



**Kenya Plantation and Agricultural Workers Union v Unilever Tea (K) Limited -Kilimari Factory (Cause E024 of 2023) [2025] KEELRC 1879 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1879 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
CAUSE E024 OF 2023**

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

**BETWEEN**  
**KENYA PLANTATION AND AGRICULTURAL WORKERS  
UNION ..... CLAIMANT**  
**AND**  
**UNILEVER TEA (K) LIMITED -KILIMARI FACTORY ..... RESPONDENT**

**JUDGMENT**

1. The Claimant brings this Claim on behalf of its member, Francis Nyaribo [hereinafter the Grievant].
2. The Claimant and the Respondent have a recognition agreement.
3. The Grievant is a former Employee of the Respondent. He was employed on 1st February 2007 as a general worker.
4. The Claimant avers that on 21st April 2021, the Grievant disciplined his daughter over certain misbehaviour, within Kimari factory village [workers' farm residences].
5. The daughter ran away to the Grievant's house screaming. Her mother came out to find out what was going on. An alarm was raised by fellow workers at the village, and they gathered around the Grievant's house, enquiring about the commotion.
6. The Grievant was asked to accompany security personnel to Kaptengwet police station. There was no evidence of wrongdoing and the Grievant was released immediately.
7. The Respondent issued the Grievant a letter to show cause dated 4th May 2021, asking him to explain why he engaged in a fight with his wife. It was alleged that he was involved in a fight at the village, in violation of the Respondent's code of business principles and policies.



8. He replied that he did not beat his wife. He only disciplined his daughter, who ran to the house screaming, attracting the attention of the other workers.
9. He was at work on 12th May 2021, attending to his routine work, when he was verbally invited to a disciplinary hearing by the Respondent.
10. Hearing was to take place the same day. Shop stewards were invited. He explained that he was not involved in a fight.
11. On 28th June 2021, he was issued a letter of summary dismissal. He was found to have breached the code of business principles and policies and the CBA.
12. His wife Naomi Kerubo, wrote a statement on 28th June 2021, explaining that she did not fight with her husband. She was never injured by her husband and did not report anywhere, that her husband beat her up.
13. The Claimant appealed against the decision. The appeal was heard on 12th July 2021, and declined.
14. The Claimant reported a trade dispute to the Labour Office. The conciliator recommended that the Grievant is paid terminal benefits. He was earning a monthly salary of Kshs. 16,432.
15. The Claimant urges the Court to find that termination was unfair.
16. The orders sought are: -
  - a. Declaration that termination was unfair and unlawful.
  - b. Reinstatement of the Grievant.
  - c. Salaries for the period the Grievant has been out of employment.  
Alternatively,
  - d. Gratuity under the CBA.
  - e. Notice.
  - f. Pending annual leave and leave allowance.
  - g. Compensation equivalent of 12 months' salary.
  - h. Damages for unfair and unlawful termination.
  - i. Costs.
  - j. Interest.
  - k. Any other suitable relief.
17. The Respondent filed its Statement of Response dated 21st March 2024. It is conceded that the Grievant was employed by the Respondent. His contract was terminated as pleaded, on 24th June 2021.
18. His contract was terminated for violating the Respondent's code of business principles and policies.
19. There was a commotion in the Grievant's house, which resulted in general disturbance to the community. He was escorted to Kaptengewet police station and booked under OB No. 10/21/04/2021.



20. The commotion originated from a wangle between the Grievant and his wife, Naomi Keubo. She was allegedly brutalized by the Grievant, sustaining injury to her left shoulder. The Grievant was at the time of the incident intoxicated.
21. The Respondent has a provision for violence prevention in its code of business principles and policies. It issued the Grievant a letter to show cause, dated 4th May 2021. He replied unsatisfactorily. He was invited for disciplinary hearing.
22. He was heard on 12th May 2021. A decision was made to summarily dismiss the Grievant, on 24th June 2021.
23. The statement attributed to the Grievant's wife dated 28th June 2021, absolving him of battering the wife, was an afterthought. The Grievant did not present the statement or call his wife as a witness, on 12th May 2021.
24. He appealed against the decision through the Claimant. The appeal was declined on 12th July 2021.
25. The Claimant reported the existence of a trade dispute to the Labour Office. The conciliator heard the parties, recommending that summary dismissal is reduced to regular termination, with the Grievant paid 6 months' salary in compensation, and other benefits under the CBA.
26. The Respondent did not accept this recommendation, maintaining that its decision was procedurally fair and substantively justified. The Respondent urges the Court to dismiss the Claim with costs.
27. The Grievant gave evidence and closed his case, on 23rd January 2025. Respondent's head of manufacturing, Gerald Wabwire, gave evidence on 11th March 2025, closing the hearing. The Claim was last mentioned on 29th April 2025.
28. The Grievant adopted his witness statement and documents on record in his evidence. He was an Employee of the Respondent from 2007 to 2021. He presently works in the construction industry at Thika.
29. He was issued a letter to show cause. He was not issued a letter inviting him for disciplinary hearing. He was summoned by word of mouth. He found the shop steward at the disciplinary venue.
30. He found a security guard walking with a child. He reported the incident to the child's mother. The guard became malicious. He set up the management against the Grievant. He raised alarm, and had the Grievant arrested and later released.
31. Cross-examined, he explained that his neighbour's daughter was moving around with the security guard. His name was Jared. He lied to the manager about the Grievant being involved in a fight with his wife. The Grievant received the letter to show cause. He did not receive invitation to the disciplinary hearing. He attended hearing in the company of the shop steward.
32. It is not true that he had previously threatened his neighbours using a machete. He did not have a warning. A neighbour lied that he was threatened by the Grievant using a machete. The Grievant was using the machete for firewood. On redirection, the Grievant told the Court that the allegations concerning the machete, were not part of the reasons, contained in the letter of termination, justifying the decision.
33. Wabwire adopted his witness statement and documents [1-8] filed by the Respondent, in his evidence-in-chief. The Respondent found out through its security personnel, that the Grievant was involved in domestic violence against his wife, within the farm residences. His wife was injured. The Respondent



