy the items. Before the order reached him, it had been approved by the Head of Department and the General Manager as a 2<sup>nd</sup> approver.
12. Subsequently, on 30 June 2022, he sent emails to three suppliers requesting quotes for their prices.
13. He further testified that, without his knowledge or authority, an intern named Ahlam accessed the system and prepared an LPO. He could not explain how the intern obtained his password. The intern sent the L.P.O. to the Financial Controller, who approved it. After approval, the intern scanned the document and sent it to Juawei, a supplier.
14. When the wire was delivered to the Respondent's store, it was found to be a five-millimetre wire instead of a six-millimetre wire. As a result, it was returned to the supplier for replacement.
15. Although an invoice had been submitted to the store by the supplier, it was not settled because the wire had not been replaced.



16. The store's department was meant to hold the invoice until the item was returned. Instead, Reinson Ngala, the store's staff member, sent the invoice to the Finance Department for payment before the goods were delivered. This mistake could not be attributed to him; it was the store's staff member's error.
17. The Respondent dismissed him from employment unfairly.
18. Cross-examined by Counsel for the Respondent, the Claimant testified that at the material time, he was a Procurement Officer. Initially, he had been recruited as a Stores Clerk and progressed through the ranks to this position.
19. As a Procurement Officer, his duties entailed receiving all purchase requests from users in various departments. Each request had to be approved by the department head. Furthermore, requesting quotations from suppliers and conducting a financial analysis of the quotations. The Terminal Manager would then approve the analysis.
20. He further testified that, upon approval by the Terminal Manager, the analysis would be sent back to the Head of Department for confirmation of the description of the items being procured. Upon confirmation, the quotation would then be forwarded to him to raise a purchase order.
21. The purchase order was then forwarded to the Finance Controller for approval. After approval, he scanned and sent the LPO to the supplier to arrange for the delivery of the goods.
22. He asserted that it was not his duty to lodge invoices into the invoicing system. It was the Stores Officer's. Additionally, he was not required to approve the invoices before they were lodged into the system.
23. The Claimant further testified that he did not have logging credentials for the invoicing system. He only had credentials for the SAP System. A system that was dedicated to procurement matters.
24. During the disciplinary hearing, he was asked why he had given his credentials to the intern. He answered that it was only to train her. She was not supposed to do anything on the system. He gave her the credentials whenever he was training her. He could then change the login credentials.
25. He did not instruct the intern, Ahlam Fuad, to enter invoices into the system. Instead, he told her to take them to the store.
26. The show cause letter dated July 22, 2022, outlines the reasons why the Respondent was contemplating taking disciplinary action against the Respondent.
27. He further testified that he responded to the show cause letter. In his response, he stated that he signed documents that were supposed to be signed by the Head of Department.
28. He was placed under an investigatory suspension through the letter dated 16<sup>th</sup> July 2022. Investigations were carried out.
29. At the hearing, he was given time to explain himself. Subsequently, he was issued a summary dismissal letter dated July 29, 2022. In the letter, the reasons for the dismissal were set out. After the dismissal, he appealed. The appeal was considered and declined. This outcome was communicated to him.
30. The disciplinary hearing was not properly conducted, as his witness was not allowed to testify. However, he didn't make this procedural impropriety a ground for his appeal.



31. His credentials enabled him to generate orders and perform quotation analysis. The intern was assigned to the Finance Department. She was expected to learn the System [SAP]. As a trainee, she moved around gaining experience.
32. He gave her his credentials whenever she was in the Procurement Department learning. After she left, he could change the credentials. The Finance Controller had instructed him to train the intern in the systems. The system could not be accessed without the credentials. The intern was supposed to use the credentials only in his presence.
33. He stated that he signed the goods return note because it was a document related to procurement.
34. At the end of the disciplinary hearing, the panellists were not unanimous as to whether or not the charges against him had been established. The Legal Advisor and the HRM held a view contrary to that of the Financial Controller and Terminal Manager.
35. Due to the disagreement, his witnesses were asked to step out and wait for further communication.
36. He reiterated that he didn't instruct the intern to post the invoices or take them to the Finance Controller. She was supposed to take them to the Store.

