



**Oloo v Avo Distribution Group alias Avo Group (Cause E525 of 2022)  
[2025] KEELRC 1865 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1865 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E525 OF 2022  
CN BAARI, J  
JUNE 26, 2025**

**BETWEEN**

**AUGUSTINE OMONDI OLOO ..... CLAIMANT**

**AND**

**AVO DISTRIBUTION GROUP ALIAS AVO GROUP ..... RESPONDENT**

**JUDGMENT**

1. This Judgment relates to the Statement of Claim dated 25<sup>th</sup> July, 2022 and filed on even date. The Claimant seeks the following remedies as against the Respondent: -
  - a. Compensation for unfair termination of his contract of employment.
  - b. Salary for 12 months in the sum of United States Dollars nineteen thousand two hundred (\$19,200 USD)
  - c. United States Dollars Eight hundred thirty one (\$831 USD) being salary arrears deducted from net pay for the months of May, 2022 (\$414 USD) and June, 2022 (\$417USD).
  - d. General damages for breach of employment contract.
  - e. Damages for pain and suffering caused by the misrepresentations and unlawful termination.
  - f. Payment of NSSF and NHIF dues against his net pay from January, 2022 to June, 2022.
  - g. Costs of this suit.
  - h. Interest on the above items of a, b, c, d, & e.
  - i. Certificate of service.
2. The Respondent entered an appearance and subsequently filed a Statement of Response dated 26<sup>th</sup> August, 2022, denying the Claimant's claim and asserting that it had valid reasons to terminate him.



3. Both the Claimant's and the Respondent's cases were heard on 10<sup>th</sup> March, 2025. The claimant testified in support of his case, adopted his witness statement and produced the list and bundle of documents filed in the matter as his exhibits in the matter. The Respondent presented the evidence of one Grant Hibbert to testify on its behalf.
4. Both parties filed submissions in the matter. The submissions have been duly considered.

#### **The Claimant's Case.**

5. The Claimant's case is that at all times before 1<sup>st</sup> January, 2022 he was securely employed with Twiga Foods Limited as a senior compliance auditor until he left them for the Respondent with an open employment contract.
6. The Claimant states that the Respondent through their agent in Europe who knew his passion and network worth in Kenya, head scouted and head hunted him from his otherwise stable employment with Twiga Foods Ltd in Nairobi, and with a promise of establishing a business empire in the region, promised him that he would grow with the Respondent as one of the critical and technical personnel of the Respondent.
7. It is his case that he forwarded his application upon request to Mr. Michael Mulvaney who was the CEO of Avo group based in the UK, and who conducted the interview together with one Bernard Mafuleka and offered him an employment letter immediately.
8. The Claimant states that he officially resigned from his former employer on 1<sup>st</sup> January 2022 to join the promoters of the Respondent company all of whom were based in London to start the business in Kenya.
9. It is his case that the Respondent employed him on/or after 28<sup>th</sup> December, 2021 as Head of Technical & Production at a NET salary of United States Dollars One Thousand Six Hundred only (USD1600\$).
10. The Claimant avers that immediately after he was offered an appointment letter he located an office space for the company to rent in Nairobi.
11. It is his case that he was able to send thirty six (36) 40ft containers of 820.176 tons by sea and 35 air shipments of 124.596 tons within 6 months, which was a break through record since the company was established in 2020. He avers further, that the company was very impressed with his breakthrough in the Kenyan and regional market, particularly with the use of his networks in the industry.
12. The Claimant states that all was well until 6<sup>th</sup> July 2022 at 8:30pm, when he received a WhatsApp call from Grant, his supervisor from London requesting him to join a team's meeting which he did upon receiving the link. The Claimant avers that it is during this teams meeting that Grant told him that his probation had ended, and that the company is not willing to continue with his services.
13. The Claimant states that during his stay in the company, he was never summoned for any disciplinary action nor issued any warning. He states that the Respondent used him to establish the company in the region, and in Kenya using his networks and career goodwill in the avocado business in the region, then unlawfully terminating him when he had been given a position in the company which it indicated would grow strong financially and internationally hence encouraging him to resign from his former employment.
14. It is the Claimant's case that no notice to show cause was issued to him or any disciplinary hearing conducted for his benefit, other than a teams meeting where he was informed that he was no longer



wanted as part of the Respondent company in any capacity, and that he immediately ceased being an employee and should not bother to report to work or the offices.

