



**Kenya Plantation and Agricultural Workers Union v Ekatera Tea Kenya Plc
(Cause E017 of 2024) [2025] KEELRC 1861 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1861 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E017 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 brings this Claim on behalf of its member, Justice Kiprono Rotich [Grievant], a former Employee of the Respondent.
2. The Claimant avers at paragraph 3 [a] of the Statement of Claim, that the Grievant was employed as a general worker, for 24 years.
3. The Grievant states, at paragraph 2 of his witness statement that as of 29th January 2023, he had been assigned guard duties, when 5 brush cutters, property of the Respondent, were stolen.
4. The pleading is inconsistent on certain details. Paragraph 3 [a] of the Statement of Claim is that the Grievant worked for 11 years, and it is also pleaded, that he served for 24 years. Paragraph 3 [d] gives the service period as 24 years.
5. The Grievant also mentioned a service period of 29 years in his evidence.
6. He was accused of breaching the Respondent's code of business principles. He denied involvement, in theft of the 5 brush cutters. He also denied that he omitted to report theft to the Respondent, while it was being planned.
7. He Respondent alleged that he had prior information regarding theft. He did not have such information. No witness implicated him at the disciplinary hearing.



8. The Claimant states that, the Grievant's dismissal was unfair, unlawful and discriminatory. It was not based on proper investigations.
9. His last salary was Kshs. 25,579 monthly.
10. The prayers, as noted in another Cause between the parties herein, E&LRC Cause Number E016 of 2024 at Kericho, are repetitious. They include: -
 - a. Pay for the entire period of dismissal.
 - b. Annual leave for the period of dismissal.
 - c. Leave and traveling allowance.
 - d. Gratuity.
 - e. Service for 23 years.
 - f. House allowance for the period of dismissal.
 - g. 12 months' salary.
 - h. Leave for the period of dismissal.
 - i. Leave traveling allowance.
 - j. Notice.
 - k. Damages for unlawful, illegal and unfair dismissal.
 - l. Costs.
 - m. Interest.
 - n. Any other suitable relief.
11. The Respondent filed its Statement of Response, dated 3rd December 2024. It is conceded that the parties have a recognition agreement and have executed various collective agreements. It is correct that the Grievant was employed by the Respondent.
12. The Respondent does not plead the date of employment, but agrees that it summarily dismissed the Grievant, on 5th March 2023 for failing to properly guard the Respondent's brush cutters against theft. He had prior information that theft was about to take place. He did not share the information with the Respondent. He told a colleague, on 10th February 2023, while investigation was underway, not to disclose to the investigators that he knew beforehand, that the brush cutters would be stolen.
13. He was heard fairly, in the company of his shop steward. He was issued a letter to show cause on 25th February 2023. He replied through an undated letter. He was invited to the disciplinary hearing through a letter dated 2nd March 2023. He was heard on 3rd March 2023. He was dismissed and all his terminal dues settled.
14. He was advised on his right of appeal, which he did not exercise.
15. The Respondent urges the Court to find that termination was fair and lawful.
16. The Grievant, and Respondent's Security Manager Nelson Kiprono, gave evidence on 20th March 2025, closing the hearing. The matter was last mentioned on 29th April 2025, when the parties confirmed / undertook filing and exchange of their submissions.



