



**Guya v British Army Training Unit (BATUK) Kenya (Employment and Labour Relations Cause E007, E006, E047, E048 & E049 of 2024 (Consolidated)) [2025] KEELRC 1874 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1874 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E007,  
E006, E047, E048 & E049 OF 2024 (CONSOLIDATED)**

**ON MAKAU, J**

**JUNE 27, 2025**

**BETWEEN**

**DENISH ODOYO GUYA ..... CLAIMANT**

**AND**

**BRITISH ARMY TRAINING UNIT (BATUK) KENYA ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The claimants are former employees of the respondent. They brought separate suits challenging their dismissal from employment by the respondent. Each claimant sought the following reliefs: -
  - a. Declaration that the summary dismissal was unlawful and unfair.
  - b. Award of compensation for unfair and unlawful termination.
  - c. Award of terminal dues and/or gratuity equivalent to one-month salary per year of service.
  - d. Accrued leave.
  - e. Costs and interest
2. The Respondent filed a statement of Response in each suit denying liability. It averred that the dismissal was based on valid reason and the claimants were accorded a fair hearing before the dismissal. It further averred that the claimants appealed against the dismissal but the appeals were unsuccessful. Consequently, it averred that the claimants are not entitled to the reliefs sought and the suits should be dismissed with costs.



3. By a Notice of Motion dated 30<sup>th</sup> September 2024, the respondent prayed for consolidation of the five suits under the instant file (ELRC No.E007 of 2024) and a consent to that effect was recorded by the two sides on 30<sup>th</sup> September 2024.

## **Background**

4. The claimants were all summarily dismissed by the respondent on 15<sup>th</sup> November 2023 for gross misconduct. Mr.Isaac Wachira was dismissed for theft of the employer's goods while the other claimants were dismissed for being implicit in the theft by Mr.Isaac Wachira.
5. On 8<sup>th</sup> June 2023, the respondent's officers received a tip off that a theft of goods belonging to the respondent was underway. The goods were loaded in a truck driven by Mr.Isaac Wachira. The officers pursued the truck and stopped it outside the respondent's camp and ordered the driver to drive back to the camp.
6. The matter was reported to the police. Mr.Isaac Wachira and Mr.Denish Odoyo Guya were arrested and charged with stealing and in the alternative handling stolen property. In the meanwhile, all the claimants herein were taken through disciplinary process for being involved in the alleged theft and were eventually dismissed from employment on 15<sup>th</sup> November 2023.. On 26<sup>th</sup> February 2024, the criminal case against Isaac Wachira and Denish Odoyo Guya was withdrawn under section 87(a) of the [Criminal Procedure Code](#) after it emerged that witnesses had relocated to UK and were unavailable to testify.
7. The claimants maintained that they were innocent but the respondent averred that the claimants were involved in a well-orchestrated theft and the recovery of the goods was only possible due to the quick action after a report by a whistle blower since they had already been ferried outside the camp before they were intercepted.
8. During the hearing, all the five claimants gave evidence and called two witnesses while the respondent called only one witness. They all adopted their respective written statements and bundles of documents as their evidence. Thereafter, both sides filed written submissions.
9. CW1 was Denish Odoyo Guya (claimant in ELRC Eoo7 of 2024). He denied the alleged misconduct and stated that on the material day, Mr.Isaac Wachira drove by and requested for two jericans of 5 litres of contaminated oil. The oil did not belong to him. Isaac never told him where he was taking the oil. He placed the jericans in the cabin on the passenger side of the truck and Isaac asked him to ground command while he was reversing the lorry. He neither knew what the lorry was carrying nor did he know whether Isaac passed the gate. He was later arrested and charged in Criminal Case No.E867 of 2023 but the case was later dismissed.
10. In the meanwhile, he was served with show cause letter and subsequently invited to a disciplinary hearing. After the hearing, he was dismissed with no payment of benefits. The people who dismissed him had summoned him to JAVA Hotel and threatened him to name the people involved in the theft or else he be dismissed and lose benefits.
11. On cross examination, he stated that he was employed as a mechanic for 22 years and he interacted with engine oil. He admitted that he was conversant with procedures which required that a Line Manager must give a gate pass indicating the items in the vehicle, Registration Number of the vehicle, the vehicle type and the authorizing Boss. He further admitted having handed over the jericans of oil to Isaac without a gate pass since he knew that he could not leave the gate without a gate pass.