15. The Claimant states that throughout his employment with the Respondent, he had no disciplinary case or prior warning or any other form of disciplinary case taken or pursued against him as he strictly served in accordance with the terms of service and the Respondent approved his service by maintaining him as an employee even after the 3 months statutory probation period.
16. He avers that after 2 months of being paid the net pay of UDS.1600, the Respondent started making deductions from his net pay and which he claims as arrears from his net pay.
17. The Claimant states that his dismissal was unjust, unfair and unlawful as he served the Respondent faithfully and in accordance with the Respondent's terms and condition of service and the relevant Labour regulations.
18. On cross-examination, the Claimant told Court that though the Respondent's company had registered for remission of taxes, it had not deducted the taxes from his net pay as that was not the agreement he had with the Respondent.
19. The Claimant told this Court that he has never received a termination letter. He emphasized that he was not heard before he was terminated.
20. The Claimant prays that the Court allows his claim and grant him the reliefs sought.

### **The Respondent's Case**

21. The Respondent states that on 28<sup>th</sup> December 2021 it hired the Claimant as Head of Technical & Production at a basic monthly salary of USD 1600.
22. It states that the Claimant's duties included identifying a robust supply chain for fruits and vegetables, support the commercial team, sourcing quality, packing and shipping produce to meet the commercial teams' needs and to support all audits carried out within the group relating to Global Gap, GRASP, SMETA, Organic and any other associated bodies.
23. It is the Respondent's case that the Claimant despite being aware of his duties and responsibilities, failed to execute the said duties to the required standard. The Respondent further states that it charged the Claimant with the responsibility to ensure proper labelling of shipments, logistics and transportation of shipments to the airport within time.
24. It states further that in March, 2022 while handling a shipment, the Claimant failed to properly label the KW1 shipment to Bahrain International Airport, and also failed to facilitate the timely payment for transportation of this shipment, and as a result of his negligence, the shipment arrived late at Bahrain International Airport and was off-loaded from the cargo list.
25. It is the Respondent's case that on various occasions, the Claimant prepared packing lists that did not meet the required standard, for instance, packing more than five pallets of size twenty-two, a concern which was brought to his attention.
26. The Respondent states that it dealt with the export of perishable goods which required critical packing and as per the standards of the pre-shipment inspection report, he failed to adhere to the required standards and this jeopardized the Respondent's reputation with its clients. It further avers that on 17<sup>th</sup> May 2022, the Claimant sent a shipment to Riyadh, Saudi Arabia yet the shipment was not to be sent as the Client had cancelled its purchase order.



