



Tononoka Rolling Mills Limited v Otwoma (Employment and Labour Relations Appeal E085 of 2023) [2025] KEELRC 1896 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1896 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E085 OF 2023**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

TONONOKA ROLLING MILLS LIMITED APPELLANT

AND

ENOCH NYAKUNDI OTWOMA RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of the Principal Magistrate's Court at Nairobi which awarded the Respondent Kshs.448,500/- as compensation for unfair termination, notice pay, costs, and interest. The Appellant, Tononoka Rolling Mills Limited, challenges the decision on grounds of procedural and substantive errors.
2. The Appellant contends that the learned Magistrate erred in law and fact by declaring the Respondent's termination unfair. It submits that the Respondent was subjected to a disciplinary hearing on 26th April 2021 for misconduct related to unauthorized removal of "off cuts" and was afforded an opportunity to defend himself. While conceding that no prior notice to show cause was issued, the Appellant argues that the hearing itself satisfied the procedural fairness requirements under Section 41 of the *Employment Act*, 2007.
3. The Appellant further disputes the awards granted by the lower court: This is as follows;
 - i. Notice Pay: The Respondent had already received Kshs.30,000/- as notice pay, yet the court awarded Kshs.34,500/- without accounting for the prior payment.
 - ii. Compensation: The award of Kshs.414,000/- (12 months' salary) was excessive, as the termination followed a valid disciplinary process. The Appellant cites *Kenfreight (E.A) Limited v Benson K. Nguti [2016] eKLR*, where the Court of Appeal emphasized the need for proportionality in compensation.



4. The Appellant urges this court to re-evaluate the evidence under *Simon Waweru Mugo v Alice Mwangeli Munyao* [2020] eKLR and set aside the lower court's judgment.
5. The Respondent defends the impugned judgment, asserting that his termination was procedurally and substantively unfair. He highlights the following breaches of Sections 41, 43, and 45 of the *Employment Act*, 2007. This comes out thus:
 - i. Ambush Hearing: The suspension letter dated 24th April 2021 cited only one incident (22nd April 2021), yet the disciplinary hearing introduced a second allegation (10th January 2021) without prior notice.
 - ii. No Representation: The Appellant failed to inform the Respondent of his right to a representative, contrary to Section 41(1).
 - iii. No Valid Reason: The minutes of the hearing (produced by the Appellant) reveal no evidence of misconduct, rendering the termination substantively unjustified under *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR.
6. On reliefs, the Respondent justifies the awards:
 - i. Notice Pay: The difference of Kshs.4,500/- was warranted as the Respondent's actual salary was Kshs.34,500/-.
 - ii. Compensation: The 12-month award was appropriate given the abrupt termination, lack of prior disciplinary record, and Kenya's high unemployment rate (*Pamela Nelima Lutta v Mumias Sugar Co. Ltd* [2017] eKLR).
7. The following issues were raised for determination:
 - i. Whether the termination of the Respondent's employment was procedurally and substantively fair.
 - ii. Whether the lower court's awards for notice pay and compensation were justified.
8. On the first issue on Procedural Fairness the Appellant's failure to issue a notice to show cause or inform the Respondent of the second allegation violated Section 41(1). The hearing was a "trial by ambush," akin to the scenario in *John Rioba Maugo v Riley Falcon Security Services* [2016] eKLR, where cosmetic compliance was condemned. The absence of representation further vitiated the process.
9. On the second issue on Substantive Fairness the Appellant did not discharge its burden under Section 43(1) to prove a valid reason for termination. The hearing minutes lack evidence of misconduct, revealing only interrogatory questions. This aligns with *Antony Mkala Chitavi v Malindi Water & Sewerage Co.* [2013] eKLR, where unsupported allegations rendered termination unfair.
10. This court makes the following findings on the issues raised in the appeal as hereunder;
11. Notice Pay: The Respondent's payslip (Page 15, Record of Appeal) confirms receipt of Kshs.30,000/- The lower court erred in awarding Kshs.34,500/- without adjustment.
12. Default in disciplinary proceedings no accompaniment/accompaniment evidence in testimony
 - (i) Award of differential in salary for the Respondent.....Kshs.4,500
 - (ii) Award three months compensation. Kshs. 34,500x3.....Kshs.103,500.00
 - (iii) Total award shs.4,500+Kshs.103,000.00.....Kshs.108,000.00



(iv) Each party to bear their costs of their appeal and claim.

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

D. K. NJAGI MARETE

JUDGE

Appearances:

Mrs Nyaencha instructed by Nyaencha, Waichari & Company Advocates for the Appellant.

Mr. Okoth Odhiambo instructed by Lemmy Regau & Company Advocates for the Respondent