12. He reiterated that he attended disciplinary hearing after 8 days hearing notice. He was provided with witness statement before the hearing. He admitted that the rules do not require him to attend oral hearing of his appeal but he maintained that no reason was given for dismissing the appeal. Finally, he stated that he had accrued leave of 24 days.
13. CW2, Isaac Ndirangu Wachira (claimant in ELRC E049 of 2024) stated that on 8<sup>th</sup> June 2023 he was instructed by Royal Engineer Support (REST) to deliver goods to St.Jude Secondary School using respondents truck. He had work ticket duly signed and he was authorized by G4S guards to leave the gate. Just 200 meters after leaving the gate, he was stopped by ASM Armstrong and his deputy who took away the gate pass and ordered him to drive back to the camp.
14. The officers went ahead to call the Military Police and Kenya Police, offloaded the cargo and locked it up. No list of the items was prepared and he was not asked to sign for the recovered items. He was then arrested and charged but the respondent never availed witnesses to testify and the criminal case was withdrawn.
15. He denied that he stole property from the employer. He admitted that he received two containers of contaminated oil from CW1 to take to the community. He confirmed that CW1 ground commanded him while reversing the lorry.
16. He confirmed that he was conversant with procedures of removing items from the respondent's camp since he had worked there for 12 years. He admitted that one needs ATUD document and a gate pass when carrying items. He contended that he had the two documents signed by his Boss Victor on the material day and Armstrong took them away. On further cross examination, he stated that the Gate pass was signed by a Royal Engineers "guy" whose name he could not remember.
17. He stated that the items in the gate pass mainly included clothing, wood, and drums among others all approved by the Royal Engineers Support. He admitted that all the items on board the truck were loaded on 8<sup>th</sup> June 2023 around 8.30am. He identified the vehicle he was driving as Registration Number PR 27 AB. He admitted that it resembled the one in CCTV Vol.avi 2023-06-08 7.29.04. He further admitted that Royal Engineers are not in charge of carpenters and quarter master.
18. He contended that on 8<sup>th</sup> June 2023 he reported to work at 7am and denied that he is the person captured in the CCTV 6 VOL at 6.41am arriving with another person. Upon further cross examination, he admitted that he arrived at 6.45am with Daniel Muriuki Muriithi. He contended he had arrived early that day to do laundry. He then changed into overalls and went to the CPO where Daniel Muriuki was working to get the vehicle. He then drove to the Royal Engineers where it was loaded. He denied being the person in overalls captured in CCTV 8-VOI at 6.47am.
19. He contended that he was helped by casuals to load the vehicle at CPO compound the previous day and still he had the authority from his Line Manager Mr.Welsh to drive. He admitted that during the disciplinary hearing, he told the committee that he could not remember the person who authorized him to move the vehicle.
20. On being shown CCTV No.31, he confirmed that a lorry was heading to the gate and the driver had overalls like the ones he was wearing. He also confirmed that four guards in blue uniform spoke to the driver and they all went behind the vehicle before the vehicle was driven away without checking the cargo. He admitted that a gate pass requires that all items in the vehicle be checked 100 percent but the G4S guards never checked the vehicle. They just went around the vehicle without opening the canopy.