27. The Respondent states that the Claimant admitted that he failed to check his e-mails, hence was not aware of the cancellation, which act resulted in a cost implication upon the Respondent amounting to USD 17,280.
28. The Respondent states that the Claimant failed to fulfil this responsibility and occasioned it losses due to reports of quality issues with the shipment. It states that between the months of February, 2022 and May, 2022, it had 12 out of 17 shipments being flagged by clients for quality issues.
29. It states that the Claimant was reminded on several occasions what was expected of him and was even given several chances to improve on his performance, in vain. It states further that the Claimant was called to a meeting on 6<sup>th</sup> July, 2022 to defend his dismal performance, but was unable to satisfactorily show cause why his contract should go beyond the probation period.
30. The Respondent further states that the Claimant failed in his managerial and supervisory roles which led it to believe that he had misrepresented his skills and experience to the Respondent, as such it was untenable to continue the employment relationship.
31. It is the Respondent's case that in the months of February, March and April of 2022, the Claimant was paid as independent contractor a monthly basic salary of USD 1600 which amount was inclusive of the statutory deductions. It states further that this arrangement was to subsist until the Respondent finalized its tax registration processes in Kenya and the Claimant would remit his deductions.
32. It states that upon completing the tax registration processes, it commenced submission of the statutory deductions for their employees including NHIF and NSSF deductions in May and June, 2022. It states that it is therefore, not true that there are arrears due to the Claimant and in any case, the Claimant's employment was not confirmed.
33. The Respondent further states that the Claimant is keen on unjustly enriching himself despite agreeing to remit his deductions during the period when the Respondent was regularizing its tax registration processes in the country.
34. The Respondent finally avers that the Claimant has no claim against it, and it is appalling that despite occasioning the Respondent great losses, he has chosen to abuse this Honourable Court's time and resources with the unjustified claim herein.
35. On cross-exam, RW1 told this Court that no deductions were made from the Claimant's salaries in the months of February to April, 2022. He further told court that an online meeting was held to discuss the Claimant's performance and that he was dismissed immediately. He confirmed that the meeting was not an official disciplinary hearing.
36. It was RW1's evidence that the Claimant's contract was not changed and that nothing shows he was an independent contractor. He told Court that the Claimant did not have management responsibility.
37. It is RW1's evidence that the Claimant was not issued with a termination letter. He further averred that there was no indication that the Claimant accepted the deductions from his salary for the months of May and June, 2022.
38. RW1 told Court that the Claimant's contract made no reference to probation, and neither does it indicate the volumes that the Claimant was expected to ship. It is his position that the Claimant did not solely occasion the liquidation of the Respondent's company.
39. RW1 confirmed that the Respondent's company was liquidated in 2024, two years after the Claimant had left.



40. The Respondent prays that the Court dismisses the Claimant's Claim with costs.

### **Analysis and Determination**

41. I have considered the pleadings herein, the oral testimonies by the witnesses and the rival submissions. The issues that present for determination are:

- i. Whether the Claimant was unfairly terminated
- ii. Whether he deserves the reliefs sought
- iii. Who bears the costs of the suit

### **Whether the Claimant was unfairly terminated**

42. A termination of employment is considered fair and lawful, where the employer's adherence to the mandatory provisions of Sections 41, 43, 45 and 47 of the *Employment Act*, 2007 on fair procedure and the substantive justification for the termination.

43. In the case of *Walter Ogal Anuro v. Teachers Service Commission* [2013] eKLR it was held that there must be both substantive justification and procedural fairness for a termination of employment to pass the fairness test.

44. Fair hearing is not only a statutory, but also, a Constitutional requirement demanded of an employer in a termination/dismissal process. This requirement is anchored on Section 41 of the *Employment Act*, which states: -

“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.”

45. The Claimant's position and which was not controverted, is that no notice to show cause was issued to him and nor was any disciplinary hearing conducted for his benefit prior to the termination. It is his case that he was suddenly asked to join a teams meeting with the Respondent's Director, where he was informed that he was no longer wanted as part of the Respondent company in any capacity, and that he immediately ceased being an employee and should not bother to report to work.

46. The Respondent's witness (RW1), one Grant Hibbert, told this Court that an online meeting was held to discuss the Claimant's performance and that he was dismissed immediately. He further confirmed that the meeting was not an official disciplinary hearing.

47. There was therefore, no pretence on the part of the Respondent of having complied with the law in terminating the Claimant's contract of employment.

48. In *Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd* [2013] eKLR, the Court held:-

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee.



Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible.....”

49. Further in the case of *Onyango Oloo v Attorney General (1986-1989) E. A 456*, the Court stated:-

“A decision in breach of the Rules of Natural Justice is not cured by holding that the decision would otherwise have been right since if the principles of Natural Justice is violated, it matters not that the same decision would have been arrived at...denial of a right to be heard renders any decision made null and void ab initio.”

50. The termination of the Claimant’s contract is therefore procedurally unfair and unlawful, and so I hold.

51. On the second limb, the Claim was terminated from the service of the Respondent without being issued a show cause notice. There was similarly no written termination letter issued, hence nothing shows the basis upon which the Claimant’s employment was terminated contrary to the mandatory requirements of Section 45 and 47(5) of the *Employment Act*.

