



**Kenya National Private Security Workers Union v Wells Fargo Security Limited
(Cause E016 of 2024) [2025] KEELRC 1820 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1820 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E016 OF 2024
MA ONYANGO, J
JUNE 20, 2025**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
WELLS FARGO SECURITY LIMITED RESPONDENT**

JUDGMENT

1. The Claimant is a trade union registered under the [Labour Relations Act](#) to represent employees in the private security sector.
2. The Respondent is an organization which operates a private security firm and employs security guards. The Claimant is therefore the proper union entitled to represent the employees of the Respondent in labour matters.
3. The Claimant and the Respondent have a valid recognition agreement and have negotiated several collective bargaining agreements (CBA)s.
4. The Claimant avers that it reported a dispute to the Ministry of Labour under section 62 of the [Labour Relations Act](#) which was accepted and a conciliator was appointed. That in his efforts to resolve this dispute the Conciliator invited the parties to his office on 2nd March, 2022 but the Respondent failed to attend. That another meeting was called by the conciliator on 23rd March, 2022 when the Respondent's Human Resource manager was in attendance but parties did not reach a settlement. That the dispute is therefore properly before this court.
5. It is the Claimant's case that the Grievant, Mr. Fredrick Mwangale was first employed by the Respondent as a private security guard on 7th August, 1998. He was promoted to the position of crew in the department of cash and transit in 2003. That the Grievant was a member of the Claimant in Kitale Branch where he was residing until his dismissal on 21st October, 2021.



6. The Claimant avers that the Grievant was falsely accused of taking money which was left behind by a customer in Family Bank, Kitale Branch when the Grievant went to bank money collected from Quickmart Supermarket, Kitale in the course of his duties as Crew Commander, Cash in Transit. It is further the Claimant's case that the said customer was not at the counter when the Grievant went to bank his collection.
7. It is the Claimant's case that the Grievant was a long serving employee of the Respondent. That he was employed in Nairobi and worked for the Respondent in various branches including Nairobi, Kisumu, Eldoret, Kakamega, Lodwar and Kitale where he was trusted by the Respondent's clients on whose behalf he used to deposit money in various banks.
8. The Claimant avers that the Grievant was taken to the police station at Kitale and was charged in court but the Bank who was the complainant failed to appear and the Grievant was acquitted for lack of evidence.
9. The Claimant avers that the Respondent relied on CCTV footage which does not show the Grievant taking the cash from the Teller as was alleged by the Respondent.
10. The Claimant avers that the action taken against the Grievant was harsh as he had worked for the Respondent for 23 years with a clean record.
11. In the Memorandum of Claim dated 16th May, 2024 the Claimant seeks the following remedies on behalf of the Grievant.
 - a. That the claimant herein has full mandate to represent the interest of the grievant in this matter and we demand that the decision of unfair dismissal be reduced to normal termination to enable the grievant to draw his terminal benefits as per the requirement of protective security order and also our C.B.A with the resplendent.
 - b. That we also demand that the claimant be paid cost of the dispute and also compensation for unfair dismissal as per requirement of *employment act* section 49. To the claimant and grievant
 - c. That the grievant be paid notice of Ksh.24,000.
 - d. That the grievant be paid his salary for the days he worked before being dismissed – 25,005/=.
 - e. That the certificate of service be given to him.
 - f. That the grievant be paid gratuity $-18 \times 23 \times 2 \ 1,717/30 = 299,694/=$.
12. In response to the Memorandum of Claim, the Respondent filed a Memorandum of Defence dated 15th July, 2024 in which it denied the allegations made in the Memorandum of Claim. According to the Respondent.
 - i. On 16th September 2021, the Grievant was assigned duties to deposit cash belonging to one of the Respondent's clients at Family Bank Limited, Kitale Branch.
 - ii. On 17th September, 2021, the Branch Manager for Family Bank Limited, Kitale Brach visited the Respondent's offices and lodged a complaint that on the 16th September, 2021 the Grievant had walked into the said bank and later collected a sum of Ksh.200,000 that had been mistakenly left at the counter by a customer of the bank.
 - iii. When the Grievant was questioned regarding the allegations, he denied the same which prompted Family Bank Limited to hand over the matter to its Security Department for further action.



