



Iburi v Uhuru Flowers Limited (Employment and Labour Relations Appeal E003 of 2024) [2025] KEELRC 1873 (KLR) (27 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1873 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E003 OF 2024
ON MAKAU, J
JUNE 27, 2025**

BETWEEN

TARASILA GAICUGI IBURI APPELLANT

AND

UHURU FLOWERS LIMITED RESPONDENT

(Being an appeal from the Judgment/Decree of Honourable D.W. Nyambu (CM) delivered on 26th March 2024 in Meru CMELRC Cause No. 6B of 2022)

JUDGMENT

Introduction

1. This appeal arises from termination of the appellant’s employment contract by the respondent on 26th October 2020. The Appellant challenged the termination in the lower court but the suit was dismissed on ground that the termination was lawful and fair.
2. The appellant was aggrieved and filed this appeal citing the following grounds:
 - a. That the learned trial Magistrate erred in law and fact in failing to find that the Appellant was terminated without being provided an opportunity to be heard in that: -
 - a. No notice to show cause was served upon her.
 - b. The Appellant was not given an opportunity to prepare and respond to any charges against her.
 - b. That the Learned trial Magistrate erred in law and fact in failing to find that issues discussed in the disciplinary hearing having been different from the issues in the purported show cause letter then the process of terminating the Appellant was flawed.



- c. That the Learned trial Magistrate erred in law in failing to determine a quantum of damages payable to the Appellant.
 - d. That the Learned trial Magistrate erred in both fact and law by disregarding the Appellant's pleadings, evidence and submissions.
3. The appeal seeks the following reliefs: -
- a. The Judgment of the Trial Court be set aside.
 - b. The Appellant's suit in the Trial court be allowed by finding that the Appellants termination was unfair and assessing general damages.
 - c. The Respondent do bear the costs of this Appeal and the court below.

Background

4. The appellant was employed by the respondent as a Flower Attendant from 11th August 2009 to 26th October 2020 when she was dismissed for misconduct. Her monthly gross salary was Kshs.44,567.
5. She contended that his dismissal was unlawful and unfair as there was no valid reason and she was not afforded any prior hearing. She averred that the times she failed to use the harvesting sledge, she had permission from her supervisor. She denied that flowers were destroyed because of her failure to use the sledge. She contended that other workers were also allowed by the supervisor to harvest without a sledge. She accused her seniors of malicious dismissal because of a grudge at the workers Sacco.
6. As regards the procedure followed before the dismissal the appellant contended that she was never served with a show cause letter or an invitation to attend disciplinary hearing. Consequently, she maintained that her dismissal was malicious and unfair.
7. The respondent on the other hand, was that the appellant was found harvesting flowers without following the set Standard Operating Procedures (SOP) hence reducing the quality of flowers resulting to losses. On 19th October 2020, she was asked by her supervisor to give a verbal explanation which was not satisfactory. She was then served with a show cause letter on the same day to explain why disciplinary action should not be taken against her.
8. The letter also invited her to a disciplinary hearing on 23rd October 2020 but she refused to acknowledge the letter. On 22nd October 2020, the employees' welfare representative reported that the appellant was inciting employees not to follow the Standard Operating Procedures of harvesting of flowers in the green house.
9. The respondent further averred that the appellant failed to attend the disciplinary hearing on 23rd October 2020 and the disciplinary panel resolved that she be dismissed from employment for committing gross misconduct contrary to section 44(4)(a)(e) of the *Employment Act*, 2007. The respondent maintained that the dismissal was lawful since the appellant was given an opportunity to defend herself but squandered the same.
10. Finally, the respondent contended that after the dismissal it computed the benefits payable to the appellant and paid her in October 2020. It averred that the appellant's monthly gross salary was Kshs.15,467.
11. During the hearing, the appellant testified as CW1 and called no witness while the respondent called two witnesses. The witnesses adopted their written statements and produced bundles of documents as exhibits. After the hearing, both sides filed written submissions.



12. After considering the evidence and submissions, the trial court (Nyambu CM) framed the following issues for determination: -
 - a. Whether there was wrongful, unlawful and unfair termination of appellant's employment.
 - b. Whether the claimant is entitled to the prayers sought.
 - c. Who bears costs of the suit.
13. Having considered the above issues, the court concluded that the termination of the appellant's employment was fair and lawful because she committed the offence charged and she declined to defend herself after being accorded the opportunity. Consequently, the suit was dismissed with costs.