21. However, he contended that the registration numbers of the lorry and the land rover car in the CCTV clips were not clear to him. Likewise, the persons in the said clips could not be identified and nothing in the clips proves that he was the one driving the lorry therein.
22. He reiterated that he was authorized by his Line Manager Mr.Welsh to take out the cargo. He contended that Mr.Welsh was never called to give evidence during the disciplinary hearing and there is no documentary evidence to show that he was given authority by him. He stated that reporting to work at 6.45am was not an offence. He reiterated that when he was intercepted after leaving the gate, Mr.Edward took the Gate pass and ATUD.
23. CW3, Dan Elisha Ocholla went with CW1 to JAVA Hotel to meet respondents' officers AQMS, ASM and Mr.Graham. He was introduced to the officers by CW1 because he had never worked for the respondents. The officers demanded that CW1 accepts liability so that during the disciplinary hearing they would help him get his benefits. They then threatened him with sacking without benefits if he failed to cooperate. On cross-examination he admitted that he was in fact a former employee of the respondent who was dismissed for theft. He had even sued the respondent in Nanyuki Case No.21 of 2021 but the same was dismissed. He confirmed that he had met Graham before but not the other officers. Finally, he confirmed that during the meeting at JAVA, the officers never called CW1 a thief.
24. CW4, Nikoe Victor was formerly employed by G4S but he was dismissed on 25<sup>th</sup> July 2023. He confirmed that he saw CW2 at the gate on 8<sup>th</sup> June 2023 and he showed a valid gate pass and valid work ticket before letting him to drive the lorry out. He admitted that during the disciplinary hearing he stated that he and his colleague guards never opened the canvas of the lorry to check the items because it was over full and the items could fall down. However, he disputed the same contents and source of the minutes because he was not given any copy of the same when he left G4S.
25. CW5, Daniel Muriuki Muriithi (claimant in ELRC E006 of 2024), denied that he assisted CW2 to steal. He was never arrested or charged. Therefore, he prayed judgment as prayed in his suit.
26. On cross examination, he stated that he could not recognize the gentlemen in video 6 Vo1 &2. He admitted that he arrived at the gate at around 6.41am and contended that, he was coming to do laundry. He admitted that one of the two men in Video 6 Vo1 & 2 wore a shirt similar to the one he (CW5) was wearing in court but maintained that he could not tell who the person was even after zooming the video. He also denied that the person in video 6 Vo2 wearing black was Wachira.
27. He admitted that some of the recovered carpentry materials were from his department while wooden sideboard and round fencing posts were from other departments unless they were brought to his department for repairs. He admitted that the reason for his dismissal was that he was implicit into the theft by Wachira. He appealed but the same was dismissed and he was issued with certificate of service.
28. He contended that he had no connection with the theft as Mr.Wachira never mentioned him and neither his Line Manager Mr.Walace nor any other witness gave evidence against him during the disciplinary hearing. He contended that his department only dealt with wooden side boards for repairs and once that was done they were returned to the respective departments or offices. He stated that he was never given a list of the stolen items.
29. CW6, Ismael Ahmed Ismael was employed to work at the Engineering sections (REST). He denied that he assisted Wachira to load stolen material to the vehicle. He contended that Mr.Wachira was working in the transport section and he never saw him that day. He also never met Mr.Odoyo (CW1) at the workshop on the material day. He also never met Daniel (CW3) on that day. He denied ever doing anything with Mr.Abdul Karim (claimant in ELRC E048 of 2024) with regard to the alleged theft.