- iv. On 27th September 2021, Family Bank Limited operations manager visited the Respondent's offices in Kitale in the company of police officers who requested the Grievant to accompany them to the police station for purposes of recording statements with regards to the incident.
 - v. The Grievant was shown the Banks's CCTV footage for 6th September, 2021 after which the police made an independent decision to arrest the Grievant.
 - vi. Having been arrested on 27th September, 2021, the Respondent made a decision to suspend the Grievant. Accordingly, the Respondent served the Grievant with a suspension letter dated 28th September, 2021.
 - vii. On 5th October 2021, the Respondent served the Grievant with a show case letter in which the Grievant was required to answer to the allegations that he had breached the trust bestowed upon him by the Respondent by taking away cash that was left by a customer at the Bank's teller counter. He was also required to show cause why action should not be taken against him for breach of trust.
 - viii. The Grievant presented a response to show cause letter erroneously dated 8th September 2021 but received by the Respondent on 8th October, 2021. In his response, the Grievant did not respond to any of the issues raised in the show cause letter. Instead, he only informed the Respondent not to carry out any disciplinary action pending the outcome of a criminal case that had been instituted against him by the state.
 - ix. On 15th October, 2021, the Grievant was invited to a disciplinary hearing which he attended with a representative who also acted as his witness.
 - x. Upon the conclusion of the disciplinary hearing, the Respondent established that the Grievant had not responded to the allegations levelled against him and that he had not specifically denied taking the money as alleged by Family Bank Limited.
 - xi. Accordingly, the Respondent made a decision to summarily dismiss the Grievant for fundamental breach of his contract of employment.
 - xii. Upon his exit, the Respondent tabulated and paid all the dues payable to the Grievant.
13. In further response to paragraph 12 of the Claim, the Respondent states that the cash which was alleged to have been stolen by the Grievant had been mistakenly left at the counter by a client of the bank.
 14. The Respondent denied that the Grievant was dismissed for stealing cash belonging to a customer of the Respondent. The Respondent clarified that the Grievant stole cash belonging to a customer of Family Bank Limited where he had been sent to deposit some money.
 15. The Respondent avers that the Grievant's dismissal was due to fundamental breach of his employment contract and he is not entitled to gratuity pursuant to the provisions of the Regulation of Wages (Protective Security Services) Order.
 16. The Respondent avers that the matter was reported to the police by Family Bank Limited in whose premises the alleged crime was committed. That the Respondent cannot be blamed or held liable for the actions of Family Bank which is a separate entity.
 17. The Respondent prayed that the Claimant's suit be dismissed with costs.



18. At the hearing both parties called witnesses. At the close of the hearing, the court directed parties to file written submissions. The Claimant's submissions are dated 28th November, 2024 while the Respondent's submissions were filed on 24th October 2023.
19. The Grievant testified as CW1 and stated that he was employed by the Respondent on 7th August, 1998 during bomb blast in Nairobi. He was issued with his first pay slip in September, 1998 when his basic pay was Kshs. 3000. His last salary was paid in November, 2021 and was Kshs. 19,015.
20. The Grievant testified that he was employed as a security guard. That at the time he left employment he had been promoted to Crew Commander/Cash Officer.
21. He recalled that his last day of work was on 16th September, 2021. That on that day he had gone to work as usual collecting customer sales and going to bank. He finished the day well and went home.
22. He testified that on that day he had collected money from Quickmart and banked the money at Family Bank after counting it. He was also given change as had been instructed by the customer and issued with a receipt.
23. He testified that when he went to Family Bank he was doing banking services for the Respondent's customer, Quickmart. That there was no complaint from Quickmart.
24. He testified that the following day he was called by his Manager who told him that Family Bank was complaining that he took money from the counter. He stated that there was no money that he took from Family Bank. That all he took was change for Quickmart. That he had 3 policemen escorting him.
25. The Grievant testified that he was taken to Family Bank where they viewed the CCTV then he went back to work and worked without incident for 7 days.
26. He testified that he was embarrassed at the office in Kitale when two men, one of whom he noticed was the Operations Manager for Family Bank and the other a police officer, went to his manager's office. His manager called him and asked him to go and write a statement. He was taken to the police station, Kitale, wrote a statement and was held there and told he would be taken to court the following day. He was told he had to pay bond or stay at the police station until the following day.
27. He testified that he was charged but never saw any complainant in court until the case was dismissed. He testified that his employer also never attended court as according to the employer, it was not part of the case.
28. The Grievant testified that after he was arrested the Respondent suspended him. After his release he went back to work but was not assigned any duties.
29. He testified that he was called for a disciplinary hearing and was accompanied to the hearing by a shop steward. He was thereafter summarily dismissed.
30. Under cross examination the Grievant stated that he was accused of taking money from the Teller inside the box. He stated that he viewed the CCTV for the Teller. He stated the money he took was given to him by the Teller and he took it to Quickmart.
31. The Grievant testified that he received a show cause letter which he responded to stating that he did not take any money and that no disciplinary action should be taken against him until the court case was over. He stated that the CCTV was played at the hearing. That the disciplinary case was heard in Nairobi and the Respondent paid for his fare.