Before this court

14. The appeal was canvassed by written submissions. For the appellant, it was submitted that she was dismissed unfairly because she was never served with the show cause letter dated 19th October 2020 and she was never summoned to any disciplinary hearing on 23rd October 2020.
15. It was submitted that no evidence was adduced to prove service of the show cause letter on the appellant. Further that the gender lady who allegedly, was sent to call her to attend disciplinary hearing on 23rd October 2020, was not called to give evidence during the disciplinary hearing or before the trial court. Consequently, it was submitted that the trial court erred in finding that the appellant was served with the show cause letter and further that she was called to attend the disciplinary hearing but declined.
16. It was further submitted that, assuming the show cause letter had been served, the termination would still be unfair because the time given to respond and attend the hearing was too short for her to prepare her case. Reliance was placed on *Hantex Garmets (EPZ) Limited v Jacob* (Appeal E070 of 2022) [2024] KEELRC 113 (KLR) where the court held that an employee should be given reasonable time to prepare for a disciplinary hearing.
17. It was further submitted that the dismissal was unfair as the reason for the dismissal of the appellant was different from the offence charged in the show cause letter dated 19th October 2020. That the show cause letter charged her with plucking the buds and failure to use harvesting sledge which was required in flower harvesting while the minutes of the disciplinary hearing departed from the said charges and introduced a new charge of inciting workers to defy the Standard Operating Procedures of harvesting flowers. Reliance was placed on *Kiilu v Isinya Resorts Limited* [2022] KEELRC 13240 (KLR) where it was held that the issues to be discussed at a disciplinary hearing must be the same as in the show cause letter.
18. In view of the fact that the reason for termination was not valid and that fair procedure was not followed, the court was urged to find that the appellant was unfairly dismissed and she is entitled to the reliefs sought in her statement of claim under section 49 of the *Employment Act*.
19. On the other hand, it was submitted for the respondent that, the termination was fair because the appellant was served with a show cause letter which also invited her to a disciplinary hearing. It was further submitted that the appellant refused to acknowledge receipt of the letter, and further failed to attend the hearing even after someone was sent to physically call her to attend the hearing.
20. It was submitted that the appellant was given sufficient time to respond to the show cause letter and to prepare for the disciplinary hearing. It was further submitted that the charges in the show cause letter were the same one discussed during the disciplinary hearing, namely, "refusal by the appellant to



harvest flowers as per the Standard Operating Procedures.” It was argued that the alleged incitement of workers not to use sledge in harvesting was separate from the charge in the disciplinary hearing.

21. In view of the foregoing materials, it was submitted that the termination of the appellant’s employment was fair because it was for a valid reason and fair procedure was followed. Consequently, it was submitted that the reliefs sought in the statement of claim are not warranted. Besides the reinstatement cannot issue since three years have lapsed since the termination.

Determinations

22. This being a first appeal, the mandate of this court is to re-evaluate the evidence on record and make my own independent conclusion. In *Selle v Associated Motor Boat Company Ltd* [1968] EA 123 the court held thus: -

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must consider the evidence, evaluate itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

23. Having considered the record of appeal and the rival submission, the following issues arose for determination: -
- a. Whether the termination of the appellants contract of employment was unfair and unlawful.
 - b. Whether the relief sought in the statement of claim are merited.
 - c. Who should bear the cost of the appeal?

Termination

24. Section 45 (1) and (2) of the *Employment Act* provides that: -

“45. . Unfair termination

- (1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - i. related to the employee’s conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”



25. The foregoing provisions highlights two factors which render termination of employment unfair, namely, lack of a valid reason, and failure to follow fair procedure. In the instant case the appellant faulted the termination for the above two factors.

Reason for dismissal

26. The termination letter dated 26th October 2020 stated as follows:

“Tarasila Gaichugi Ihuri

O Box 1062

Meru.

26th October 2020

Dear Tarasila,

Termination Of Service

It's with regret that we have to inform you of Management's decision to terminate your employment contract with the company due to non-performance. Consequently, your last working day will be 26th October 2020.

