



**Kenya Union of Commercial, Food and Allied Workers v Mantrack Limited
(Cause E329 of 2022) [2025] KEELRC 2033 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2033 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E329 OF 2022
DKN MARETE, J
JUNE 25, 2025**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
MANTRACK LIMITED RESPONDENT

JUDGMENT

1. This matter came to court by way of Statement of Claim dated 18th May, 2022. The issue in dispute is therein cited as;

Unfair/unlawful dismissal of Mr. Silvesta Okubasu Indimuli
2. The Respondent in the Memorandum of Response dated 5th June, 2024 denies the claim and prays that it be dismissed with costs.
3. The Claimant’s case is that the parties have valid Recognition Agreement and a Collective Bargaining Agreement in force with the relevant one being the CBA for 2018 – 2020.
4. The Claimant’s further case is that the grievant was employed by the Respondent on 1st March, 2000 as a technical inspector at a salary of Ksh. 17,000.00 per month. This rose to Kshs.161,691.00 as at the time of his termination from employment. It is his case that on 6th October, 2021 at around 1635 hours, the grievant received a phone call and was informed that there was an emergency to which he was required to attend to at home. He therefore sought permission to leave work early, that is before 1700 hours, the normal time for leaving work but supervisors were in a meeting. He therefore informed his colleague that is engineers and technicians that he was leaving early due to an emergency and that they should ensure a completion of their work. This was explained to his immediate supervisor first thing on the following morning.



5. The Claimant's other case is that on 8th October, 2021, the grievant received a show cause letter from the Respondent Human Resource Manager on allegation of absconding duty for nineteen (19) minutes on 6th instant. He responded to this on 13th October, 2021 explaining his case. On 15th October, 2021 he received a letter of invitation to a disciplinary hearing on 18th October, 2021 to which he attended and made his representation. He was ultimately dismissed on 25th October, 2021.
6. The Claimant avers that this matter was reported to them whereby they reported a trade dispute to the Cabinet Secretary, Ministry of Labour who appointed a conciliator who recommended that the dismissal be reduced to a normal termination and that the grievant be paid terminal benefit in accordance with the CBA inclusive of six (6) months salary as compensation. The Claimant was unhappy with this recommendation and registered such dissatisfaction to the conciliator. This is the offspring of this suit.
7. The Claimant submits that the grievant had had a twenty-one (21) years blemish free stint of service and only absented himself for 19 minutes on 6th October, 2021. This should have been punished by a verbal warning as per the Respondent's Human Resource Manual. The Respondent's action was therefore extreme, mala fides and unfair to the grievant and was actuated by his active participation in trade union activities.
8. She prays as follow;
 - i. Find that the dismissal of the grievant was unfair and unlawful.
 - ii. Order the Respondent to unconditionally reinstate the grievant; or in the alternative;
 - iii. Order the Respondent to pay the grievant all his terminal dues in accordance with the parties Collective Bargaining Agreement.
 - iv. Order the Respondent to pay the grievant 12 months salary as compensation for unlawful termination
 - v. Any other relief that this Honourable court may deem fit to meet ends of justice.
 - vi. Costs of the suit be borne by the Respondent.
9. The Respondent's case is a denial of the claim.
10. The Respondent denies the existence of a Recognition Agreement inter partes and puts the Claimant in strict proof thereof. She however agrees that Claimant was in her employ effective 1st March, 2000 in the position of a Technical Inspector. His salary at the time of separation was Kshs.141,778.84 at the time of separation. His duties primarily involved offering machine and genset inspections, repair and maintenance using given caterpillar and other applicable manufacturer specifications or guidelines, among other technical duties.
11. The Respondent's other case is that the grievant was a habitual absentee and engaged in early departures from work. These comprised and constituted a fundamental breach of his employment contract in contravention of section 44(3) and 44(4)(c) of the Employment Act, 2007. This was demonstrated through an attendance register (Appendix 4) showing instances where the grievant left work early.
12. The Respondent further justifies their action by submitting that the grievant was taken through disciplinary proceedings in compliance with section 41 of the Employment Act, 2007. Again, the grievant voluntarily signed a discharge voucher (Appendix 10 (c)) waiving any further claims and seeks to rely on the authority of *Trinity Prime Investment Limited v Lion of Kenya Insurance Company Limited* [2015] eKLR, where the court upheld the binding nature of such agreements.



13. The matter came to court variously until 13th February, 2025 when the party agreed on a disposal of the matter by way of written submissions.
14. The issues for determination therefore are;
 1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Claimant is entitled to the relief sought.
 3. Who bears the costs of this suit?
15. The 1st issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant in his written submission dated 11th December, 2024 submits a case of unlawful termination of employment. It is her case and submission that Section 43(1) of the *Employment Act*, 2007 requires an employer to prove the reason for termination. The Respondent alleges that the grievant's early departure on 6th October, 2021, coupled with a history of absenteeism justified summary dismissal under Section 44(4)(c) of the Act. However, the Claimant disputes this by providing an attendance extract (Claimant's Submissions, Paragraph 16) showing that the grievant often worked beyond required hours.
16. This court notes that the Respondent's evidence of habitual absenteeism is limited to a one-month attendance register. This is insufficient to prove a pattern of misconduct in a whole twenty-one (21) years period of service. Moreover, the Respondent's policy (Exhibit S012) prescribes a verbal warning for minor infractions and not summary dismissal. This disproportionate punishment for an insignificant and minor offence connotes mala fides and unfairness on the part of the Respondent. This is derided in the celebrated authority of *Anthony Mkala Chitavi v Malindi Water and Sewerage Co. Limited* [2013] eKLR, where the court emphasized proportionality in disciplinary actions.
17. As to substantive and procedural justice, Section 41 of the *Employment Act*, 2007 mandates a hearing before termination. The Respondent complied by issuing a show-cause letter and convening a disciplinary hearing. However, the dismissal letter introduced new allegations not included in the show-cause letter, thereby violating the grievant's right to a fair hearing as established in authority of *Pius Machafu Ishindu v Lavington Security Guards Limited* [2017] eKLR.
18. The Respondent's filing of a shallow claim that no Recognition Agreement existed inter partes is contradicted by the Claimant's reference to a CBA for 2018-2020 (Exhibit SO1). The Claimant, as the grievant's union, has standing under Section 12 of the *Labour Relations Act*, 2007. The signing of the discharge voucher by the grievant is a non-issue. The grievant's case is that this was done under financial duress. The court, guided by the authority of *Coastal Bottlers Limited v Kimathi Mithika* (2018) KECA 523 (KLR) where it was observed that the voucher does not bar claims for unfair termination as it only covered terminal benefits.
19. The Respondent has therefore failed to demonstrate substantive and procedural fairness in the grievant termination of employment. It is tempting to agree with the Claimant that there were other and ulterior motives behind the termination of employment. I therefore find a case of unlawful termination of employment and hold as such. And this answers the 1st issue for termination.
20. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.
21. I am declined to allow the claim and order relief as follows;



- (i) A declaration be and is hereby issued that the dismissal of the grievant by the Respondent was wrongful, unfair and unlawful.
- (ii) Twelve (12) months compensation for unlawful termination of employment.
Kshs.161,691.00 x 12.....Kshs.1,940,292.00
Total of Claim/award.....Kshs.1,940,292.00
- (iii) The costs of this cause shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Lilian Manene for the Claimant Union.

Miss Obiayo instructed by Federation of Kenya Employers for the Respondent.