32. He stated the reason for his dismissal by the Respondent according to the dismissal letter was that he stole money.
33. The Grievant testified that he was paid Kshs. 19,015 in November, 2021 and was also issued with a discharge certificate and certificate of service. He stated that he was asking to be paid until 23rd October, 2021.
34. The Respondent called two witnesses. RW1 Peter Walters, the General Manager -Valuables in Transit, adopted and relied on his witness statement dated 15th November, 2024. Under cross examination RW1 stated he did not visit the incident site and relied on the CCTV footage. He stated that he was not the one who did the investigations into the incident. He further stated that the Respondent did not involve the police.
35. RW2 George Njaramba, the Special Projects Manager of the Respondent relied on his witness statement dated 15th November, 2024. He testified that he relied on the CCTV footage in his investigations. That he advised the company that the employee had a case to answer and to report the incident to the police.
36. Under cross examination RW2 stated that the Respondent's Branch Manager Kitale visited the scene. That there was no case that had ever been reported against the grievant, that the Grievant was a good employee of the company and had never been implicated in any other incident involving money. He stated the Grievant was in Family Bank to do business for the Respondent, that there was no complaint from Quickmart.

Determination

37. I have considered the pleadings, the evidence and submissions of the parties. The issues that arise for my determination are: -
 - i. Whether the Respondent had a valid and fair reason for dismissing the Grievant summarily,
 - ii. Whether due process was followed in dismissing the Grievant summarily from employment,
 - iii. Whether the Claimant is entitled to the remedies sought.
38. The Grievant was, according to the dismissal letter, summarily dismissed from employment for breach of trust bestowed upon him by taking away cash that had been left by another bank customer inside the Teller's till at the counter as a result of which Family Bank made a report claiming a loss of Kshs. 200,000. The letter of summary dismissal is reproduced below.

Wells Fargo

Our Ref: WF/HRD/130875/21 22nd October, 2021

Fredrick Ongayi Mwangale

Box 48

Mahanga -Maragoli

Dear Mr. Mwangale,

Re: Summary Dismissal

We refer to a show cause letter issued to you on 5th October, 2021 and to your subsequent response vide your letter dated 8th September, 2021. We noted that your response to the show cause letter was



erroneously dated. We make further reference to the disciplinary hearing held on 15th October, 2021 in the office of the Human Resource Director in Nairobi.

The Disciplinary Committee having considered your response to the show cause letter, the CCTV footage that was played to you and your oral reorientations during the hearing has arrived at the conclusion that indeed on 16th September, 2021, while employed as a Crew Commander and assigned duties to deposit client's cash at Family Bank in Kitale, you breached the trust bestowed upon you as an employee of the company by taking away cash that had been left by another bank customer inside the teller's till at the counter. As a result of your actions which are clearly captured by the CCTV cameras installed in the bank, Family Bank made a report to us claiming a loss of Ksh. 200,000/=.

Consequently, you are found to have fundamentally breached your obligations arising under your contract of employment. Therefore, in accordance with section 44 (3) of the [Employment Act 2007](#),m you have been summarily dismissed from employment with effect from 22nd October, 2021.

You are therefore required to clear with the company by returning all company property in your possession and signing all the necessary discharges upon which you will collect your final dues comprising of the following:

- i. Salary for the month of October 2021 upto and including 22nd October, 2021.
- ii. Any leave days earned but not taken as at 22nd October, 2021.
- iii. Your uniform refund.

We have also enclosed your Certificate of Service.

Yours faithfully,

Signed

Willis Ayeiko Onyango

Human Resources Director

39. The only evidence against the Grievant according to the Respondent, was CCTV footage in Family Bank. That CCTV footage was not filed in court. The Respondent's witnesses referred the court to some to some very long logging address which was also referred to in the Response to Claim and in the submissions. It is not clear what the Respondents wanted the court to do with the logging address because the court is not supposed to look for evidence outside the court record. Further, the manner of production of electronic evidence is very elaborately provided in the [Evidence Act](#) which the Respondent did not as much as make reference to.
40. No witness from Family Bank testified or was even required to prepare a statement during investigation of the incident by the Respondent. Family Bank was not invited to come to court to confirm to the court if such CCTV footage actually existed and how the image was captured, by what means or by whom.
41. There is no complaint against the Grievant from Family Bank. The statement of the Teller who is alleged to have lost the money allegedly stolen by the Grievant was never sought by the Respondent. The client of Family Bank who allegedly left the money in the Tellers counter was never sought to file a statement for purposes of investigation to prove that the said client actually existed and deposited the amount alleged to have been deposited in Family Bank.