It is noted that you have several warnings for similar kind of conduct: plucking ready flower buds on quality flowers on subsequent number of days i.e.

8th July 2020

22nd September 2020

8th October 2020

You know very well that the Company deals in export of quality flowers as the main source of income and plucking of incoming quality of flowers results to reduced earnings.

This kind of conduct has exhausted the number of warnings thus giving us no option but to terminate your contract with immediate effect.

You will be entitled to the following dues less statutory deductions and monies owed to the company.

Salary and worked up-to and including 26th October 2020 House allowance for the days worked Leave days earned but not taken Gratuity for five years served.

Payment of your terminal dues will be at your respective Bank and subject to company clearance.

Yours faithfully,

For: Uhuru Flowers Ltd,

Ivan Freeman

Managing Director”

27. The letter cites the reason for the termination as non-performance, and plucking ready flower buds on quality flowers on 8th July 2020, 22nd September 2020 and 8th October 2020. The issue of non-performance was not mentioned in the show cause letter and in the minutes of the disciplinary committee. Consequently, the said non-performance was not a valid reason for termination. However,



the issue of harvesting flowers without adhering to the Standard Operating Procedure was raised in the show cause letter and the proceedings of the disciplinary hearing. The alleged violation included plucking of flower buds and failure to use a sledge. The appellant admitted that offence during the trial and therefore I will not belabour that point but agree with the respondent that there was a valid reason for the termination.

Procedural fairness

28. 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.”

29. The appellant denied service of the show cause letter dated 19th October 2020 which was also the invitation to a disciplinary hearing. She further denied that any person was sent physically to call her to attend the hearing. She contended that she was on duty on 23rd October 2020 and no one called her to attend the hearing.
30. The respondent did not adduce any evidence to prove service of the show cause letter or to prove that the appellant was made aware of the disciplinary hearing. There is no evidence that the appellant received and refused to acknowledge service of the show cause letter.
31. The person who allegedly effected the service is unknown and he or she was not called to give evidence during the disciplinary hearing or during the trial. Further, the person who was sent to call the appellant on the day of the disciplinary hearing was also not called to give evidence. Consequently, I find that the show cause letter dated 19th October 2020 was never served on the appellant and no one was sent physically to call her from her work station to attend the disciplinary hearing.
32. The foregoing holding is fortified by the fact that the termination letter never made allegation that the appellant was served with any show cause letter or invitation to attend hearing. The letter only stated that she had been warned severally and her conduct had exhausted the required warnings and the only option was to dismiss her.
33. In view of the foregoing finding, I hold that the appellant was never accorded any opportunity to defend herself before termination of her employment on account of misconduct. Consequently, the termination was unfair and unlawful within the meaning of section 45 of the *Employment Act*.
34. In reaching the foregoing conclusion, I am guided by *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."

Reliefs

35. In view of the conclusion that the termination was unfair, I find that the appellant is entitled to declaration that her dismissal was unfair within the meaning of section 45 of the *Employment Act*, 2007.
36. The appellant prayed for reinstatement but as correctly submitted by the respondent, such award is not tenable now since the three years window permitted by section 12 (3) of the *Employment Act* has now been closed. Consequently, I award the alternative prayer of compensatory damages under section 49(1) of the *Employment Act*.
37. The appellant worked for over 10 years but then contributed to the termination through misconduct. Therefore, I award six months gross salary for the unfair termination. The payslips produced indicated her gross pay of Kshs.15,467. Hence the compensation is Kshs.92,802.
38. The claim for future salary and allowances until retirement is declined for lack of particulars and supporting evidence.
39. Since the appeal has succeeded, the appellant is awarded costs of the appeal and the court below.

Conclusion

40. I have found that the termination of the appellant's employment was rendered unfair by the respondent's failure to follow fair procedure as set out under section 41 of the *Employment Act*. I have also found that the appellant is entitled to compensatory damages for the unfair termination under section 49 of the *Employment Act*. Consequently, I allow the appeal, set aside the judgment of the trial court and substitute it with the following orders in favour of the appellant:
 - a. CompensationKshs.92,802.00
 - b. The award is subject to statutory deductions.
 - c. Costs of the appeal and court below.

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.

ONESMUS N MAKAU

JUDGE

