



**Chaka v Corrugated Sheets Limited (Appeal E039 of 2024)
[2025] KEELRC 1785 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1785 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E039 OF 2024**

**K OCHARO, J
JUNE 12, 2025**

BETWEEN

MWASOKO JUMA CHAKA APPELLANT

AND

CORRUGATED SHEETS LIMITED RESPONDENT

*(An appeal against the judgment and decree of the principal magistrate,
G.Sogomo of 23rd February 2024 in Mombasa CELRMC cause No. E 271 of 2021)*

JUDGMENT

Introduction

1. Claiming that at all material times, he was an employee of the Respondent whose employment the latter terminated unfairly, the Claimant sued them Claiming various reliefs thus, one month's salary in lieu of notice, unpaid salary for 17 days worked in March, 2020, unpaid house allowance for 288 months, earned but unpaid leave days for 24 years, compensation for public holidays worked during the 24 years, unpaid overtime, compensation for unlawful termination, unpaid NHIF contributions, and service pay, cumulatively, KShs. 3, 537,913.40.
2. The Respondent opposed the claim, asserting that the Appellant was lawfully summarily dismissed for gross misconduct and, as such, had no cause of action against them. It was further asserted that, in the circumstances of the matter, the Appellant was not entitled to the reliefs he had sought.
3. After hearing the parties regarding their respective cases, the learned trial Magistrate concluded in his judgment, dated as aforesaid, that the summary dismissal was not wrongful as asserted by the Appellant, declined the reliefs he had sought, and dismissed his case.



The Appellant's case before the Lower Court.

4. The Claimant stated that he was employed by the Respondent as an officer messenger on 2nd January 1996.
5. On 12th March 2020, he was given luggage by his colleague, Erick Mawira, to deliver to the Respondent's security guards at the gate to hold for him [Erick].
6. On 12th March 2020, he received a call from the Respondent's Human Resources Manager, who accused him of stealing the Respondent's two wall clocks.
7. On 13th March 2020, when he reported for work, he was summoned to the Manager's office where he was forced to apologize and write a letter admitting that he had attempted to steal the wall clocks, as a condition precedent to be allowed to continue working.
8. On 17 March 2020, the Respondent summoned him for a disciplinary meeting and terminated his employment without allowing him to defend himself.
9. He asserted that the Respondent did not allow him to take his annual leave throughout his tenure. Furthermore, the Respondent was not duly remitting statutory contributions to his account with the relevant authorities.
10. His employment was terminated without justifiable and valid grounds and a proper termination notice. It was unfair and illegal.

The Respondent's Case before the Lower Court

11. The Respondent presented Ziporah Onyango, its Human Resources Manager, to testify on its behalf. The witness stated that the Respondent employed the Appellant on 2 June 2009.
12. On 12th March 2020, the Claimant was caught by the Respondent's Security Guard leaving the premises with two wall clocks. When asked to explain, he claimed that Erick had given them to him while processing a gate pass for the clocks. It was discovered that this explanation was false, as Erick had already left the Respondent's premises.
13. Neither the Claimant nor Erick had received permission to remove the two wall clocks from the Respondent's premises.
14. Upon reporting the following day, the Claimant was asked to show cause why disciplinary action couldn't be taken against him. As a result, the Claimant issued an apology letter and categorically stated that one clock was meant for him and the other for Erick Mawira.
15. Subsequently, the Claimant, along with Erick Mawira, was invited to a disciplinary hearing, where they attended with a shop steward, the Chief Shop Steward, and the Branch Secretary and Area Secretary of the Kenya Engineering Workers Union.
16. He was allowed to defend himself during the disciplinary meeting.
17. The Claimant was summarily dismissed for gross misconduct. Due process was observed.

The Judgment by the Lower Court.

18. After hearing the parties and considering their respective cases, the Learned trial Magistrate held that the Appellant had failed to prove his case. He consequently dismissed it.



The Appeal to this Court.

19. Aggrieved by the Judgment, the Appellant filed this appeal, anchoring the same on the following grounds;
 - I. That the learned Magistrate misdirected himself in law and fact in finding that the Appellant was fairly terminated from work in the absence of the show cause letter, notice of invitation to the disciplinary meeting and being informed to attend the disciplinary meeting with a witness of choice.
 - II. That the learned Magistrate misdirected himself in law and fact in finding that the Appellant was afforded reasonable time to mount a defence before the disciplinary committee, and that the Appellant was served with a show cause letter and an invitation letter to the disciplinary meeting, which documents were not filed in Court by the Respondent.
 - III. That the learned magistrate erred in law and fact and misdirected himself in application of section 47 [5] of the *Employment Act* in shifting the burden of justifying the grounds for termination of employment or wrongful dismissal to the Appellant instead of the Respondent.
 - IV. That the learned Magistrate erred in law and fact in failing to find that the Appellant's dismissal from employment ought to have been both procedurally and substantively fair in accordance with sections 43, 44, and 45 of the *Employment Act*.
 - V. The learned trial Magistrate disregarded the overwhelming evidence tendered by the Appellant to prove that he was entitled to terminal dues upon unlawful dismissal from work as enshrined in section 49 of the *Employment Act*.
 - VI. The learned trial Magistrate disregarded the submissions made by the Appellant's Counsel on both the law and facts.

Analysis and Determination.

