



Kenya Plantation & Agricultural Workers Union v Ekatera Tea Kenya [Formerly] Unilever Tea Kenya Limited (Cause E004 of 2023) [2025] KEELRC 1877 (KLR) (27 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1877 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E004 OF 2023**

**J RIKA, J
JUNE 27, 2025**

BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT
AND
EKATERA TEA KENYA [FORMERLY] UNILEVER TEA KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claim herein is brought by the Claimant Union, on behalf of its member, Joshua Maina [Grievant].
2. The Claimant and the Respondent have a recognition agreement, and have registered several collective agreements.
3. The Grievant is a former Employee of the Respondent. He was employed as a general worker, on 5th February 2011.
4. He was dismissed on 16th March 2020, in circumstances the Claimant pleads, amounted to unfair and unlawful termination.
5. His last salary, was at a monthly rate of Kshs. 15,877.50.
6. The Claimant avers that on 25th December 2019, the Grievant and his colleagues went for a Christmas drink at a watering hole, in Kimulot market, in the neighbourhood of their workplace.
7. A colleague, Reginald Ambaisi joined the drinking party. The Grievant and his friends had enough and left the bar, at 6.30 a.m. The Grievant was quite drunk, requiring the assistance of his friends to stagger his way home. His friends assisted him, and subsequently dispersed to their various destinations.



8. On 26th December 2019, the Grievant was informed by his wife, that the Respondent's security personnel, were looking for him. He presented himself to their office, on 27th December 2019.
9. He was confronted with the allegations that on 25th December 2019, he assaulted Reginald. The Grievant requested that Reginald is called to the meeting to confirm the allegations, but his request was denied.
10. The Grievant thought the matter had been settled. He was surprised to receive a letter to show cause from the Respondent on the subject, dated 27th January 2020. He was simultaneously asked to attend disciplinary hearing on 5th February 2020.
11. He replied to the letter to show cause. He attended disciplinary hearing on 5th February 2020.
12. He was summarily dismissed on 16th March 2020. He appealed on 18th March 2020. He was heard on appeal, and the decision to summarily dismiss him, sustained.
13. The Claimant reported the existence of a trade dispute to the Labour Office. Parties made their representations. There was no settlement and the conciliator issued a certificate of disagreement, paving the way for filing of the Claim.
14. The Claimant urges the Court to find that termination was unfair, and grant him the following prayers:
 - a. Unconditional reinstatement.
 - b. Salary for the period the Grievant has been away.
 - c. Leave days for the period the Grievant has been away.
 - d. Leave and leave travelling allowance [repetitious]
Alternatively,
 - e. Gratuity under the CBA.
 - f. Leave allowance [repetitious].
 - g. 12 months' salary in compensation for unfair termination.
 - h. Leave [repetitious].
 - i. Leave traveling allowance [repetitious].
 - j. Notice.
 - k. Damages for unfair and unlawful termination [repetitious].
 - l. Costs.
 - m. Interest.
 - n. Any other relief.
15. The Respondent concedes that the Grievant was employed by the Respondent as pleaded.
16. The Grievant stabbed his colleague Reginald with a sharp object, above the left eye, on 25th December 2019, at around 22.00 hours. The two were returning home from a drinking spree.