30. He contended that he worked for 15 years with the respondent and rose the ranks to store man. He was familiar with Policies and Procedures and his job description which was to account for all the stores under his care and monitor stock level. He confirmed that he used to wear yellow lanyards and the casuals he was supervising were wearing Red Lanyards.
31. He admitted that he was served with show cause letter but he never responded. He was thereafter invited to disciplinary hearing where he stated that he never loaded any item onto the lorry because he went for lunch. He confirmed that page 17 of the investigations report paragraph 1 stated that only him, Abdulkarim and Wairegi had access to some of the items found in the vehicle upon search.
32. He confirmed that he and Abdulkarim went for lunch and left the casuals alone and unattended. He stated that he learnt later that the goods were loaded by the casuals but denied that they were from his store. He maintained that the goods in issue were not under his custody. He confirmed that he was dismissed for being implicit in the theft and his appeal was dismissed without citing any reason. He denied knowledge that one loses his benefit upon dismissal from employment.
33. He contended that he was never questioned by the Military police. The show cause letter did not list any items stolen from his store. He contended that going for lunch was not an offence. The goods allegedly stolen from his store are unknown and the number plate of the vehicle loaded was not mentioned in the show cause letter. The name of the driver was also not mentioned. He maintained that his dismissal was unlawful and therefore he is entitled to gratuity.
34. CW7, Abdulkarim Abubakar (claimant in ELRC E048 of 2024) was working in the Engineering section as a store man. He denied releasing any items to the vehicle driven by Wachira on the material date. He denied that he was captured in the CCTV Videos produced in court. He confirmed that he worked for eleven (11) years and therefore he had experience and familiarity with the policies and procedures of BATUK.
35. His duties were to account for all the stores in his custody, and monitor stock levels. He used to wear yellow lanyard while the casuals under him were wearing Red Lanyard. He was dismissed for being implicit in the theft by Wachira. He admitted that CW1 and him went for lunch together and left the casuals alone and unattended.
36. He was served with a show cause letter but it never asked him to write a response. He was later invited to a disciplinary hearing which he attended and he was dismissed because goods under his custody were found in the vehicle. He appealed but the appeal was rejected. He admitted that the Investigations Report indicated that only him, Ismael and Wairegi had the custody of some of the goods found in the vehicle. However, the details of the alleged stolen items was not given.
37. He contended that ground 5 of his appeal was that he was not given a fair hearing as he was not allowed to defend himself against the charges made against him. He contended that there is no evidence adduced to prove that he failed to account for any stocks, or that anything was stolen from his store. He contended that the store was locked before going for lunch and it was not broken into.
38. He maintained his denial that he never knew what was loaded onto the vehicle, or what vehicle it was. Further the names of the casuals who loaded the vehicle were not named.
39. RW1, Major Jason Varndell testified on behalf of the respondent. He stated that the vehicle in issue had completed community task the previous day and there was no authority for the vehicle to leave the camp on the day of the theft. He stated that CCTVs were reviewed and Investigations Report prepared. The five claimants herein were found culpable of attempted theft and they were dismissed and two more staff were given warning including Steve and Wairegi.



40. He stated that CW1 was dismissed because he was in communication with Isaac (CW2), he gave him items in the vehicle, and directed him to remove the vehicle. CW3 a carpenter, was dismissed for loading items onto the vehicle without authority. CW2 (Isaac), was dismissed for driving the vehicle without authority, loading items onto the vehicle and driving it out of the camp.
41. CW6 and CW7 were dismissed because they had the custody of items recovered from the vehicle and the two were present when casuals loaded the items onto the vehicle. He contended that CW6 and CW7 were not allowed to go for lunch during the time they alleged they went. Mr. Wairegi stated as much during the disciplinary hearing and that is why he was not dismissed with the others. RW1 prayed for the suit to be dismissed.
42. On cross examination, he confirmed that CW6 and CW7 were working in the store and they were free to go for lunch together so long as the store was secured and the casuals supervised. He denied that the CW6 and CW7 went for lunch as alleged and contended that they were captured on the CCTV clips produced in court. A list of items taken from the Royal Engineering stores was prepared and included Batteries, paint and timber among others.
43. He reiterated that the vehicle was not supposed to be loaded with anything as the CW1 (Isaac) had delivered the materials to build structures for the community the previous day. He contended that fencing posts and timber were lost from the store where CW3 (Daniel) was working. He stated that 7 people were suspended but two, Stephen Muthoni and Wairegi were reinstated after recording statement.
44. He confirmed that CW1 and CW2 were charged in court but the case was dismissed because witnesses failed to attend court. He contended that the witnesses were not notified and they left the Country.
45. He admitted that the meeting between respondents' officers and CW1 at JAVA was not part of lawful disciplinary procedure because the matter was not supposed to be taken outside the Military camp. The officers never participated in decision making against the claimants. He reiterated that the items were taken outside the camp and they were returned but he had no inventory of the recovered items. The goods could not have been recovered had the vehicle not been intercepted. He contended that he was able to interpret the pictures and places in the CCTV clips and that he did not need to be an IT expert to do that.
46. He contended that the minutes from G4S about Victor (CW4) were authentic because they were sent by email in response to his email. He contended that he was the ultimate decision maker in the claimants' case and was guided by the Kenyan law.

