



Mritaugu v New Kenya Co-operative Creameries Ltd (Cause E488 of 2020) [2025] KEELRC 1835 (KLR) (20 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1835 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E488 OF 2020**

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

BETWEEN

PATRICK MUTUMA MRITAUGU CLAIMANT

AND

NEW KENYA CO-OPERATIVE CREAMERIES LTD RESPONDENT

JUDGMENT

1. The claimant was summarily dismissed from employment on the 31st of October 2017 and vide a memorandum of claim dated 20th August 2020 sued the respondent and sought the following Orders:-
 - a)) A declaration that there was a breach of the employment contract and the termination of employment was wrongful, unlawful, unfair and unconstitutional.
 - b) Payment in lieu of notice of one (1) month amounting to Kshs. 120,000/-.
 - c) Payment for the months of Aug, Sept, and October 2017 amounting to Kshs. 360,000/-.
 - d) 12 months' salary as general damages for wrongful dismissal and unlawful and unfair termination amounting to Kshs. 1,440,000/-.
 - e) Accrued leave pay.
 - f) Costs of this suit.
 - g) Interest on (b), (c), (d), (e) and (f) above at court rates from the date of filing suit until payment in full.
 - h) Certificate of Service.
 - g) Any further relief that this Honourable Court may deem fit to grant in the interest of justice.



2. The claimant in support of the claim filed his witness statement dated 20th August 2020 and list of documents of even date and the bundle of documents.
3. The Respondent entered appearance through the law firm of Lumumba and Lumumba Advocates and filed a reply to statement of claim dated the 19th of October 2020, which was amended and dated the 20th of September 2020, denying the allegations in the Memorandum of Claim and raised counterclaim to the effect that the claim be dismissed and judgment be entered for the Respondent for Kshs. 1,532,598.62 with costs and interest. In support of the response, the respondent filed its list of witnesses of dated the 15th of December 2022, witness statement of Marusoi Burgok of even date, together with the respondent's list of documents dated 20th of September 2022 and the bundle of documents.

Hearing and evidence

4. The claimant's case was heard on the 15th October 2024 where the claimant testified in his case on oath, adopted his witness statement dated 20th August 2020 and produced the documents under list of even date as C-exhibits 1-9 as his evidence in chief. He was cross-examined by advocate for the respondent Ms, Oele and re-examined by his advocate. He closed his case.
5. The respondent's case was heard on the 20th January 2025 where Marusoi Burgoh, the chief manager Internal Audit of the respondent testified on oath, adopted his witness statement dated 15th December 2022 and produced documents under list dated 20th September 2022 as his evidence in chief. He was cross-examined by counsel for the claimant, Ms. Nadia and re-examined by their counsel. RW2, Michael Mukopi, was a further witness of fact who testified on oath on the 12th March 2025. RW2 adopted his witness statement dated 27th February 2023 and produced documents under list dated 20th September 2022 as R- exhibits 1-10 as his evidence in chief. He was cross-examined by counsel for the claimant, Ms.Nadia and re-examined by their counsel.

The Claimant's case in summary

6. The Claimant herein was employed by the Respondent as a Salesman as per the employment contract dated 19th June 2006 on permanent and pensionable terms. The contract stipulated that the Claimant would be on probation for the first two (2) months after which he received a letter of confirmation of employment. The Claimant was later promoted to a Sales Representative and issued with a new employment contract dated 31st March 2017. The Claimant avers that on or about 3rd June 2017, he was issued with a show cause letter on the basis that the audit for the year 2016/2017 had revealed that he had conspired with three reconciliation clerks to be issued company stock at lower prices as opposed to current prices, causing the company to suffer losses of Kshs. 1,532,598.62. Despite submitting a response to the show cause letter pleading his innocence, the Claimant was suspended vide a letter dated 12th July 2017. Subsequently, the Claimant was summarily dismissed from employment vide a letter dated 31st October 2017 on the same grounds as those contained in the show cause letter. Although the Claimant appealed the Respondent's decision to summarily dismiss him vide a letter dated 20th November 2017, he has never received feedback on the same to date.
7. The Claimant contends that he was never furnished with a copy of the full audit report upon which his summary dismissal from employment was grounded to allow him interrogate it and/or make responses to it, he was never subjected to a fair hearing prior to his summary dismissal, and the grounds for his dismissal were unfair and driven by ulterior motives.