17. The Grievant was issued a letter to show cause. He replied. He was invited for disciplinary hearing which took place on 5th February 2020. Witnesses were availed. He was found guilty of assaulting Reginald. The committee recommended that he is summarily dismissed.
18. He appealed through the Claimant. The appeal was declined. He was paid his final dues and issued a certificate of service.
19. The Claim has no merit. The Respondent prays for its dismissal with costs.
20. The Grievant, Joshua Maina, gave evidence on 17th October 2024, closing the Claimant's case. Estate Manager at the time of the incident, Margaret Lang'at, gave evidence for the Respondent on 11th March 2025, closing the hearing.
21. The Grievant relied on his witness statement and 9 documents on record, in his evidence-in-chief. He restated that he went drinking on Christmas day 2019, in the company of fellow workers. He was joined by another worker Reginald. Everyone was drunk. The Grievant was later alleged to have stabbed Reginald. He did not stab him. He was summarily dismissed for no reason.
22. Cross-examined, he conceded that he was issued a letter to show cause. He replied. He was invited for hearing. He was advised on his right to be accompanied. He was heard. A decision was made to summarily dismiss him. He appealed. His appeal was dismissed.
23. He was completely sloshed, at the watering hole. He could not recall what happened there. He was told that he beat up Reginald. No witnesses saw him beat Reginald. There were witness statements presented at the disciplinary hearing. He did not see the statement of Reginald. He called Nyaribo and Hamisi as his witnesses.
24. He was not paid terminal dues. He had worked for 9 years. Gratuity was payable after 10 years. He was ready to work for 10 years. The Respondent housed him. He used to go on annual leave.
25. Redirected, the Grievant told the Court that no officer from the Respondent was at the bar. Those who made witness statements were not at the bar. They stated what they said was told to them, by Reginald. The statement of Cheruyiot stated that Reginald was drunk and staggered. Japheth states that Reginald fell and did not recognize who hit him. The Grievant was not paid terminal dues.
26. Lang'at relied on her witness statement and 8 documents filed by the Respondent, in her evidence-in-chief. The Grievant was found to have assaulted a colleague, Reginald. He was taken through a disciplinary process and dismissed. He was dealt with administratively. The Respondent did not have control over the criminal aspects of the allegations. The Grievant appealed unsuccessfully. Due procedure was followed and valid reason established.
27. Cross-examined, Lang'at told the Court that the Grievant stabbed Reginald above the left eye. There were no eye witnesses. Witness statements confirmed the stabbing. Reginald obtained P3 form. He reported to the police. The Respondent did not have control over the police.
28. Reginald's statement, at page 2, reveals that he walked into the bar at around 3.00 p.m. and left after 4 hours of drinking. He would not have been sober after 4 hours of drinking. A security guard Cheruyiot, recorded a statement, stating that Reginald was drunk and clumsy. The Grievant admitted stabbing Reginald and sent emissaries, asking for forgiveness. Stabbing took place within the farm. The bar was outside the farm. The Grievant breached the Respondent's code of conduct and CBA clause 24.
29. Redirected, Lang'at told the Court that witness account not only stated that Reginald was drunk and clumsy, but also that he was bleeding in the eye. Reginald reported to the Police. P3 form was not in



possession of the Respondent. The Respondent relied on the decision of the disciplinary committee, in summarily dismissing the Grievant.

30. The issues are whether the Respondent, in summarily dismissing the Grievant, adopted a fair procedure under Sections 41 and 45 of the *Employment Act*; whether valid reason, or reasons, were established to justify dismissal; and whether the remedies sought are merited.

The Court Finds: -

31. The Claimant Union and the Respondent have a recognition agreement, and have concluded a collective bargaining agreement.
32. The Grievant, a member of the Claimant Union, was employed by the Respondent on 5th February 2011 as a general worker.
33. He worked for 9 years.
34. He was summarily dismissed by the Respondent on 16th March 2020, on the allegation that he had stabbed and wounded his colleague Reginald, above his left eye. The Grievant was found to have violated Respondent's workplace policy, the CBA and the *Employment Act*.
35. Procedure: There was no defect in the procedure. The Grievant was issued a letter to show cause; he responded; he was formally invited for disciplinary hearing; he was advised on his right to be accompanied; he was heard in the presence of 2 shop stewards, Ronald Ouma and Rael Nyakerario; he was allowed to call witnesses, and called 2 witnesses; a shop steward accompanying the Grievant was allowed to make representations; and in the end a decision was made to summarily dismiss the Grievant.
36. He appealed the decision. The appeal was heard in the presence of Respondent's Bomet Branch secretary Jared Momanyi. The decision to summarily dismiss the Grievant was sustained.
37. The Claimant reported the existence of a trade dispute to the Labour Office. A conciliator was appointed and heard representations from the parties. There was no settlement, and a certificate of unresolved dispute issued, paving way for presentation of the Claim before the Court.
38. This procedure was in conformity with the demands of fairness under Sections 41 and 45 of the *Employment Act*.
39. Validity of reason[s]. The Grievant and his workmates went to celebrate the birth of Christ, by having a drink, at their favourite watering hole, in the neighbourhood of their workplace.
40. They seem to have been at it, the greater part of the night of 25th December 2019. They became severely drunk, and their recollections blurred.
41. Reginald, a colleague of the Grievant joined the party and similarly became intoxicated.
42. It was after the workers had had enough, in the wee hours of 26th December 2019, as they staggered back to their residences, that the Grievant is alleged to have stabbed Reginald.
43. There is no doubt from witness accounts, that Reginald was stabbed. He reported assault to the police, and was issued P3 form.
44. While the Grievant conceded that he was too drunk to have a clear recollection of what he did on the material night, Reginald recorded a statement with Marvin Odhiambo, internal investigator engaged by the Respondent.