### **The Respondent's Case**

37. The Respondent's case was brought out in the witness statements of Edith Ameyo and Naomi Njiri, dated 28<sup>th</sup> November 2022.
38. Edith Ameyo [RWI] stated that by a letter of employment dated 7th November 2017, the Claimant was engaged by the Respondent as a Stores Clerk initially on a one-year contract running from 9th November 2017 to 8th November 2018 on a consolidated monthly salary of KShs. 65,000.
39. After successfully completing the probation period, the Claimant was confirmed as a permanent employee by a letter dated 1st October 2018 and was subsequently promoted and transferred to the finance department, where he worked as a Procurement Officer until the termination of his employment on 29th July 2022.
40. At the time of termination, the Claimant's consolidated pay was KShs. 132,502.
41. She stated further that before the termination of his employment, the Claimant had received a warning letter for misconduct, as evidenced by the offence sheet dated 18<sup>th</sup> August 2020 and the letter dated 24<sup>th</sup> August 2020.
42. The termination was a result of the Claimant's involvement in an attempt to misappropriate the Respondent's funds by purporting to obtain funds from the Respondent's accounts department for goods not supplied.
43. Prior to the termination, the Claimant was subjected to a fair disciplinary process that led to his dismissal.
44. At both the initial disciplinary hearing and the appeal hearing, he was accompanied by a co-worker of his choice. Both the claimant and the co-worker were allowed to make their representations.
45. In his response to the show cause letter, the Claimant admitted to some lapses in his conduct, which were contrary to his terms of service with the Respondent.
46. By a letter dated 25<sup>th</sup> July 2022, the Claimant was summarily dismissed. The reasons for the dismissal were clearly stated in the letter.



47. After the dismissal, his terminal dues were duly computed and paid; the Respondent doesn't owe the Claimant any salary arrears as claimed. He was issued a certificate of service dated 29<sup>th</sup> July 2022.
48. The Claimant's actions and omissions that led to his dismissal constituted a breach of trust. Consequently, the Respondent had no choice but to end the employment relationship.
49. Naomi Njiri, the Financial Accountant with the Respondent Company, stated that on or about 28<sup>th</sup> June 2022, Captain Amin approached the Claimant requesting the purchase of wire rope. The Claimant referred Captain Amin to Bwanamkuu, the HOD, Operations/Marine, to raise a purchase request on the SAP system. A reservation number 1536 for wire rope for marine use was requested on 28<sup>th</sup> June 2022 on the system and approved by Bwanamkuu, and later by Makbul Saad [Terminal Manager].
50. The Claimant obtained sick leave from 29<sup>th</sup> to 30<sup>th</sup> June 2022. However, on 29<sup>th</sup> June 2022, he sent an email requesting for a quotation for rubber-insulated wire rope [6mm x 200 m] from Jiwanjee Industrial & Hardware Limited [supplier]. On the same day, the supplier responded with a quotation of KES 450 per metre [ plus VAT]. A purchase request was released on 30<sup>th</sup> June 2022. A local purchase order dated June 30, 2022, was then issued in favour of the supplier.
51. The L.P.O. was noted as prepared by the Claimant and approved by Farida Mbarak. It was discovered that Ahlam was using the Claimant's email address and SAP login credentials, which explains why the email to the supplier and the LPO were issued while he was away on sick leave.
52. On 6th July 2022, the supplier's delivery note No. 103736 was signed by Renson Ngala [Stores Officer], confirming that 200 metres of wire rope was received at the store. According to Renson, the wire was stored there, awaiting inspection and approval by the relevant user department. The delivery note was accompanied by the Supplier's invoice for KES 104,000.
53. On or about 7<sup>th</sup> July 2022, Apollo Mterere [ Stores Assistant] informed Captain Amin that the wire rope had been delivered. Upon inspection, Captain Amin rejected the wire, stating that he had requested an 8mm rope, not a 6mm rope. The Claimant was called to the store and informed of this.
54. On the same day, Apollo raised a Goods Return Note and A Gate Pass. The Return Note was signed by Apollo [as Stores Personnel] and was to be signed by a Head of Department, but was signed by the Claimant. There was conflicting information from both the Claimant and Mr. Apollo as to the availability of a Head of Department to sign the note. On the one hand, Mr Apollo stated that he was informed by the Claimant that there was no Head of Department to sign the note. On the other hand, the Claimant asserted that his knowledge of the matter was sufficient to allow him to sign the document. The gate pass was then signed by Leyla Ali [Projects Coordinator]. The wire rope was then delivered to the supplier.
55. On 12<sup>th</sup> July 2022, Ahlam resumed work from leave and found invoices on the Claimant's desk. She asked the Claimant whether she could receive the invoices, including that of Jiwanjee, in the system. The Claimant initially advised her to hold on, but later asked her to accept them into the system.
56. On 16th July 2022, both the Claimant and Apollo Mterere were issued suspension letters to facilitate investigations into the matter. They were subsequently issued show cause letters on July 22, 2022. A disciplinary hearing for both was held on 27th July 2022.
57. During the hearing, Apollo stated that he was not involved in the procurement or payment process and that his role was solely to receive, record, and coordinate collection with the relevant user departments.



