



**Kenya Plantation and Agricultural Workers Union v Ekatera Tea Kenya Plc
(Cause E016 of 2024) [2025] KEELRC 1880 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1880 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E016 OF 2024**

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

**BETWEEN
KENYA PLANTATION AND AGRICULTURAL WORKERS
UNION CLAIMANT**

**AND
EKATERA TEA KENYA PLC RESPONDENT**

JUDGMENT

1. The Claimant Union and the Respondent have a recognition agreement, and have executed several collective agreements.
2. The Claim, is brought on behalf of Phillip Nyangau [Grievant], a member of the Claimant, and former Employee of the Respondent.
3. The Statement of Claim is dated 16th July 2024.
4. The Claimant states that the Grievant, was employed by the Respondent for 11 years, as a general worker. He was dismissed on 23rd December 2023. The date of his appointment is not pleaded.
5. The Claimant explains that on 11th December 2022, the Grievant completed his task, and went home.
6. He learnt that his colleague, Happiness Kwamboka had been arrested by Respondent’s security for ferrying Respondent’s fertilizer, to a destination known only to herself.
7. The Respondent alleged that the Grievant was complicit. He was said to have breached the Respondent’s code of business principles. It was alleged that he stole the fertilizer, and when stopped by security, on 11th October 2022, he refused to stop, and ran away.
8. Happiness stopped and upon search, was found to be carrying away, 5.4 kgs of the Respondent’s fertilizer in 2 bags. She was also found in possession of a pair of protective gloves.



9. Interrogated, she implicated the Grievant.
10. No witness implicated the Grievant at the disciplinary hearing. The Claimant states that termination was discriminatory. It was not based on proper investigations. It was unfair and unlawful.
11. Several prayers are pleaded by the Claimant, some which are repetitious. The Claimant prays for: -
 1.
 - a. The Grievant is paid for the entire period of dismissal.
 - b. Leave days dues at the time of dismissal.
 - c. Leave and traveling allowance.
 2.
 - a. Gratuity.
 - b. Service pay.
 - c. House allowance for the period of dismissal.
 - d. 12 months' salary.
 - e. Annual leave for the period of dismissal.
 - f. Leave traveling allowance.
 - g. Notice.
 - h. Damages for unfair, unlawful and illegal dismissal.
 - i. Costs.
 - j. Interest.
 - k. Any other suitable relief.
12. The Respondent filed its Statement of Response on 13th March 2025.
13. The relationship involving the parties and the Grievant, is conceded.
14. The Respondent received a report , on 11th October 2022, that the Grievant, with Happiness Kwamboka, had been spotted by Respondent's security supervisor, engaged in what appeared to be a suspicious activity.
15. When asked to stop, the Grievant fled, while Happiness stopped. She was arrested and found in possession 2 fertilizer application bags, the first which contained 2.5 kgs of fertilizer, and a pair of green gloves. The second bag contained 3.9 kgs of fertilizer, a pair of gloves and 1 leggers. These were confirmed to belong to the Grievant, who had fled the scene.
16. The Grievant's fleeing from the scene, abandoning what he had been carrying, was reasonable and sufficient reason to believe he had committed an offence against, or to the substantial detriment of the Respondent, in breach of the Respondent's code of business principles, and breach of the CBA. He breached the terms of his contract and the *Employment Act*.
17. The Respondent carried out investigations and issued a letter to show cause to the Grievant. His reply was unsatisfactory. He was invited for disciplinary hearing through a letter dated 25th November



2022. Hearing was scheduled for 28th November 2022. The Grievant was advised on his right to be accompanied, and to call witnesses.
18. He attended hearing in the company of a shop steward. He was given fair hearing. He signed the minutes. He was dismissed on 23rd December 2022, and paid his terminal dues. He appealed against the decision. His appeal was considered and declined.
 19. The Claim has no merit. The Respondent prays for its dismissal with costs.
 20. The Grievant, and his former unit manager Robert Twara, gave evidence for the respective parties, on 20th March 2025, closing the hearing. The Claim was last mentioned on 29th April 2025, when the parties gave their undertaking on filing and exchange of closing submissions.
 21. The Grievant adopted his witness statement dated 16th July 2024, and documents filed by the Claimant, in his evidence in chief.
 22. He denied that he stole the Respondent's fertilizer. No one saw him steal. He had a clean record for 12 years. He never saw Happiness stealing. He was not paid terminal benefits.
 23. Cross-examined, he confirmed that Happiness was his colleague. He did not know what she was doing with the fertilizer. He heard that she was arrested with the fertilizer. He did not run away.
 24. He was running after a rabbit.
 25. He was issued a letter to show cause. He was given a chance to defend. He was advised on his right to be accompanied. He was accompanied to the hearing. Witness were called. He cross-examined them.
 26. Redirected, the Grievant restated that he did not steal the fertilizer. He did not collude with Happiness. His record was clean. He was only paid Christmas advance. He was not paid his salary and terminal dues.
 27. Twara told the Court that he was the Grievant's supervisor. He adopted his witness statement dated 3rd December 2024, and 4 documents filed by the Respondent, in his evidence.
 28. Cross-examined, he told the Court that he had worked for the Respondent for 25 years, and was familiar with the Grievant. He had worked with the Grievant directly for about 2 years.
 29. The Grievant stole 3.9 kgs of Respondent's fertilizer. It was found in his bag. The bag was left with Happiness. The Respondent did not take a photo of the fertilizer. Evidence was presented establishing the Grievant's culpability.
 30. Security asked the Grievant and Happiness to stop. The Grievant fled. Happiness stopped. She had her own bag, and that left by the fleeing Grievant. Happiness and other witnesses confirmed that the Grievant fled, leaving the stolen fertilizer with Happiness. He was paid Kshs. 23, 226 as terminal dues. It did not reflect 12 years of service. He did not discharge the Respondent.
 31. Redirected, Twara confirmed that the disciplinary hearing minutes, confirm Happiness was among the witnesses. She confirmed that the Grievant was with her, and that he fled away.
 32. The issues are whether termination of the Grievant's contract was procedurally and substantively fair, under Sections 41, 43, 44 and 45 of the [Employment Act](#); and whether he merits the remedies sought.