52. In the case of *Galgalo Jarso Jillo v Agricultural Finance Corporation [2021] eKLR* the court stated thus:-

“...the overall design of the law is that the employer has the duty to provide evidence to establish the validity of the termination in terms of sections 43 and 45 of the Act absent which a presumption of fact arises in favour of the unlawfulness of the termination.”

53. The Respondent’s position is that the Claimant was reminded on several occasions of what was expected of him and was even given several chances to improve on his performance, in vain. It asserts that the Claimant despite being aware of his duties and responsibilities, failed to execute the said duties to the required standard. The Respondent further maintained that the Claimant’s failure to fulfil this responsibility, occasioned it losses due to reports of quality issues with the shipment.

54. The Respondent indeed led evidence to show that the Claimant had performance related shortcomings in the manner in which he handled his responsibilities, considering the perishable nature of the products that the Respondent traded in. These aspects of non-performance were however not put to him in writing in the form of a show cause letter, and nor was he placed on a performance improvement plan to help him perform better.

55. In the circumstances, I find the termination of Claimant’s employment both procedurally and substantively unfair.

### **Whether the Claimant is entitled to the reliefs sought**

56. The Claimant sought an award of compensation for unfair termination of his contract of employment, salary for 12 months in the sum of United States Dollars Nineteen thousand two hundred (\$19,200 USD), the sum of United States Dollars Eight hundred thirty one (\$831 USD) being salary arrears deducted from net pay for the months of May, 2022 (\$414 USD) and June, 2022 (\$417USD), general damages for breach of employment contract, damages for pain and suffering caused by the misrepresentations and unlawful termination and payment of NSSF and NHIF dues against his net pay from January, 2022 to June, 2022.



57. The claim for compensation has merit premised on the finding of an unfair termination. In making an award of compensation the court is bound to consider the provisions of Section 49(4) of the *Employment Act, 2007*.
58. The record evidently shows that the Claimant had performance issues which the Respondent maintained resulted in the termination of his employment. For reason that the Claimant did contribute to the termination of his employment contract, I deem an award of seven (7) months' salary sufficient compensation for the unfair termination and which is hereby awarded.
59. On the claim for salary arrears, the Claimant contends that the USD 1600 given to him under his contract was net salary and no deductions were supposed to have been made against it.
60. On its part, the Respondent asserts that in the months of February, March and April of 2022, the Claimant was paid as independent contractor a monthly basic salary of 1600 USD which amount was inclusive of the statutory deductions. It states further that this arrangement was to subsist until it finalized its tax registration processes in Kenya, and that the Claimant was expected to have remitted his own tax deductions.
61. The Respondent insists further, that upon completing the tax registration processes, it commenced submission of the statutory deductions for their employees including NHIF and NSSF deductions in May and June, 2022, and that it is not true that there are arrears due to the Claimant.
62. The contract entered between the Claimant and Respondent indicated that the Claimant's monthly salary was 1600 USD. The contract did not specify that this pay was a net salary. It then follows, that in the absence of an express indication that the salary offered was net, the Court will construe the payment as gross pay and hence subject to statutory deductions, especially going by the Respondent's explanation of why the deductions were not made earlier.
63. I in the circumstances, proceed to hold that the Claimant is not owed salary arrears, and his claim on this account fails.
64. Having made an award of compensation for the unfair termination of contract, the claims for general damages for breach of employment contract as well as damages for pain and suffering, have no basis, and are dismissed.
65. Finally, the claim for payment of NSSF and NHIF dues against the Claimant's net pay from January, 2022 to June, 2022, is devoid of merit as the two are statutory deductions which can be pursued under the law under which they were to be deducted.
66. In the upshot, the claim succeeds in terms of the following orders:-
- a. A declaration that the Claimant's employment was unfairly terminated.
  - b. An award of seven (7) months salary as compensation for the unfair termination at USD 11,200
  - c. The Respondent shall bear the costs of the suit and interest at court rate from the date of this judgment until payment in full.
67. It is hereby so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE, 2025.**

**C. N. BAARI**  
**JUDGE**



Appearance:

Mr. Malinzi present for the Claimant

Mrs. Omondi present for the Respondent

Ms. Esther S - C/A