58. In his defence, the Claimant contended that the payment for the rope was yet to be made. Furthermore, he had initiated the process of exchanging the wire rope, which was still pending when he was sent on suspension. He indicated that in the circumstances of the matter, the supplier would either exchange the item or issue the company with a credit note to cancel the invoice.
59. He further stated that it takes about 7 to 14 days for a credit note to be issued and that he was aware that the supplier issued a credit note. The IT department confirmed that indeed the credit note was issued on 16<sup>th</sup> July 2022 [the same day he was sent on suspension].
60. The main issue underlying the matter was the apparent disregard of policies and procedures in the procurement and stores department.
61. Apollo should have confirmed with the Claimant who the user of the wire rope was before obtaining the quality confirmation note signed by Ernest. After realising he had engaged the wrong person and the wire was not of the required quality, he ought to have exercised some diligence and cancelled the confirmation note.
62. The Claimant lacked the authority to sign the Goods Return; this was the responsibility of the department head. The matter of returning the wire rope was not so urgent that it could not have waited for the Head of Department to be available. Aware that the rope had been returned, he should have reviewed the invoices that the trainee was to post and advised that the invoice from Jiwanjee not be posted until the replacement of the rope had been received.

### **Analysis and Determination**

63. From the pleadings, evidence, and submissions on record, the following issues present themselves for determination, thus;
  - i. Whether the summary dismissal against the Claimant was fair.
  - ii. Whether the Claimant is entitled to the reliefs sought.
64. There is no dispute that at all material times, the Claimant was an employee of the Respondent, and that he was summarily dismissed from his employment under a dismissal letter dated 29<sup>th</sup> July 2022. However, the parties furiously disagree as to whether the dismissal was fair or not.
65. Faced with the task of determining whether or not an employee was wrongfully and unfairly dismissed from employment, as is the case in the instant case, the Court must consider and pronounce itself on two statutory aspects, procedural and substantive fairness.
66. In *Pius Machafu Isindu vs Lavington Security Guards Limited* [2017] KECA 225[KLR], the Court of Appeal stated;

“There can be no doubt that the Act, which was enacted in 2007, places a heavy legal burden on employers in matters summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal [section 43]; prove the reasons are valid and fair [section 45]; prove that the grounds are justified [section 47 (5)] amongst other provisions. A mandatory elaborate procedure is then established under Section 41, requiring notification and a hearing before termination.

..... Those provisions are a mirror image of their constitutional underpinning in Article 41, which governs rights and fairness in the labour relations.”



67. Section 45[2][c] places upon the employer the obligation to prove that the employment was terminated in conformity with fair procedure; otherwise, the summary dismissal against an employee or the termination of their employment shall be deemed unfair. Also see *National Bank of Kenya Limited v Samuel Nguru Mutonyi* [2019] eKLR.
68. The Procedure alluded to in the provision mentioned above is elaborately set out in Section 41 of the Act. It bears repeating that the procedure is mandatory. An employer contemplating summarily dismissing an employee or terminating their employment must inform the employee of the reasons for the intention; accord the employee an adequate opportunity to make a representation on the grounds while in the company of a colleague of choice or a trade union representative if the employee is as member of a trade union, and consider the representations by the employee and the person accompanying them, before arriving at a final decision in the matter.
69. A keen consideration of the material before this Court reveals that, regarding adherence to the tenets of procedural fairness, the Respondent started very well. However, at some point, they dropped the ball. In their show cause letter dated 22<sup>nd</sup> July 2022, the Respondent explicitly set forth its intention to take disciplinary action against the Claimant and the reason therefor. Thus, satisfying duly, the information/notification component of the procedure contemplated under Section 41 of the Act. It is imperative to point out that the reason was that he attempted to defraud the Respondent of KShs. 104, 400. He responded to this accusation.
70. By their letter dated 26th July 2022, referring to the show cause letter, they invited the Claimant to a disciplinary hearing scheduled for 27th July 2022. Referring to the show cause letter, it was a sufficient signal that the accusation was maintained and that this was what the Claimant was to defend himself against at the hearing.
71. I have carefully reviewed the minutes of the disciplinary proceedings of 27th July 2022, and one thing catches my eye: the topic of discussion was not the charge of “attempting to defraud the Respondent KES 104 400,” but poor work ethics. No evidence was presented to the panel to demonstrate an attempt to defraud, nor were questions posed to the Claimant, indicating that the subject under discussion was the infraction outlined in the show-cause letter.
72. No wonder the Committee stated in the minutes, “From the proceedings of the hearing, it is clear that Joseph had failed to follow the right procedure, and to this, he was wrong. The TM, FC, and ASCO believed he should be terminated since his actions could have had a cost implication for the Company. And RW2 in her witness statement [turned evidence in chief], “The main issue underlying this matter is obvious disregard of policies and procedures in the procurement and stores department.”
73. It is not surprising that the Legal Advisor and the Human Resource Officer were of the view that there was no evidence suggesting that the Claimant had attempted to defraud the Respondent.
74. 4. To deviate from the charge outlined in the show cause letter, to which the employee was invited to make representations, and to commence deliberations on matters unrelated to the charge, not only undermines the purpose of the provisions of Section 41 of the Act but also contravenes the principles of natural justice and the right to a fair hearing under Article 50, fair labour practices under Article 41, and fair administrative procedures under Article 47 of *the Constitution*. It cannot be in sync with the dictates of procedural fairness.
75. The Claimant asserted that his witness was not permitted to testify. He and the witness were asked to step out so that the committee could hold deliberations. He therefore suggested that his defence was not fully presented or heard. I have carefully reviewed the minutes of the disciplinary hearing. They indicate that the Claimant had a witness and that, at the time the Committee was adjourning for



