



**Ihaji v First Class Cars Concierge Limited (Civil Suit 1245 of 2018)
[2025] KEELRC 1843 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1843 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL SUIT 1245 OF 2018**

**JW KELI, J
JUNE 20, 2025**

BETWEEN

EDWIN KWARONYA IHAJI CLAIMANT

AND

FIRST CLASS CARS CONCIERGE LIMITED RESPONDENT

JUDGMENT

1. The claimant following the termination of his employment vide summary dismissal filed a claim through a statement of claim dated 17th July 2018 and received in court on the 25th July 2018 against the respondent seeking the following Orders:-
 - a. Compensation for wrongful termination
 - b. Salary for 12 months in the sum of 420,000/=
 - c. C. Severance pay
 - d. General and exemplary damages for disregard of the law on termination
 - d. Costs of this suit.
 - e. Interest on the al the above items at court rate from the date of judgement until payment in full
 - f. Any other or further relief that this Honourable Court may deem just a fit to grant.
2. In support of the claim, the claimant filed his witness statement dated 17th July 2018 and a bundle of documents.
3. The claim was opposed. The respondent entered appearance and filed answer to the claim dated 24th August 2021 and amended on the 20th June 2022, witness statement of Mwangi Muturi dated 29th



January 2020, its list of documents dated 24th January 2020 together with the bundle of documents and a supplementary list of documents dated 31st October 2022 together with the bundle.

Hearing and evidence

4. The claimant's case was heard on the 3rd November 2022 by My Brother Judge Ocharo Kebira when the claimant testified on oath, adopted his witness statement dated 17th July 2018 and filed documents as his exhibits and his evidence in chief, and was cross-examined by counsel for the respondent, Kibwe and re-examined.
5. The respondent's case was before me. The Respondent called as its witness Mwangi Muturi who testified on oath, adopted his witness statement dated 29th January 2020, produced documents under list of documents dated 24th January 2020 as Exhibits 1-5 and the supplementary list of documents as Exhibits 6-7 all as the respondent's evidence in chief. The witness was cross-examined by counsel for the claimant, Malinzi and re-examined by own counsel.

Claimant's case in brief

6. The claimant at the hearing adopted his witness statement 17th July 2018 as his evidence in chief which stated as follows:-
7. He was employed by the respondent company in 2015 and confirmed in employment as a driver in 2016 and worked as such until he was terminated unlawfully without any justifiable reasons in 2018. On the particular day that allegedly informed the respondent to terminate him, he was with my former boss Mr. Gikonyo and was driving motor vehicle registration Number KBY 8635 from Mombasa Road to Fair View Hotel. That Gikonyo told him that he was rushing for a meeting so he should be fast. He de-toured and changed the lane to Mbagathi Road before the Roundabout which was allowed under the law as there was a turn around de-tour. As he was doing the same a truck dented the car occasioning the damage. That he came out from the car and checked it as the driver of the truck was in wrong but his boss told him to get back in the car and take the car to the Garage. That he dropped the boss to his meeting and went to Posh Centre for repair.
8. He later worked for three days then was told and in fact the company called him and insisted he applies for a leave on 19/02/2018. That he said he did not intend to go for a leave but was told to sign for 21 days and immediately filed a leave slip plus the claiming days to go back on 19/03/2018. He received a call that he was required at the office and on arrival he was handed the termination letter by the director, Muturi. He was issued with a calculation of his wages & pay for 21 days. That he was unfairly terminated without any regard to process of the law and procedure.

Respondent's case in brief

9. As per witness statement dated 29th January 2020 of RW(Mwangi Muturi). He was the Operations Director of the Respondent herein and stated he had full knowledge of all the issues in dispute. By a letter of appointment dated 15th April, 2015, the Respondent employed the Claimant as a driver, which employment was confirmed on 5th May, 2016 upon the Claimant's successful completion of probation. Pursuant to Section 44 (4) (c) of the *Employment Act*, 2007, it was an express term of the contract that the Respondent reserved the right to terminate the Claimant's employment forthwith without notice or salary in lieu of notice if the Claimant was found guilty of gross negligence in the performance of his duties. On 14th February, 2018, the Claimant negligently and recklessly drove the Respondent's Motor Vehicle KBY 863S along Mombasa Road thus causing a road accident which occasioned a substantial loss on the Respondent. As a consequence of the foregoing accident, the



Claimant was issued with a Notice to Show Cause and attended a Disciplinary Hearing on 19th February, 2018 at the Respondent's offices.

10. On 19th March, 2018, the Respondent, upon undertaking extensive investigations, summarily terminated the Claimant's employment on account of gross misconduct, negligence and reckless conduct which led to the occurrence of a road accident on 14th February, 2018. The foregoing accident is not an isolated incident as the Claimant had been involved in multiple road accidents during his employment with the Respondent which subsequent investigations by the Police squarely placed blame on him. Before the termination of the Claimant's employment, the Respondent had served the Claimant with several verbal and written warnings urging the Claimant to undertake his duties diligently and desist from his habitual recklessness and negligence, which warnings was disdainfully disregarded by the Claimant. The Respondent's termination of the Claimant's employment on account of his gross negligence and recklessness in the performance of his duties was just, fair and lawful.
11. The parties filed written submissions after the hearing.