Respondent's case in brief

8. In its Amended Response to Statement of Claim and Counterclaim dated the 20th of September 2022, the Respondent denied the allegations of acting in breach of the contract of employment, and of unfairly dismissing the Claimant. It also denied that the Claimant satisfactorily responded to the Notice to Show Cause issued to him.
9. The Respondent averred that the Claimant failed to diligently and faithfully discharge his duties as a Sales Representative to ensure that the products were not under-priced and to ensure that the company did not suffer losses due to employee fraud. He also failed to observe the company's rules and regulations, particularly those which required him to disclose in writing all interests in any ventures, contracts and/or arrangements which may conflict with the interests of the company or with the performance of his duties. The Respondent explained that the Claimant was implicated, in an independent audit for the year 2016/2017 which culminated in an audit report dated 14th June 2017, as having conspired with three reconciliation clerks to defraud the company of revenue of Kshs. 1,532,598.62. They averred that the Claimant, despite being aware of the prices of company products as contained in the price lists which were in his possession, he accepted under-priced products from the reconciliation clerks, deliberately sold them at current market prices, and later sought to reconcile them at the lower prices in accordance with the under-priced invoices. Further, the Claimant misused his access rights to the SAP system by generating invoices and sales orders for himself and under-invoicing himself by changing the product prices.
10. The Respondent clarified that the suspension of the Claimant to pave way for investigations was standard practice. They also stated that the Claimant was invited to a disciplinary hearing vide an invitation letter dated 6th October 2017. The hearing was held on 11th October 2017 with the Claimant in attendance. The Claimant's appeal was also considered and a verdict delivered to the Claimant confirming his termination from employment. According to the Respondent, the Claimant's termination from employment was therefore well-founded under Section 44 (c) and (g) of the [Employment Act](#) 2007.
11. In their counterclaim, the Respondent claimed the sum of Kshs. 1,532,598.62 from the Claimant.
Determination
Issues for determination
 - a. Whether the termination was lawful and fair
 - b. Whether the claimant was entitled to reliefs sought
 - c. Whether the counterclaim was merited

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 of employment 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. The burden of proof in employment cases is as stated in section 47(5) of the *Employment Act* as follows:-‘47 (5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.’”

Substantive Fairness

14. Section 43 provides for proof of reasons for termination of employment 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.” It is on the basis of the foregoing legal framework the court proceeded to re-evaluate the evidence before the lower court to reach own conclusion on the substantive fairness, which relates to the fairness of the reason(s) for the termination of the employment.

Claimant’s submissions

15. It is considered unfair to terminate a contract of Employment if the employer fails to demonstrate that the reason for termination is valid. Section 41 of the *Employment Act* provides that: -"Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation."
16. In the case of *Mary Chemweno Kiprui v Kenya Pipe Line Company Limited* [2014] eKLR and *Alphonnce Machanga Mwachanya v Operation 680 Ltd* [2013] eKLR the court held that the above provision of section 41 of the *Employment Act* is couched in mandatory terms and if the employer breaches the same, the consequences are dire as the employee may be awarded compensatory damages or reinstatement under section 49 of the *Act*.
17. In this case, the Claimant was issued with a Notice to show cause letter dated 3rd July, 2017 where the Respondent wildly alleged that the Claimant had colluded with the reconciliation clerks to defraud the Respondent causing a loss of Kshs. 1, 532,539.62/-. The Respondent failed to supply the Claimant with a copy of the audit report that led to the wild allegations, neither did they explain to the



Claimant and to make him understand the reasons why he was facing the disciplinary hearing and his involvement in the alleged loss of Kshs. 1, 532, 539.62/-. Section 44(4) (g) of the Act provides that:

“ 4. Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of employer to dismiss an employee summarily under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if:-‘g. an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer’s property.”