has a policy against violence at the workplace. The Grievant was issued a letter to show cause and subsequently granted a hearing, and dismissed.

34. Cross-examined, Wabwire maintained that the Grievant brutalized his wife. He did not know who specifically reported the incident to Respondent's security. The Respondent investigated the incident internally. It was reported to the police. Wabwire did not know who was the complainant at the police. He did not know what was the outcome at the police. He did not know if the injured wife was treated at a hospital. The Grievant was in breach of the Respondent's business and housing policy.
35. Wabwire did not participate in the disciplinary hearing. He was not aware of medical evidence adduced, showing that the Grievant's wife was injured. Clause 14 of the housing policy prohibited Employees resident at the farm, from involvement in domestic violence. The wife did not give evidence at the disciplinary hearing.
36. Redirected, Wabwire reiterated that the Grievant was charged with breach of housing policy, and policy on prevention of domestic violence. It is not disputed that he was escorted to the police station. It is not disputed that the Grievant was invited to the disciplinary hearing.
37. The issues are whether termination was based on a fair procedure; whether it was substantively justifiable; and whether the Grievant merits the prayers sought.

**The Court Finds: -**

38. The Grievant was employed by the Respondent as a general worker, on 1st February 2007. He was stationed at Koiwa estate, before transfer to Kimari estate. He was dismissed while working at Kimari, on 24th June 2021.
39. He was alleged to have engaged in domestic violence. The letter of summary dismissal states that he was dismissed for breach of housing policy, which prohibited Employees and their dependents from engaging in domestic violence, creating disturbance to other residents; breach of the Respondent's violence prevention and management policy; and breach of the CBA clause 24 [g].
40. He unsuccessfully appealed against the decision through the Claimant.
41. The Claimant reported the existence of a trade dispute to the Labour Office. The conciliator recommended that summary dismissal is commuted to regular termination, and the Grievant paid compensation equivalent of 6 months' salary, and other terminal benefits under the CBA.
42. Procedure. The Grievant was issued a letter to show cause, but not formally invited for the disciplinary hearing.
43. There is no letter to him, inviting him to the disciplinary hearing, and communicating the charges, he was expected to respond to at the hearing.
44. Having responded to the letter to show cause on 7th May 2021, the Respondent did not write to him further, either to inform him that his response was not satisfactory, or was satisfactory.
45. Instead, the Respondent summoned him to office for hearing, on 12th May 2021, and heard him. He was not given notice of the hearing to enable him prepare.
46. The default was not corrected through the summoning of the shop steward to the meeting, who the Grievant found sitting at the disciplinary meeting. It was incumbent upon the Respondent to communicate to the Grievant directly and in good time, concerning the disciplinary hearing.
47. The Court faults the Respondent for lack of formal invitation.