DETERMINATION

Issues for determination

- a. Whether the termination was lawful and fair
- b. Whether the claimant was entitled to reliefs sought
- c. Whether the termination was lawful and fair

Whether the termination was lawful and fair

12. The threshold for determination of fairness of termination of employment is according to the provisions of section 45 (2) of the [Employment Act](#) to wit:- '45(2) A termination of employment by an employer is unfair if the employer fails to prove—
 - (a) that the reason for the termination is valid
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.” To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the [Employment Act](#) (Walter Ogal Anuro v Teachers Service Commission[2013]eKLR).
13. Section 43 provides for proof of reasons for termination as follows:- '43. Proof of reason for termination
 - (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
 - (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”



14. The letter of termination was produced by the claimant and is reproduced below-

“First Class

19th March 2018

Re: Termination Letter for Edwin Ihaji

Dear Edwin,

It is with regret that we inform you that your employment with First Class Car Concierge Ltd has been terminated effective 19th March 2018.

You are being terminated due to the accident that occurred on the 14th of February. Muchohi Gikonyo, who was your passenger reported that you were in the wrong and negligent.

The management expects you to handover all documents and any other company property that are in your possession. Also clearly give a proper handover to Office Which shall finalize any matters that you may have that are pending.

The management would like to take this opportunity to thank you for the service you have rendered to the company.

We wish you the best in your future endeavours.

Mwangi Muturi

Operations Manager

First Class Car Concierge Ltd.” The reason for the termination was thus, ‘You are being terminated due to the accident that occurred on the 14th of February. Muchohi Gikonyo, who was your passenger reported that you were in the wrong and negligent.’”

15. During cross-examination, the claimant confirmed that he was employed as a driver and that clause 9 of his contract stated that any accident caused by the negligence of the driver will not be tolerated. That under the contract the employer reserved the right to summarily dismiss him. The claimant on further cross-examination confirmed that the accident occurred on the 14th February 2018. He was referred to the insurance claim form from which he confirmed it was his form in respect of Motor Vehicle KBY 836S which he was driving at the time of the accident. He confirmed at page 3 of the form his statement spoke of what had happened on that day. That he also filed pictures with impressions in the insurance form.
16. The claimant further confirmed he was also the driver of Motor Vehicle KCA 039E and there was an accident involving the vehicle on the 1st February 2017. He told the court he completed the form for insurance purpose and confirmed the Vehicle had damages. He stated that the respondent expected him to exercise diligence in employment. He was called and advised to take some leave days and nothing was asked about the accident. On re-examination the claimant told the court the case was not reported to the police and that there was no investigation to confirm he was negligent.
17. The court confirmed from the statement of the claimant that the claimant was the one who swerved into the lane of the other motor vehicle and perhaps that is why the said driver was not stopped. In accident case it is the driver with obligation to report a road accident to the police. The claimant failed



to do so meaning he took responsibility over the accident. He confirmed in the witness statement to insurance that only his motor vehicle suffered damage.

18. The court did not find prove of further investigation by the respondent as alleged by RW1. However, the court found admission by the claimant that he was the one who caused the accident by swerving into the lane of the other vehicle. He was aware that the employer would not tolerate accident arising from negligence. Under section 44 (c) of the *Employment Act*, it is valid reason to dismiss an employer for negligence, to wit :- ‘44(4)(c) an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;’
19. The court finds, on a balance of probabilities, that the Respondent as the employer relied on a valid reason to dismiss the employee.
20. On procedural fairness the respondent pleaded contract of parties to statevit provided for summary dismissal in the event of such negligence. The court holds that any contract contrary to the law is null and void and consequently such a clause is null and void to the extent it seeks to oust procedural fairness before termination of employment. Termination of employment under section 44(4) of the *Employment Act* which invites summary dismissal, section 41(2) of the *Employment Act* applies to wit- ‘(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.’ The termination lacked procedural fairness.
21. Consequently, the court found that the summary dismissal was unprocedural under the law hence unfair termination for lack of procedural fairness.

Whether the claimant was entitled to reliefs sought.

22. The claimant sought the following reliefs in the claim:-
 1. Compensation for wrongful termination
 2. Salary for 12 months in the sum of 420,000/=
 3. Severance pay
 4. General and exemplary damages for disregard of the law on termination
 5. Costs of this suit.
 6. Interest on the al the above items at court rate from the date of judgement until payment in full
 7. Any other or further relief that this Honourable Court may deem just a fit to grant.
23. The court on finding unfair termination is guided by section 49 of the *Employment Act* which provides for the following remedies outside reinstatement-
 - 49(1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following—
 - (a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;



- (b) where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or
- (c) the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.” In the instant case the court established the reasons for the termination as valid but the procedure flawed and thus the only remedy available was notice under section 35 of the Employment Act as read with section 49(1)a) to wit:- ‘the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;’ . Clause 11 of the employment contract provided for 1 month notice . The claimant produced his contract indicating gross pay of Kshs. 42,958.72 and the same is awarded as notice pay in lieu. No compensation is deserved under section 49 (1)c of the Employment Act in the event the court finds valid reason for termination as an employee cannot be awarded for his own breach of contract.

24. Severance pay is payable under section 40 of the Employment Act on termination on grounds of redundancy, which was not the case herein. Service pay is the relevant claim under normal termination but was not applicable as the claimant was under NSSF(see Section 35(6) of the Employment Act).
25. Claim for general and exemplary damages for disregard of the law on termination- the only remedies the court can grant in event of finding unfair termination in a claim under the Employment Act are ones under section 49 of the Employment Act. The prayer is disallowed.

Conclusion

26. The claim is allowed. The court declares that the termination was lawful but procedurally unfair. Judgment is entered for the claimant against the respondent as follows:-
- a. Notice pay of 1 month gross salary Kshs. 42958.72 with interest at court rate from date of judgment
 - b. Costs of the suit .
27. 30 days of stay is granted.
28. It is so Ordered.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20TH DAY OF JUNE 2025.

**J.W. KELI,
JUDGE.**

In the presence of:

Court Assistant: Otieno

Claimant – Malinzi

Respondent: -Ndaiga