18. Relying on the above provision, the Claimant submits that there were no reasonable or sufficient grounds linking him to the alleged loss of Kshs. 1, 532, 539.62/- and therefore his termination was unfair. In the case of Galgalo Jarso Jillo v Agricultural Finance Corporation [2021] eKLR, Manani J. stated that:

“ 30. But even where there exists substantive ground(s) to justify a termination, the law obligates the employer to observe certain procedural structures to ensure the upholding of the broad principles of natural justice in processing the separation between him/her and the affected employee. The employer has to: provide the employee with details of the accusations against the employee; allow the employee an opportunity to respond to the charges: allow the employee to be accompanied by a shop steward or co-employee of his choice during the process; and finally provide the employee with a decision either terminating or saving the contract of service.”

19. The Respondent gave the Claimant a chance to respond to a show cause letter and also to appear before a disciplinary, while this process is provided for by the law, failure to avail the Evidence/Audit report to the Claimant made it impossible for the claimant to defend himself during the Disciplinary hearing therefore violating the rules of Natural justice. The claimant prays that this Honourable Court be mindful of the fact that justice can only be realized and seen to be done when a party is allowed a chance to defend themselves and interrogate all the evidence brought against them. Otherwise, how would the Claimant have defended himself against the allegations levelled against him when he did not have any idea of what he was being accused of or how he was involved in the alleged fraud?

20. On whether the findings of the Audit report were conclusive to warrant the termination of the Claimant’s employment. The Respondent relied on the Audit report to dismiss the Claimant. However, the report did not indicate how the Claimant was involved with the alleged accusations or how he colluded with the reconciliation clerks. No documents were produced during the disciplinary hearing to show how the said figure was reached at or linking the Claimant to the loss of causing the alleged loss of Kshs. 1, 532, 539.62/-. section 43 of the Employment Act provides that:“(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.

21. Section 43 places the burden of proof on the Respondent to prove exactly how the Claimant colluded with the Reconciliation clerks and how he was involved in the actions that led to the termination of



his employment. However, the Respondent failed to produce any evidence proving that the Claimant had access to the SAP system, that he colluded with the Reconciliation clerks that led to the alleged loss of Kshs. 1, 532, 539.62/-. Section 45 of the Act provides in part as follows: -

- “(1) No employer shall terminate the employment of an employee unfairly.
- (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:
Related to the employees conduct, capacity
compatibility; or-Based on the operational requirements of
the employer; and -That the employment was terminated in
accordance with fair procedure.’

22. Having the above provision in mind, both the Respondent and the Audit Report failed to indicate the exact or direct conduct of the Claimant in the alleged loss. Consequently, the findings of the Audit report should not have been used to terminate the Claimant's employment contract.
23. The claimant submitted that the findings of the audit report were not conclusive as it failed to show sufficient proof or any proof at all of the Claimant's involvement with the reconciliation clerk to be issued with stocks at a lower price as opposed to the current prices. Therefore, the decision of the Respondent to terminate the Claimant's employment contract was wrongful, unlawful and unfair.

Respondent's submissions

24. The Respondent submits that the termination of the Claimant was neither wrongful, unlawful, unfair, nor unconstitutional. The termination was undertaken in accordance with the Employment Act, 2007, the Respondent's Human Resource Policy Manual, and the prevailing Collective Bargaining Agreement (CBA). Section 44(4)(g) of the Employment Act, 2007 provides that summary dismissal is justified where an employee is guilty of gross misconduct including willful neglect of duties or breach of the employer's lawful instructions. The actions of the Claimant- namely manipulating SAP system entries to self-generate sales orders at altered prices through collusion with reconciliation clerks constitute gross misconduct and fraudulent misrepresentation.
25. In Judicial Service Commission v Gladys Boss Shollei [2014] eKLR, the Court of Appeal emphasized that an employer is entitled to dismiss an employee where there is sufficient ground supported by evidence, provided due process is followed. In the instant case, the Claimant was subjected to a fair disciplinary process in compliance with Section 41 of the Employment Act. We further draw your attention to section 45(1) of the Employment Act, 2007 that sets out the test for fair termination. In the case of Nzioka v Lemoc Limited (Cause 495 of 2016) [2025] KEELRC 501(KLR) (20 February 2025) (Judgment), in citing the case of Walter Ogal Anuro v Teachers Service Commission (2013) eKLR, the Honourable Court stated that; "... For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer to effect the termination." Similarly, in the case of Pamela Nelima Lutta v Mumias Sugar Co. Ltd [2017] eKLR the Honourable Court further held that; "What constitutes fair termination is a matter that is now well settled by the wealth of Jurisprudence of this court and the Court of Appeal. There are two elements that must be satisfied by the employer, fair procedure