45. Reginald was himself intoxicated, but confirmed that he was stabbed. He had the wound above his left eye, confirming that he sustained injury the previous night.
46. It is not likely that Reginald, having been assaulted and shed blood, and having woken up with a wound above his eye, would not recall even slightly, the identity of the person who assaulted him.
47. He had been drinking with the Grievant. The Grievant was known to him. According to Reginald in his statement, he walked into the bar at 3.00 p.m. on 25th December 2019. The Grievant and his friends joined him. The Grievant and his friends left the bar. Reginald followed them, and found the group having a drunken quarrel. He asked them why they were quarrelling, and why they could not sort out their differences amicably. He left the group and entered the village [workers' farm residences].
48. He distinctly remembered the Grievant following him. The Grievant confronted Reginald, wanting to know what he had said to them at the gate. Reginald ignored him and continued walking to his house. Near Kaitu's house, the Grievant caught up with Reginald and aimed at him, a sharp object. Reginald realized he had been stabbed and asked why the Grievant stabbed him. He was bleeding.
49. As he ran away he encountered 2 security guards. He reported to them. They called 2 police officers. The officers went to the Grievant's house. He was not there. Reginald was issued a P3 form.
50. The Grievant was not prosecuted by the police, but the Court agrees with the Respondent, that this inaction, was not a bar to administrative action which the Respondent took.
51. Reginald also recalled that on 27th December 2019 at around 10.00 a.m. the Grievant went to his house and asked for forgiveness. On this date there was no suggestion from any party, that the involved Employees were drunk, so as not to have clear recollection of the day's events. Reginald was not ready to forgive. The Grievant then sent Kennedy Anyona and Japheth Wepukhulu to intercede for him.
52. This recollection by Reginald was fairly elaborate and credible. The shedding of his blood on the fateful night probably sobered him, waking him up from his drunken stupor, and allowed him to register in his mind, the identity of his assailant.
53. Although the workers were drunk, clumsy and not expected to recall the exact details of the events that took place on the night of 25th December 2019, the recollection of Reginald above, was also supported by other witness statements, and was sufficient to lead the Respondent to genuinely believe that the Grievant committed an act of gross misconduct.
54. It was a plausible explanation by Reginald, of the circumstances leading to his injury. The injury did not just happen to be there, in the morning of 26th December 2019. It was not self-inflicted. Reginald had a fair picture of how he was injured, and who injured him.
55. The Grievant stabbed a colleague, and his explanation that both were too drunk, does not justify shedding the blood of another human being.
56. He acted against the Respondent's workplace policy on violence, the CBA and the *Employment Act*.
57. He went drinking as he was entitled to, during Christmas festivities, became embroiled in a drunken quarrel with colleagues and Reginald, and stabbed Reginald, injuring him above the left eye.
58. The Court does not condone violent behaviour at the workplace.
59. The Respondent established valid reason[s] justifying its decision, under Sections 43 and 45 of the *Employment Act*. It was not required to pursue criminal prosecution against the Grievant, and establish that he stabbed Reginald, beyond reasonable doubt. The Respondent took an administrative decision,



in accordance with the minimum statutory standards of fairness, prescribed under Sections 41, 43, 44 and 45 of the *Employment Act*, 2007.

60. Remedies. He worked for 9 years. He was advised in the letter of summary dismissal that he would be paid salary for days worked, any pro-rata leave due, overtime due, and one-way bus fare home.
61. Clause 32 of the CBA did not avail to the Grievant any form of gratuity. Gratuity was only available to Employees who completed 10 years of continuous service. He completed 9. It is not clear why the CBA did not provide for pro-rata gratuity.
62. A copy of his pay slip, which is quite faded, indicates he was subscribed to N.S.S.F, and would therefore have access to some social security benefit, at the end of service.

It is Ordered: -

- a. The Claim is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT KERICHO,
THIS 27TH DAY OF JUNE 2025.**

JAMES RIKA

JUDGE