The Court Finds: -

33. The Claimant avers that the Grievant was employed by the Respondent for 11, and on other occasions, 12 years. It is common evidence that he worked as a general worker, and was dismissed by the Respondent on 23rd December 2022. He was alleged to have stolen the Respondent's fertilizer.
34. Procedure. The Respondent's security personnel, on 11th October 2022, found the Grievant and his colleague, Happiness Kwamboka to be engaged in suspicious activity.
35. The 2 were required to stop. Happiness was said to have complied and stopped, while the Grievant fled, leaving his bag with Happiness. The Respondent alleged to have conducted a search, and recovered 5.4 kgs from the 2. 3.9kgs were from the Grievant. A pair of gloves was recovered from each of the 2 Employees.
36. Following these allegations, the Respondent issued the Grievant with a letter to show cause. He replied on 10th November 2022.
37. He was invited for hearing through a letter dated 25th November 2022. He was advised on his right to be accompanied by a union representative or a colleague of his choice. Hearing was slated for 28th November 2022.
38. The Grievant was heard in the presence of a shop steward. Witnesses were called and the Grievant availed the opportunity to cross-examine them. Among the witnesses was his colleague, Happiness Kwamboka.
39. The disciplinary committee, upon evaluation of the evidence recommended that the Grievant breached the Respondent's code of business principles and the CBA.
40. A decision was made to summarily dismiss the Grievant, on 23rd December 2022.
41. He lodged an appeal with the Respondent's country general manager, on 23rd January 2023. The appeal was considered and declined.
42. The Court is satisfied that procedure was fair, in accordance with the minimum statutory standards of fairness, under Sections 41 and 45 of the [Employment Act](#).
43. Validity of reason[s]. In explaining his flight on 11th October 2022, when required to stop by the Respondent's security personnel, the Grievant told the Court on cross-examination, that: -

“I was running after a rabbit.”
44. He does not deny that he ran. He conceded that he ran, but not away on account of guilt over theft of the Respondent's fertilizer. He was running after a rabbit.
45. This explanation by the Grievant led the Court to the conclusion that the Grievant was up to no good, when stopped by the Respondent's security personnel.
46. It cannot be that he was stopped by the security personnel, and a rabbit emerged from the bushes suddenly, diverting him from the instructions of the security personnel to stop.
47. Even if it was correct that a rabbit suddenly emerged, the Grievant did not explain why he found it more attractive to run after the rabbit, leaving his colleague Happiness, with his bag containing 3.9 kgs of stolen fertilizer and a pair of gloves.



48. His explanation about why he fled, was a cock and bull story. It was a lie, a fanciful tale, not worthy of being told to any person, little less presented as evidence before any Court of Law.
49. Security supervisor Joseph Keragori told the disciplinary committee that the Grievant and Happiness were required to stop. The Grievant ran away. Happiness was arrested and confirmed that the Grievant was her colleague, who ran away. Stolen fertilizer was found in the workers' bags. This evidence was corroborated by another security guard Kipkemoi Sang, and importantly, by Happiness Kwamboka.
50. The Grievant was properly, lawfully and fairly found to have committed a criminal offence against the Respondent; he breached the CBA and the Respondent's code of business principles; and violated fundamental terms of his contract of employment. He breached the implied terms of trust and confidence. He stole the Respondent's fertilizer, and while asked to stop for a search, took off, explaining quite extraordinarily, that he was running after a rabbit.
51. Termination was based on valid reason, under Sections 43, 44 and 45 of the [Employment Act](#).
52. Termination was therefore fair, both on procedure and substance.
53. Remedies. The Respondent's witness Robert Twara, told the Court that the Grievant was in the end paid Kshs. 23,226. This was his final salary. He was not paid any other terminal dues, after at the very least, 11 complete years of service.
54. The Respondent heard the Grievant fairly and established valid reason warranting summary dismissal, but did not adhere to the principles of justice and equity, under Section 45 [4] [b] of the [Employment Act](#), by disregarding the Grievant's years of service. It did not adhere to the intention of the law, under Section 18 [4] of the [Employment Act](#), which demands that Employees who are summarily dismissed for just cause, are paid all their accrued benefits. This provision of the law supersedes the CBA. While the Respondent correctly found that the Grievant was engaged in an act of gross misconduct warranting dismissal without notice, it was not just and equitable to deprive him recognition and reward for his years of service.
55. The Grievant invested 11 complete years of service in the Respondent's tea plantations, and ought to have been recognized and rewarded for his investment, and not paid salary for days worked alone, on exit. It was in any event, open to the Respondent to surcharge the Grievant for loss of its fertilizer if any, from his salary for days worked, which the Respondent opted to pay to the Grievant as the totality of his terminal package, instead of expropriating altogether, his 11 years worth of service.

It is ordered: -

- a. It is declared that the Grievant was summarily dismissed fairly and lawfully.
- b. Summary dismissal is reduced to regular termination, and the Respondent shall pay to the Grievant gratuity under clause 32 [a] of the CBA, computed at 22 days' salary for 11 complete years of service, at Kshs. 216,180.
- c. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, THIS 27TH DAY OF JUNE 2025.

JAMES RIKA

JUDGE