and valid reason." Further, in *Janet Nyandiko v Kenya Commercial Bank Limited* [2017] eKLR the court expressed itself as follows, and which was cited with approval by the Court of Appeal in the case of *National Bank of Kenya v Anthony Njue John* [2019] eKLR, thus: -"Section 45 of the Act makes provision inter alia that no employer shall terminate the employment of an employee unfairly. In terms of the said section, a termination of an employee is deemed to be unfair if the employer fails to prove that the reason for the termination was valid; that the reason for the termination was a fair reason and that the same was related to the employee's conduct, capacity, compatibility or alternatively that the employer did not act in accordance with justice and equity."

26. The Respondent submitted that it complied with the provisions of section 45 and 41 of the *Employment Act*. In the Show Cause letter dated 3rd July 2017, it read in part;

"It has come to our attention from an Audit Report carried out in Dandora sales covering the financial year 2016/2016 that on numerous transactions you conspired with three reconciliation clerks to be issued with stocks at a lower prices as opposed to current prices. The clerks on generating sales orders in SAP, Rose Nyambura altered the prices under your account amounting to Kshs 56,265.30, Evelynne Mumbi amounting to Kshs 449, 133.38, and Ruth Kinyua amounting to Kshs 7,169.04. This has resulted to the company losing revenue of Kshs 1,532,598.62. The report also indicated that you have been generating invoices and sales orders for yourself from the SAP system and taking advantage of those access rights and under invoicing yourself by changing the price. This is a serious breach of company rules and regulations. It is punishable under the Collection Bargaining Agreement (CBA) Clause 24(vi), (viii)."

27. The reason for termination was also indicated in the Termination Letter dated 31st October 2017. It read in part;"As per our earlier letters, it had been reported through internal audit report dated 14th June 2017 carried out in Dandora Sales Depot for 2016/2016 that on numerous occasions you conspired with reconciliation clerks M/s Evelynne Mumbi, Ruth Kinyua and Rose Nyambura accepting underpriced invoices hence picking products at lower prices selling them at trade prices and while on return from market reconciling the same at underpriced invoice price as opposed to trade price hence defrauding New KCC a total of Kshs 1,532,598.62." That from the evidence presented before this Honorable Court, the Respondent had a fair and valid reason to terminate the employment of the claimant, based on his gross misconduct that not only amounted to stealing from the company but also to the company incurring significant losses.

28. On procedural fairness the respondent submitted that it was well guided by the provisions of section 41 of the *Employment Act*. In addition to informing the claimant of the reasons for termination as outlined above, the Respondent also considered any representations which the employee made on the grounds of misconduct pursuant to section 41(2); Upon the discovery of the fraudulent activities by the Claimant vide the Audit Report dated 14th June, 2017, the Respondent, vide the Show Cause letter dated 3rd July 2017, informed the claimant, and invited him to show cause why disciplinary action should not be taken against him for committing fraud. On 6th October, 2017, the Respondent wrote a letter to the Claimant inviting him for a hearing to explain his case as per the letter presented before the court as evidence. The Letter read in part:-"..The Management has considered and decided to invite you for a hearing on 11th October 2017...You are hereby given an opportunity to appear before the committee to allow you to explain your case." On 10th, 11th and 12th October 2017, the Management Disciplinary Committee held a disciplinary meeting and subsequent disciplinary hearing at New KCC Creamery House. The Claimant attended the hearings. A copy of the Minutes of the disciplinary hearing was presented in evidence before this court. On 31st October 2017, being dissatisfied with the Claimant's explanation both in the response to Show