48. Other procedural requirements were largely satisfied. There was a hearing in the presence of a shop steward. The Grievant was granted the opportunity to be heard. A decision was made and communicated to him, to summarily dismiss him.
49. He was granted a right of appeal which he exercised unsuccessfully. The Claimant reported dispute to the Labour Office and again, parties were granted a hearing on conciliation.
50. Procedure was largely fair, but tainted by lack of a formal invitation of the Grievant, to the disciplinary hearing.
51. Reasons. The Grievant was dismissed on account of engaging in domestic violence. He was alleged to have battered his wife, Naomi Kerubo.
52. Domestic violence was against the Respondent's housing and prevention of violence policies.
53. The Court found both the Respondent's evidence of the alleged battering of Kerubo by the Grievant, and the Grievant's own response to the allegation, inconsistent.
54. The Respondent alleged that the incident was reported to its security personnel. The reporter was not identified. The Grievant was escorted to Kaptengewet police station. It was not known who the complainant was. Wabwire did not know who was the complainant or what became of the complaint.
55. He similarly was at a loss, to state whether the Respondent gathered any medical evidence surrounding the Grievant's wife's injury. The Respondent simply pleaded that the Grievant's wife was injured on the left shoulder.
56. The wife was herself not called as a witness to confirm that she was battered by the Grievant resulting in injury, and the commotion that disturbed other workers.
57. While the Respondent retains a laudable policy against domestic violence within its premises, it regrettably, did not establish that there was domestic violence at the Grievant's residence, amounting to breach of the Respondent's prevention of violence and housing policies.
58. The Grievant himself told the Court an unpersuasive story, about a security guard whom he found three times, walking with a neighbour's daughter. He suggested that that guard was having an improper relationship with his neighbour's daughter. When he reported him to the security department, the guard became malicious, and somehow conjured the allegations against the Grievant, leading to termination of the Grievant's employment.
59. In his Statement of Claim, it was not about a neighbour's daughter; it was about his own daughter, who was involved in unspecified misbehaviour. The Grievant attempted to use the rod to save his daughter. She ran, either in or out of the house, screaming at the top of her voice, attracting other workers, who thought it was the Grievant who had accosted his wife Kerubo, generating her screams.
60. The wife wrote a statement after the disciplinary hearing and decision, dated 28th June 2021. She denied that she was battered and also attributed the screams to her 5-year old daughter. She stated that the daughter had misbehaved, and the Grievant wanted to discipline her. The daughter bolted out screaming, causing the commotion.
61. Unfortunately, the wife did not give evidence to the disciplinary committee on 12th May 2021. Her statement ought to have been made at the disciplinary hearing, but the Grievant as seen in analysing procedure, was not given adequate notice of the hearing, which could perhaps, have kept out his wife's evidence.



62. There was however an appeal, heard on 12th July 2021, where the Grievant's wife's statement, dated 28th June 2021, perhaps ought to have been presented as fresh and important evidence.
63. In all, there were inconsistencies in both parties' evidence, on the cause of the commotion which led to the Grievant's dismissal.
64. Section 43 of the *Employment Act* however, requires the Employer to establish reason or reasons justifying termination. What the Grievant said in the end is not conclusive, in determining if there was valid reason or reasons, justifying termination. The Respondent did not establish valid reason or reasons, warranting dismissal of the Grievant.
65. Remedies. The letter of termination is dated 24th June 2021. 4 years have lapsed, since the Grievant left employment. The remedy of reinstatement has expired, under Section 12 [3] [vii] of the E&LRC Act, Cap 8.E the Laws of Kenya. It is not available to the Grievant.
66. The Court has concluded that termination was flawed both on procedure, and for want of valid reasons. It has looked into the report of the conciliator, which confirms that it was not established that the Grievant battered his wife. The conciliator looked extensively at the Grievant's employment record, in determining what appropriate remedies to recommend. It was a relevant finding that the Grievant worked for 14 years, but did not have a clean record. He had been issued a 3rd warning. The finding was not discounted by the Claimant before the Court.
67. The conciliator recommended that the Grievant is awarded equivalent of 6 months' salary in compensation for unfair termination, and terminal benefits under the CBA.
68. Terminal benefits under the CBA were not specified in the report of the conciliator or evidence presented by the Claimant.
69. Clause 32 of the CBA entitles Employees with over 10 years of service, to gratuity at the rate of 22 days' salary, for each complete year of service. Gratuity is extended to medical retirees and dead Employees. Clause 26 exempts Employees who are validly summarily dismissed.
70. The Grievant worked for 14 years. He was not validly and fairly dismissed. He merits gratuity at the rate of 22 days' salary for each of the 14 years of service.
71. He earned a monthly salary of Kshs. 16,432, which translates to Kshs. 13, 904 x 14 years = Kshs. 194,654. He is granted gratuity at Kshs. 194,654.
72. Clause 25 [c] of the CBA entitles Employees with over 5 years' continuous service to notice of 2 months. The Grievant is awarded notice of 2 months, at Kshs. 32,864.
73. The recommendation of 6 months' salary in compensation for unfair termination, made by the conciliator is upheld. The Court has taken into account that the Grievant worked for 14 years, he has been awarded gratuity and notice, and was not shown to have caused or contributed to the circumstances leading to his dismissal. He mitigated loss of employment, by finding alternative work in the construction industry at Thika. He is awarded 6 months' salary in compensation for unfair termination at Kshs. 98,592.
74. As observed above, the Claimant did not specify other benefits that are awardable to the Grievant, under the CBA.
75. Costs to the Claimant.
76. Interest allowed at court rate from the date of Judgment till payment is made in full.



In Sum, It Is Ordered: -

- a. It is declared that termination was unfair.
- b. The Respondent shall pay to the Grievant through the Claimant, gratuity at Kshs. 194,654; notice at Kshs. 32,864; and compensation for unfair termination equivalent of 6 months' salary, at Kshs. 98,592- total Kshs. 326,110.
- c. Costs to the Claimant.
- d. Interest allowed at court rate from the date of Judgment, till payment is made in full.

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

**JAMES RIKA**

**JUDGE**