- deliberations, the witness had not been heard. I am compelled to conclude that the Claimant was not fully heard in his defence, as his witness did not make any representations.
76. The Committee disagreed on what the outcome of the disciplinary proceedings would be. Consequently, they resolved to seek help from persons outside the committee's membership through what they termed consultations. The persons to be consulted and who influenced the decision to have the Claimant summarily dismissed never heard the Claimant and his witness make representations. It becomes challenging for one to fathom how they arrived at their decision/opinion that influenced the decision without first hearing the matter. However, it isn't difficult to hold that the approach negated the principles of fair hearing.
77. In light of the foregoing premises, I come to the inescapable conclusion that the summary dismissal was procedurally unfair.
78. Under Section 45 of the *Employment Act*, termination of an employee's employment or summary dismissal of an employee is unfair if the employer fails to demonstrate that the reason for the termination/summary dismissal was fair and valid. It has been and is the position of this Court, that a fair and valid reason in the context the provision must inter alia one that flows from initial events of the disciplinary process, thus, the suspension letter, the investigations [if any], the show cause letter, and the invitation to the disciplinary hearing document. A reason for termination that only arises during termination or summary dismissal will seldom be fair and valid.
79. The effect of allowing such would be to render nonsense the requirement for notification and hearing, as contemplated under Section 41 of the *Employment Act*, and the manner of exercise of the employer's managerial prerogative, subject to abuse, and sliding back to the pre-2007 manner of exercise.
80. I have carefully considered the minutes of the disciplinary hearing, the witness statements by the Respondent's witnesses, and the summary dismissal letter, all of them explicitly suggest that the charge the subject matter of the show cause letter, and the invitation to the disciplinary hearing letter, attempt to defraud, was not the basis for the summary dismissal as brought out in the dismissal letter. Given this, I find that the summary dismissal against the Claimant wasn't substantively fair.
81. The Claimant sought compensation for unfair dismissal. Section 49[1][c] of the *Employment Act* empowers this Court to grant twelve months' gross salary in favour of an employee who has successfully challenged their employer's decision to terminate their employment. However, it is essential to note that the power is discretionary and exercised depending on the circumstances of each case.
82. I have carefully considered the circumstances under which the Claimant's employment was terminated, how the termination was effected without compliance with the dictates of procedural and substantive justification, the length of service to the Respondent, and the fact that he got a new employment, and hold that he is entitled to the relief, to an extent of three month's gross salary.
83. The Claimant's employment was terminable under Section 35 of the *Employment Act*, with a twenty-eight-day notice. No doubt, the notice was not issued. As such, I see no reason under the law that impairs this Court in the instant matter to grant the Claimant notice pay under section 36 of the *Employment Act*.
84. The entitlement to the other reliefs sought by the Claimant was not established by evidence. I decline the same.
85. In the upshot, judgment is entered for the Claimant against the Respondent as follows: -
- i. A declaration that the summary dismissal against him was procedurally and substantively unfair.



- ii. Compensation under the provisions of Section 49[1][c] of the *Employment Act*, three months' gross salary, KES. 397,506.
- iii. One month's salary in lieu of notice, KES. 132,502.
- iv. Interest on the awarded sum at court rates from the date of this Judgment till full payment.
- v. Costs of the suit.

**READ, SIGNED AND DELIVERED THIS 30<sup>TH</sup> DAY OF JUNE 2025.**

**OCHARO KEBIRA**

**JUDGE.**