17. The Grievant relied on his witness statement and documents filed by the Claimant, in his evidence. He had a clean record. He confirmed that he was on duty, at the time the brush-cutters were stolen. He was however, not guarding the store, the scene of crime. He was at the village [workers' farm residences]. The store and the village are about 1,500 metres apart. There were no CCTV cameras at either place. He was not involved in any theft. He was summoned for disciplinary hearing. He was heard and summarily dismissed. He was not paid anything, only salary for 15 days worked.
18. Cross-examined, he told the Court that he was deployed at the upper and lower villages within the factory, not at the store. He signed the attendance register on reporting and leaving duty. He left the register in the custody of the Respondent. He did not have foreknowledge of the theft. He did not confide to anyone, that brush cutters would be stolen.
19. He only advised in general, that when casual workers are leaving employment, theft is rampant. He did not call a colleague Isaya, and warn him that brush cutters would be stolen. He was just advising colleagues to be alert.
20. He agreed that he attended hearing accompanied by the shop steward. He defended himself. He signed the minutes. He was issued a letter of summary dismissal. Redirected, he told the Court that he signed the log [register] book, which was retained by the Respondent. He did not have prior information concerning theft, but used to advise his colleagues to be alert at all times.
21. Security Manager Nelson Kiprono adopted his witness statement and documents filed by the Respondent, in his evidence-in-chief.
22. Cross-examined, he told the Court that he did not have his letter of appointment, but that it was commonly known, that he was the Security Manager. He had worked for 4 years, and knew the Grievant for 2 years. The Grievant's record was clean. The Respondent retained an occurrence book. It did not exhibit the book before the Court. The scene of crime was not suited for CCTV camera installation.
23. There were 3 night guards at the scene. 2 were at the village, and 1 at the store. John and Isaya worked together. They patrolled and confirmed all was fine at their areas. The Grievant did not do so. He also did not hand over his shift properly.
24. The Grievant was paid his dues, except for years of service. He was not entitled to this, because he was summarily dismissed. He was senior, with long years of service. He had prior information of theft, which he did not share with the Respondent. Isaya, the colleague he confided in, was not a witness for the Respondent.
25. Redirected, Kiprono told the Court that there were witnesses at the disciplinary hearing, who confirmed that the Grievant manned the store. He was paid salary for days worked.
26. The issues are whether termination was based on fair procedure pursuant to Sections 41 and 45 of the *Employment Act*; whether it was based on valid reason[s] under Sections 43, 44 and 45 of the *Employment Act*; and whether the multiple remedies sought by the Claimant are merited.

The Court Finds: -

27. The Grievant was employed the Respondent as a general worker. Later on, it seems, he was assigned security guard role. The date of employment as observed at the outset, is not clear from the parties' pleadings.



28. His pay slip on record, for the month of February 2023, however indicates his date of employment as 7th May 1993. He was summarily dismissed on 3rd March 2023. He therefore worked for 29 years and 10 months. His evidence that he worked for 29 years is correct, and other service periods suggested in the pleadings, are erroneous.
29. Procedure. The Grievant was alleged to have failed to prevent theft of the Respondent's brush cutters, which took place on the night of 29th January 2023.
30. The Respondent states that it investigated theft. It then issued the Grievant a letter to show cause dated 25th February 2023. He replied denying responsibility through an undated letter.
31. His reply was not satisfactory. He was invited for disciplinary hearing through a letter dated 2nd March 2023. Hearing was slated for 3rd March 2023.
32. He was advised on his right to be accompanied by a workmate of his choice, or a trade union representative. He attended hearing accompanied by a workmate and a shop steward.
33. He was heard, and signed the minutes. It was concluded that the Grievant was culpable.
34. He was summarily dismissed through the letter dated 5th March 2023. The letter states that he violated the Respondent's code of business principles and CBA, relating to protection of the Respondent's physical, financial assets, and intellectual property; wilful neglect of duty; and disobedience of lawful command of a superior. He was told he could appeal the decision within 7 days. He did not appeal.
35. The dispute was presented before the Ministry of Labour. The conciliator heard representations of both parties. The conciliator faulted the Respondent for relying on witness statements, without calling the actual witnesses at the disciplinary hearing. It was also the conciliator's view that none of the witness statements, established that the Grievant had prior knowledge of theft. It was recommended that the Respondent pays to the Grievant equivalent of 6 months' salary in compensation for unfair termination, and contractual benefits under the CBA.
36. This procedure, in the respectful view of the Court, was in conformity with the minimum standards of procedural fairness under Sections 41 and 45 of the *Employment Act*.
37. Reason[s]. There are 3 related reasons cited in the letter of summary dismissal, justifying termination. These are reproduced at paragraph 33 above.
38. The Grievant's recollection of the events on the material night, is that he was assigned guard duties with Isaya Rono. His guarding area was Chagaik upper and lower villages.
39. He did not guard the store, from which the brush cutters were stolen. The store was guarded by John Mutai.
40. The evidence by Security Manager Nelson Kiprono appears to diverge from that of the Grievant. According to him, Isaya and John Mutai worked together, which would mean that the Grievant worked alone.
41. Unfortunately the Respondent did not avail to the Court the occurrence book and the register [log] in book, which would have clarified which guard was signed duty at what time, at which site, and with which other guard.
42. None of the other guards with relevant information, such as Isaya and John, were availed to the Court.
43. It was not established by the Respondent that the Grievant was assigned duty at the store, and that theft of the brush cutters occurred under his guard.



