



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Chandarana Supermarket Limited v Edward (Appeal E018 of 2024)  
[2025] KEELRC 1914 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1914 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E018 OF 2024  
DKN MARETE, J  
JUNE 25, 2025**

**BETWEEN**  
**CHANDARANA SUPERMARKET LIMITED ..... APPELLANT**  
**AND**  
**AMISI EDWARD ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Appeal dated 22nd January, 2024. It comes out thus;
  1. That the Honourable Magistrate misunderstood the nature of the case before the Honourable court as the judgment was not supported by evidence thus arriving at a wrong decision
  2. That the Learned Magistrate erred in law and fact in failing to consider that there was an employment contract between the Appellant and the Respondent which provided for termination from employment.
  3. That Learned Magistrate erred in law and fact in failing to consider that the Appellant issued a notice to show cause letter dated 25/05/2020 which he responded to and the Respondent was invited to a disciplinary hearing on 02/06/2020 prior to the Respondent being summarily dismissed.
  4. That the Learned Magistrate erred in law and fact in failing to consider that the Appellant did not contravene Section 44 and 45 of the *Employment Act*.
  5. That the Learned Magistrate erred in law and fact in excessively awarding the Respondent the award of 12 months' salary and in contravention of Section 49 (1) of the *Employment Act*.
  6. That the Learned Magistrate erred in law and fact by awarding the Respondent love allowance for the year 2019.



7. That the Learned Magistrate erred in law and fact in finding that the Respondent was unfairly terminated by the Appellant.
  8. That the Learned Magistrate erred in law and fact in finding that there was no valid and fair reason to terminate the Respondent's employment despite cogent evidence presented in court.
2. It is Proposed to ask this Honourable Court:
- a. That the judgement of the Trial Court dated and delivered on 6<sup>th</sup> April 2023 be set aside together with all consequential orders there be substituted with an order dismissing the claim.
  - b. That the Appellants appeal be allowed.
  - c. That the costs of the appeal be borne by the Respondent.
3. This Appeal borders on the conducts of the case and the findings and decision of the court upholding the Claimant's case. The other limb of contention is that the learned magistrate's holding and issue of twelve(12) months salary as compensation for unlawful termination of employment per section 49(1) of *Employment Act*, 2007.
4. The issues for determination therefore are;
1. Whether the Appellant followed due process in the dismissal of the Respondent.
  2. Whether the Appellant had substantive reasons and a fair hearing of the Respondent before dismissal.
  3. Whether the award of twelve(12) months compensation is excessive in the circumstances.
5. The 1st issue for determination is whether the Appellant followed due process in the dismissal of the Respondent. The Appellant cites section 44(3) of the *Employment Act*, 2007 and submits that the Respondent was issued with a termination letter dated 4th June, 2020. This was as consequence of a fundamental breach of contract on the part of the Respondent by being implicated in theft of an item, to wit, doom, from the Appellant's enterprise or supermarket.
6. The Appellant further pleads compliance with section 41(1) and (2) of the *Employment Act*, 2007 in that the Respondent was invited to a disciplinary hearing on 2nd June, 2020 where he was at liberty to attend with a union representative. Prior to this, a notice to show cause letter dated 25th May, 2020 was issued to the Respondent to which he replied.
7. The Respondent sought to rely various authorities including Malindi Court of Appeal No. 63/2015 Bamburi Cement Limited vs Farid Aboud Mohammed [2016] eKLR where the Court of Appeal pronounced itself by applying the requirement of sections 35 and 41 of the *Employment Act*, 2007 in conferring a lawful termination of employment.
8. The Respondent on the other hand pegs his case and defence on the basis that he had been searched and that he did not hear the manager calling him back for a re-search. He submits that there was no valid reasons for termination because the reason for which he dismissed is not the same as the reason for which he was called upon to show cause – refusing to come back for search as opposed to loss of trust and faith in the employee. This amounts to splitting hairs.
9. The Respondent's further submits that the Appellant had a witness who at first admitted having heard the manager call the Respondent but later recanted the statement at a review hearing on 16th June, 2020. Again, the Appellant did not invite the calling manager to testify at the disciplinary hearing or even produce a statement on the episode. The security officer whose statement was influential in the



decision to terminate the Respondent was also not called to testify. Instead, the Appellant relied on the CCTV footage which was not conclusive evidence for dismissing the Respondent because the various witnesses viewing had differing interpretations on the same.

10. The Respondent's case is faulty from the onset. This is because the evidentiary test in this case is a balance of probabilities and no more. The Appellant came out of her way to prove her case on a balance of probabilities. The testimony of Jane Njambi, the Respondent's Human Resource Manager on the goings on during the disciplinary proceedings was that the Respondent was awarded an opportunity to be heard. He had a union representative with him at the hearing. He agreed with his case of termination and even a tabulation of his termination dues. This was besides reiterating the case of the Respondent refusal to return for a further search after being recalled by the manager.
11. Disciplinary procedures are supposed to be simple and effective. It is not expected that these carry the rigmarole of criminal proceeding whose standard of proof is beyond reasonable doubt. In the circumstances of this case, a simple case of balance of probabilities was expected and established in the case of Appellant. The more probable of the respective cases of the parties is the Appellant's. The Respondent on a balance of probabilities was culpable of the allegations made against him. He cannot lay claim on higher burden of proof.
12. The learned magistrate erred in law by imposing a higher bar of proof than was necessary in making a determination of fact. This is as set out by section 107-109 of the *Evidence Act*, Chapter 80, Laws of Kenya. The party seeking to rely on a set of fact(s) must establish the same in evidence on a balance of probabilities. The Appellant in the circumstances satiated the requirement of section 47(5) of the *Employment Act*, 2007 by rebutting a case of unlawful termination of the employment of the Respondent through evidence. I therefore find that the dismissal of the Respondent by the Appellant was based on due process and sustainable.
13. The 2nd issue for determination is whether the Appellant had substantive reasons and a fair hearing of the Respondent before dismissal. A fair hearing was awarded to the Respondent before the decision of dismissal was made. He was taken through the disciplinary process by an issue of show cause letter to which he answered. A disciplinary hearing was conducted where he attended with a shop steward representative of his choice and a decision made to dismiss him. The Appellant had a valid reason for dismissal and this was upheld at the disciplinary hearing.
14. The 3rd issue for determination is one on whether the award of twelve (12) months compensation is excessive in the circumstances. On a finding of a fair and lawful termination of employment, this issue for determination dissipates into nothingness. It is not worthy of any determination.
15. I am therefore inclined to allow the Appeal, set aside the judgment and orders of the trial court with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Gakungu instructed by Macharia-Mwangi & Njeru Advocates for the Appellant.

Mr. Uvyu instructed by M.M. Uvyu & Company Advocates for the Respondent.