### **Issues for determination and analysis**

47. I have considered the pleadings, evidence and the submissions filed. It is a fact that all the claimants were employees of the respondent and their services were terminated by the respondent for gross misconduct. It is also a fact that they lost their benefits on ground that they were dismissed for misconduct.
48. The issues for determination are: -
  - a. Whether the dismissal of the claimants was unfair and unlawful.
  - b. Whether the claimants are entitled to the reliefs sought.



## Unfair and unlawful termination

49. 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 and compatibility; or
    - (ii) based on the operational requirements of the employer; and
  - (c) that the employment was terminated in accordance with fair procedure.”

50. According to the above provision, termination of employment becomes unfair and therefore unlawful if it was not justified by a valid reason and/or if fair procedure was not followed. The statute puts the burden of proof of the said two ingredients on the employer. In this case, CW2 (Isaac Wachira) was dismissed for theft while the other four claimants were dismissed for being implicit in the theft.

51. CW1 admitted that he gave Isaac (CW2) two jericans of 5 litres contaminated oil on the material day and ground commanded him to remove the vehicle. The oil CW1 gave out did not belong to him and he took it from the place he was working as a mechanic. He put the jericans in the cabin on the passenger side of the vehicle. He did so without authority or any gate pass.

52. CW2 (Isaac Wachira) admitted that he was intercepted by respondent’s officers after leaving the camp gate while driving a lorry loaded with items from the respondents’ camp. He never denied that CW1 gave him two jericans of oil on the same date. He contended that he had the authority from the Line Manager to transport the goods to St.Jude Secondary School but the ATUD was for the previous day. He named the Line manager as Welsh. He contended that the officers who stopped him took away the Gate pass and ATUD.

53. Having considered the evidence before the court, I find the case of Mr.Denish Guya fairly straight forward. He took away oil in two jericans, belonging to his employer and loaded it onto a truck driven by CW2 (Isaac). He then helped him to remove the vehicle. He did so without any authority documentation. Whether the oil was contaminated or not, he was supposed to get the necessary approval. To that extent the reason for the dismissal of the CW1 (Denish Guya) is established.

54. The item of stolen oil also catches on the CW2 (Isaac Wachira). He jointly committed the offence with CW1. CW2 carried the oil outside the camp gate together with other items which he loaded onto the lorry assisted by other employees and covered the same with canvass. He admitted that the items were from the Royal Engineering Support and included drums, clothing and wood among others. However, he admitted that Royal Engineers were not in charge of carpenters and Quarter Master from where some other items were collected.

55. Having considered the evidence on record, I am not satisfied by the explanation by the CW2 about the authorization to load and deliver the goods outside the respondent’s camp. He did not rebut the



- evidence by RW1 that the community service had been completed the previous day and the vehicle was not supposed to deliver other materials for the community project on 8<sup>th</sup> June 2023.
56. If at all the claimants' Line Manager, Mr. Victor Welsh had indeed issued him with Gate pass and ATUD to deliver the items, one wonders why he allowed the claimants to be arrested, suspended and eventually dismissed from service without benefits. If the allegation by the CW2 (Isaac) was true, he would have mentioned him when he was arrested and during the disciplinary hearing. In fact, he admitted before this court that during the disciplinary hearing, he told the committee that he could not remember the person who authorized him to drive the vehicle. If he could not remember the authorizer few days after the incidence, how comes he remembers his name after almost two years? I find the respondent's evidence more believable than that of the claimant. CW2 (Isaac) had no authority to drive the lorry and to take the cargo outside the camp on 8<sup>th</sup> June 2023.
  57. As regards the other claimants herein (CW5, CW6 and CW7), they denied that they assisted Isaac to load the lorry. They contended that no list of items removed from their respective stores was availed to them or this court. However, there is evidence that items belonging to their respective stores were recovered from the intercepted lorry on 8<sup>th</sup> June 2023.
  58. CW5 admitted that some of the recovered items belonged to his store (CPO) and some were from other departments usually brought there for repairs. CW2 stated that the lorry was left at the CPO, the previous day and he went to collect it on 8<sup>th</sup> June 2023 and proceeded to load the items at the Royal Engineers with the help of casuals.
  59. CW6 and CW7 were store men at the Royal Engineers and they denied being implicit in the theft of items in the store. They alleged that they had left the store securely locked and went for lunch. They admitted that they left the casuals alone. The explanation given by CW5, CW6 and CW7 is contrary to very detailed investigations report that shows the movement of all the claimants and the vehicle in issue plus other persons including G4S Security guards.
  60. According to the report, the vehicle was partially loaded with wood at CPO and left for the Royal Engineering at 7.28 hours. It remained in that place (REST) being loaded until 12.19pm when a canopy was placed over the partially loaded vehicle. The vehicle left the REST compound at 13.02 hours after loading. More items were loaded while parked near the training bay until 13.58 hours. The last items were said to be material only accessible by CW6, CW7 and Wairegi.
  61. Having considered the evidence above, I am convinced on a balance of probability that CW5, CW6 and CW7 were all involved in the theft of the respondent's property. However, the employer chose to dismiss them for being implicit in the theft rather than the theft itself.
  62. Having analyzed the evidence tendered, I find and hold that the respondent has proved on a balance of probability that the claimants' conduct amounted to gross misconduct under section 44(4)(g) of the *Employment Act*. CW2 (Isaac) was intercepted ferrying away property belonging to the respondent outside the camp. CW1 admitted that he loaded 2 jericans of oil onto the lorry at the request of CW2. CW5, CW6 and CW7 were caught by CCTV while assisting CW2 load the lorry with the employer's property. The property was in their custody at the CPO and REST. The loading at CPO was before 7.28 hours while the loading at REST was from 7.28 to 13.58 hours. CW2 admitted that he was intercepted while ferrying the said items. The items were identified as oil, wood, sideboards, fencing posts, clothes among others. I am satisfied that the said misconduct was a valid reason for the summary dismissal of the claimants.