42. There is practically no evidence at all in court that any money was lost at Family bank and that the Grievant stole such money other than the averments by the Respondent's witnesses. The criminal case against the Grievant over the incident was dismissed when Family Bank failed to avail witnesses.
43. The Grievant vehemently denied taking any money from the teller at Family Bank Kitale Branch. He stated that the only money he took from the Bank Cashier was change for Quickmart Supermarket, which did not raise any complaint against him.
44. The Respondent's letter paying Family Bank the money allegedly stolen by the Grievant states that it is done as a "gesture of goodwill", that Wells Fargo does not accept any liability for the loss.
45. From the evidence on record, it appears that the Respondent decided to believe the narrative from Family Bank against the Grievant without any proof and ignored the denial of involvement from its employee who RW2 described in court in the following words: "There was no case ever reported against Mr. Mwangale. He was a good employee of the company. He had never been implicated in any other incident involving money."
46. RW2 further stated: "Mr. Mwangale went to Family Bank to do the work of Wells Fargo. There was no complaint from Quickmart."
47. From the forgoing, I find that from the evidence on record, there was no valid reason for termination of the Grievant's employment.
48. On the issue of procedure the Grievant was first issued with a notice to show cause which he responded to. He was then called for disciplinary hearing which he attended with the shop steward. The procedure was therefore in conformity with fair process as set out in section 41 of the *Employment Act*.
49. Section 45(2) of the *Employment Act* provides that for termination of employment to be fair the employer must prove both fair process and valid reason. In this case the employer proved only fair process. There was no proof of valid reason. The termination of the Grievant's employment by way of summary dismissal was therefore unfair. I find and I declare accordingly.

What reliefs should issue?

50. Having found that the dismissal of the Grievant was unfair, I now consider if he is entitled to any of the remedies sought. In the Memorandum of Claim, the Claimant sought the following reliefs on behalf of the Grievant: -

- i. One month pay in lieu of notice

Having found the summary dismissal of the Grievant unfair, he is entitled to pay in lieu of notice which I award him at one month's salary. According to the pay slip at page 24 of the Respondent's bundle, the Grievant's basic salary was Kshs. 21,717. He was paid a house allowance of Kshs. 3258. His gross pay upon which notice is based under section 49(1) of the *Employment Act* is Kshs. 24,975 which I award him.

- ii. Salary for days worked

The Grievant's last salary was Kshs. 19,015 which is indicated to be less 8 days unworked and less statutory deductions and mid month advance of Kshs. 2,500. He was arrested while at work on 27th September, 2021 and incarcerated for only 12 hours. He therefore did not miss any day of work while in custody. The Respondent did not explain why there was a deduction of 8 days from the salary of the Grievant for the month of November, 2021.



The Grievant testified that he reported to work after being released by the police following which he was suspended. The *employment Act* does not provide for suspension and the Respondent did not produce any terms of service which allow suspension without salary at the behest of the employer. The Grievant was summarily dismissed from employment on 22nd October, 2021. He is thus entitled to payment of salary during suspension to the date of summary dismissal being 22nd October, 2021. I award him full salary for September, and October up to 22nd October, 2021 (24,975 + 21,132.70) being Kshs. 46,107.70 less salary advance and the statutory deductions for September 2021 (200+600+2500), less salary received for November, Kshs. 19,015. I award the Grievant Kshs. 23, 792.70.

iii. Gratuity

The Regulation of Wages (Protective Security Services) Order 1998 (as amended from time to time) provides for gratuity at the rate of 18 days per year worked for employees who have completed 5 years of service. The Grievant having worked for the Respondent from August, 1998 to October, 2021, had completed 23 years of service at the time of termination of his employment. His salary was Kshs. 24,975 at the time of termination as per pay slip for September, 2021 at page 24 of Respondent's bundle. 18 days salary for 23 years is therefore $24,975/26 \times 23 \times 18 =$ Kshs. 397,679 which I award the Grievant under this head.

iv. 12 months' compensation for unfair dismissal

Having found that the dismissal of the Grievant was unfair, and noting the Grievant's long service of 23 years which as confirmed by RW2 was a clean record, and taking into account all other factors under section 49(4) of the Act, it is my view that the Grievant is entitled to maximum compensation, which I award at $(24,975 \times 12 =)$ Kshs. 299,700 as compensation for unfair termination.

v. Certificate of service

The Grievant is entitled to a certificate of service which the Respondent confirmed to have issued to the Grievant.

51. In conclusion judgment is entered in favour of the Claimant as against the Respondent in the following terms:

- i. One month pay in lieu of notice Kshs. 24,975
- ii. Salary for days worked Kshs. 23, 792.70
- iii. Gratuity Kshs. 397,679
- iv. Compensation for unfair dismissal Kshs. 299,700.

Total Kshs. 746,168.70

52. The Claimant is awarded costs of Kshs. 50,000 in view of the fact that the Claimant was represented by a union official and is not subject to the Advocates Remuneration Order.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF JUNE 2025

MAUREEN ONYANGO

JUDGE