Cause and during the disciplinary hearing, the Respondent terminated the Claimant's services to New KCC, vide a letter dated 31st October 2017. In *Kenfreight (EA) Limited v Benson K. Nguti* [2016] eKLR, the Court of Appeal held that an employee who commits acts of gross misconduct and breaches the trust of the employer cannot claim unfair termination. The Respondent had justifiable cause to terminate the Claimant based on evidence from the audit report indicating financial loss due to the Claimant's actions. The Audit Report dated July 2017 provides clear, detailed, and independently verifiable evidence of the Claimant's conduct. The report revealed direct manipulation of stock prices and fraudulent invoicing by the Claimant and named clerks, resulting in a quantifiable loss of Kshs. 1,532,598.62. We refer this Honourable Court to Section 43(2) of the *Employment Act*, which states that; "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." The Claimant's assertion that the report did not indicate how the Claimant was involved with the alleged accusations or how he colluded with the Reconciliation Clerks, is misconceived, an afterthought that clearly abuses the Court's process. On the contrary, the Report not only demonstrated how invoices and sales orders were grossly underpriced relative to the prices, but also identified each of the involved salespersons, and their respective unaccounted Review that occasioned losses to the Respondent. Further, RW2 testified to this Honourable Court, affirming the contents of the Audit Report and stating that the Claimant had been generating invoices and sales orders for himself from the SAP system and taking advantage of those access rights and under-invoicing himself by changing the price. In the case of *Thomas Sila Nzivo v Bamburi Cement Limited* [2014] eKLR, the court observed as follows: "The Respondent had reasonable and sufficient grounds to suspect the Claimant of having acted to the substantial detriment of the Respondent and its property, and was justified in summarily dismissing the Claimant under Section 44 [4] [g] of the *Employment Act* 2007. The Employer was not required to have conclusive proof of the Claimant's involvement; it was only expected to have reasonable and sufficient grounds. The physical audit, the discovery that no oil was available even as the Claimant protested he received such oil.....all gave the Respondent reasonable and sufficient grounds to act against the Claimant."

29. Furthermore, the statement made by the Claimant that the Respondent did not avail the Audit Report to the Claimant during the Disciplinary hearing is irresponsible and an afterthought. It was RW2's testimony that the Audit Report was duly provided to the Claimant, and in any case, the Claimant could not have substantially responded to the show cause letter without the report, which he did. The evidentiary threshold under employment law is on a balance of probabilities. As held in *Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya)* [2017] eKLR, the employer is only required to demonstrate that it had reasonable and sufficient grounds to believe the employee committed the misconduct. The Respondent relied on professionally conducted audit findings and afforded the Claimant a chance to respond. The report was not only conclusive but also corroborated by internal SAP data, showing deliberate under-invoicing and fraudulent pricing schemes orchestrated by the Claimant.

Decision

30. Substantive fairness- The claim for unfairness was hinged on the lack of valid reasons. In first part of response to show cause dated 5th July 2017, the Claimant referred to show cause regarding the audit report of Dandora sales in the financial year 2016/2018. The court noted that the Claimant did not deny knowledge of the internal audit report. In appeal letter dated 20th November 2017, again the Claimant referred to the audit report and did not say he had not seen it. He said the termination was unfair in the sense that the "said reconciliation clerks Everlyn Mumbi, Ruth Kinyua and Rose Nyambura who had used my account name for their own account manipulation benefits." He further



- stated no single invoice had been submitted to him on the undervalued prices. During the hearing, he knew the disciplinary hearing was based on the audit report but said it had not been shared. The court on perusal of the evidence concluded the Claimant had accessed the audit report before the hearing.
31. Did the Claimant have access to the system – he denied this at the hearing. The report said he had access. During disciplinary hearing the Claimant said he raised orders and sold products to market and did reconciliations. He sold using the price list. (See minutes of the disciplinary hearing). As per the respondent’s witness RW1 orders and reconciliation could not be done without access to the system. RW2 at cross-examination on whether the Claimant had access to the system told the court all staff had SAP accounts and cannot work without access. RW2 explained the role of the Claimant in the fraud. That the price list which the Claimant told the court he had, guides price of every product. That he was issued lower prices by the clerks and proceeded to sell products at market rate and did reconciliation of sales at the lower process as captured in the audit report. The court on perusal of the foregoing on reason for the termination was not persuaded to interfere with the decision of the Respondent. The court was guided by the provisions section 43 of the *Employment Act* and section 44(4)(g) (an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer’s property.)
 32. The reason was based on reasonable suspicion that the Claimant had committed offence against Respondent’s property. The Claimant had a duty under contract dated 31st March 2017 to ensure pricing of products is done uniformly in all outlets. He failed in that duty. The evidence to prove under section 43 is that of reasonable suspicion of crime. The reason on suspension was supported by the audit report. The court finds the termination met the test of a reasonable employer *British Leyland UK Ltd vs. Swift*. Any reasonable employer failed with such report finding could have effected termination after due process to the Claimant and on the involved staff. Further the court was persuaded by decision in *Thomas Sila Nzivo v Bamburi Cement Limited* [2014] eKLR, the court observed as follows:-“The Respondent had reasonable and sufficient grounds to suspect the Claimant of having acted to the substantial detriment of the Respondent and its property, and was justified in summarily dismissing the Claimant under Section 44 [4] [g] of the *Employment Act* 2007. The Employer was not required to have conclusive proof of the Claimant’s involvement; it was only expected to have reasonable and sufficient grounds. The physical audit, the discovery that no oil was available even as the Claimant protested he received such oil.....all gave the Respondent reasonable and sufficient grounds to act against the Claimant.” In the upshot the court held the reason for termination was fair.