## Procedure

63. The claimants were served with show cause letters and thereafter they were accorded to disciplinary hearing. They attended the hearing and made their representations. The representations were considered and found to be unsatisfactory and they were dismissed. They appealed but the appeal were found to be unmeritorious and they were dismissed.

64. 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.”

65. Applying the above provision to the facts of the case, I find and hold that the respondent has proved that it followed a fair procedure before dismissing the claimants. In the case of [George Musamali v G4S Security Services Kenya Ltd](#) [2016] eKLR, where the court held that:

“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.”

66. In the case of [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.”

67. Having considered the evidence, the law and precedents, I am satisfied that the employer has proved that both substantive fairness and procedural fairness were observed before separating itself from the claimants. Consequently, I find that the claimants have failed to discharge their burden of prove under section 47(5) of the Employment Act of proving unfair termination of their employment by the respondent as alleged.

### **Reliefs sought**

68. In view of the finding that the claimants have not proved unfair termination, it is obvious that they are not entitled to compensation under section 49 of the Employment Act. Likewise, the claim for gratuity has not been proved and it is declined. A claim for payment of gratuity must be grounded on the contract of employment or employer’s HR Policies and Procedures. The court has not been shown a copy of the HR Manual providing for the gratuity. I gather support from Pathfinder International Kenya Ltd v Stephen Ndegwa Mwangi (2019) eKLR where the Court of Appeal held: -

“We are persuaded by the above reasoning and would further add that for an employee to claim gratuity, it must be provided in the contract of employment or provided for in a Collective Bargaining Agreement or a statute. Suffice it to say that the Employment Act does not make it mandatory for employers to pay gratuity to employees.”

69. The claimants have also prayed for accrued leave. However, no particulars of the leave have been pleaded and evidence adduced to prove the same. Consequently, the same is declined. In the end, this suit and the other four suits consolidated herewith, lack merits and they are dismissed with costs. The consolidated files are: -

1. ELRC Cause No.E006 of 2024 - *Daniel Muriuki Muriithi v British Army Training Unit Kenya*
2. ELRC Cause No.E047 of 2024 - *Ismail Ahmed v British Army Training Unit Kenya*
3. ELRC Cause No.E048 of 2024 - *Abdulkarim Abubakah v British Army Training Unit Kenya*
4. ELRC Cause No.E049 of 2024 – *Isaac Wachira v British Army Training Unit Kenya*

**DATED, SIGNED AND DELIVERED AT NYERI THIS 27TH DAY OF JUNE, 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.