44. On the second aspect concerning his prior knowledge of intended theft, there was inconclusive evidence from the Grievant himself, and witness statements from his colleagues, on his foreknowledge of theft.
45. The colleagues who recorded statements however, were not availed to the Court, and the conciliator found that they were not even called at the disciplinary hearing.
46. The Grievant conceded that he had warned his colleagues about the likelihood of theft of the brush cutters taking place. According to him, he was discharging his routine duty of alerting his colleagues about the likelihood of theft. He told the Court that thefts normally took place whenever casual / seasonal workers were leaving employment. He denied that this amounted to prior knowledge of theft, and that he failed to pass on the intelligence to the Respondent, for preventive measures.
47. Isaya recorded a statement, also stating that the Grievant had attempted to dissuade his colleagues from disclosing his foreknowledge to the investigator appointed by the Respondent, to investigate the incident.
48. But neither Isaya, nor any other security guard, was called to elaborate the communication made to them by the Grievant, concerning his foreknowledge of theft.
49. The evidence by the Grievant that he was merely alerting his colleagues, about possible theft, appears suspicious, particularly because he was alleged to have specifically mentioned the brush cutters, in his alert.
50. However, it was for the Respondent to establish valid reason, which the Court does not think, the Respondent did, through evidence, in this dispute.
51. In the end, the Court formed the view that the sanction of summary dismissal, with loss of benefits was extremely harsh, particularly in light of the Respondent's concession that the Grievant had served for decades, and had a clean record.
52. Beyond establishing that termination followed a fair procedure and was founded on valid reason or reasons under Sections 41 and 43 of the *Employment Act*, the Court has an obligation to examine if the Employer acted in accordance with the principles of justice and equity, under Section 45 [4] [b] of the *Employment Act*.
53. A fair outcome ought to be achieved, at the end of the disciplinary process. The principle of a fair go all round, demands that there is fairness and balance, in punishment of Employees who are dismissed for what their Employers perceive to be just cause. Section 18 [4] of the *Employment Act* provides that an Employee who is summarily dismissed for just cause, shall on dismissal, be paid all monies, allowances and benefits due to him, up to the date of dismissal. The Respondent did not treat the Grievant justly and equitably, after he had served for 29 years.
54. How does the Respondent justify paying the Grievant 15 days' salary only, at the end a dedicated 29 years' service?

It Is Ordered: -

- a. The decision by the Respondent against the Grievant, summarily dismissing him, is commuted to regular termination.
- b. He shall be paid by the Respondent: notice of 2 months under clause 25 [c] of the CBA, at Kshs. 51,158; and gratuity under clause 32 [a] of the CBA, at the rate of 22 days' salary for 29 complete years of service, at Kshs. 627,669 – total Kshs. 678,827.



- c. The sum to attract interest at court rate, from the date of Judgment till payment is made in full.
- d. Other prayers are declined.

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

JAMES RIKA

JUDGE