Procedural fairness

33. The court noted the Claimant was issued with show cause and taken through disciplinary process. The Claimant appealed but there was no response. The Respondent was obliged to respond to the appeal in completion of due process. The Respondent produced the Collective Bargaining Agreement which it relied on for the disciplinary process. Clause 27 provided for the appeal against disciplinary action. The Clause 27 stated that the employee had a right to appeal. That the company shall look into the case on the basis of the employee’s appeal and or any other new evidence. “The company’s decision will be communicated to the employee and thein writing within 21 days of the meeting”. The court established there was no compliance with clause 27 of the CBA by the Respondent. The process was thus flawed. Consequently, the court held the reason for termination was valid but the process unfair for failure to comply with clause 24 of CBA on appeal rights of the employee.



Whether the Claimant is entitled to reliefs sought

34. On the Claim for payment of salary of August, September and October 2017.-The Claimant was issued with a suspension letter dated 3rd July 2017. Taken through disciplinary hearing and issued with a termination letter dated 31st October 2017. The Respondent did not deny non-payment of the salary. The Respondent relied on the decision of the Court of Appeal *Galgalo Jarso Jillo vs. Agricultural Finance Corporation*, 2021 where the court relied on Court of Appeal decision in *Kenya Power & Lighting Company vs. Aggrey Lukorito Wasike* (2017) eKLR to the effect that the court should not turn a blind eye to the fact the employee contributed to own misfortune and that just is two way highway for both employee and employer. The CBA forms part of contract between employee to employer Clause 25 (II) of the CBA provided for ½ pay during suspension and the same is granted thus KShs.180,000/=.
35. Notice pay -The court having held that the process was flawed hence termination was deemed to have occurred under clause 26 of the CBA and section 35 of *Employment Act*. Notice pay is award for salary in lieu of 1 month's thus KShs.120,000/=.
36. On the prayer for compensation, the reason for termination was proved to the satisfaction of the court, hence no compensation was due under section 49 which provides for compensation where the reason(s) for termination is not justified.
37. The Claimant prayed for accrued leave without any details of how many accrued days and period of accrual. I perused the statement of the Claimant and found there was no issue of leave. At the hearing the claimant said he thought there were outstanding leave days. That was a vague claim and the same is dismissed.

Whether the counterclaim was merited

38. Whereas the report was produced and the court accepted there was reasonable basis for suspicion of crime against the property of the employer, the respondent was required to prove with specificity how it arrived at the figures in the report. The said invoices ought to have been produced. The court without such proof declines to award the counterclaim.

Conclusion

39. The claim is allowed. Judgment is entered for the Claimant against the Respondent as follows:-
 - a. The termination is held as lawful but procedurally unfair.
 - b. Notice pay of KShs.120,000/-.
 - c. Salary at ½ for 3 months of suspension -KShs.180,000/=.
 - d. Total amount of KShs.300,000/-(b and c above) payable with interest at court rates from date of judgment.
 - e. Certificate of service to issue under section 51 of the *Employment Act*.
 - f. Costs of the suit.
40. The counterclaim is dismissed. No order as to costs as the reason for termination was justified.
41. 30 days stay of execution is granted.
42. It is ordered.



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

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Claimant – Manyange h/b Kimakia

Respondent: Oele