20. This Court appreciates its role as the first Appellate Court in this matter, to reconsider and reanalyse the material presented before the trial Court, and to arrive at its own conclusions without necessarily being bound by those of the trial Court. However, in doing so, the Court reminds itself that it neither saw nor heard the parties. Where it diverges from the trial Court's findings, it must provide clear reasoning for the same. See also- *Musera v Mwechelesi & Another* [2007] KLR.
21. In my view, the Appellant's appeal will succeed or fail on the following broad grounds:
 - I. Did the Learned trial Magistrate err in law and fact when he held that the Respondent's employment was fairly terminated?
 - II. Did the Learned trial Magistrate err in law and fact, by failing to award the Appellant the reliefs he had sought or any of them?
22. The Appellant contended, and his Counsel submitted, that the termination of his employment was procedurally unfair. He was not issued with a show cause letter or formally invited to a disciplinary hearing. The Appellant stated in his statement of claim that on 17th March 2020, he was summoned for a disciplinary meeting. In his evidence under cross-examination, he admitted that he attended the disciplinary hearing. Given this averment and evidence, the Appellant could not reasonably assert that he was not invited to a disciplinary hearing. It is not one of the dictates of Section 41 of the *Employment Act* that the invitation to a disciplinary hearing must be in writing.



23. There is no dispute that when the Appellant was caught with the two wall clocks, he was summoned by the Human Resources Manager the following day to explain himself regarding the events of the previous day. He subsequently wrote an apology letter and does not deny having done so. Up to this point, I do not doubt that the Appellant was aware of the Respondent's accusations against him.
24. So, I refuse to believe that when he was summoned to the disciplinary meeting, he was unaware of the accusations he was facing.
25. Consequently, I am satisfied that the Respondent fulfilled the notification and information component of procedural fairness as contemplated under section 41 of the Act.
26. The Appellant asserted that although he attended the disciplinary hearing, he was not allowed to defend himself. I have carefully reviewed the meeting minutes submitted as evidence by the Respondent and noted that they present the Appellant's explanation regarding the accusation. Trade union representatives signed the minutes at the hearing. The Appellant did not deny that these representatives were present during the hearing or that they signed the minutes. Furthermore, the Appellant does not contend that what is recorded in the minutes as his explanation is not an accurate reflection of what he provided or that he did not give such an explanation. Therefore, I remain unconvinced that he was not given an opportunity to defend himself.
27. Essentially, the purpose of a notice to show cause is to inform the affected employee of the allegations the employer has against them. Therefore, in cases where it is evident that the employee was aware of the accusations, a court cannot determine that the termination of the employee's employment was not procedurally fair merely because a written show cause was not issued.
28. The Appellant contended that the learned trial Magistrate misapplied the provisions of section 47[5] and improperly shifted the burden of proof to the Appellant. My understanding of this provision of the law is that it creates an oscillating burden of proof. Initially, it is on the employee, and depending on whether the employee manages to discharge this burden, it shifts to the employer. The question arises: What is this burden that initially rests on the employee? They must demonstrate prima facie that an unlawful termination occurred; that is, the absence of procedural and substantive fairness, or a breach of section 46 of the Act [that the termination or summary dismissal was on one of those prohibited grounds], among others. It is only upon discharging this burden that the obligation shifts to the employer to prove justification for the termination.
29. With great respect, I am doubtful that the Appellant's submissions clearly understand the provision's significance. Contrary to what is contended, I maintain that the learned trial Magistrate comprehended the variable nature of the burden of proof under the provision and on whom it rested at which point.
30. Section 43 of the *Employment Act* places a duty on the employer to prove the reason for dismissal in disputes regarding the termination of an employee's employment. The Act further imposes a burden of proof under section 45[2] on the employer to demonstrate that the reason was fair and valid. The reason for the summary dismissal of the Appellant's employment was that he attempted to steal two wall clocks from the premises.
31. The Appellant provided a written apology for the infraction. I have no reason to believe that he did not. In my view, the apology went a long way in supporting the fact that, indeed, at the material time, there was a reason for the Respondent to initiate disciplinary proceedings against and sanction the Appellant. Therefore, there is no doubt that the Respondent fulfilled the legal burden under section 43 of the *Employment Act*.



32. In situations where an employee is summarily dismissed, the dismissal passes the substantive fairness test under section 45[2], if the infraction in question falls under the list set out in section 44[4] of the *Employment Act*, or since the list isn't exhaustive, the gravity of the impact of the infraction on the employer-employee relationship is considered to be at the same level as those specifically listed could have.
33. Under section [44][4], the theft of an employer's property falls into the category of acts committed by an employee that constitute gross misconduct, potentially warranting the sanction of summary dismissal. The Appellant admitted that he attempted the theft and expressed remorse for it. Having acknowledged the misconduct, the Respondent had the following options: pardon him, consider it a mitigating factor and impose a lighter sanction, or proceed with summary dismissal. The Respondent cannot be faulted for choosing one of these options, particularly the gravest—summary dismissal.
34. For the above reasons, I have no difficulty in concluding that the Respondent demonstrated the reason for the dismissal was valid and fair under section 45[2] of the *Employment Act*. Also see- John Gitau Mwaura v National Bank of Kenya Ltd [2018] eKLR, cited by Counsel for the Respondent.
35. The learned trial Magistrate didn't err in finding that the summary dismissal against the Appellant was substantively fair.
36. Before the trial court, the appellant sought relief that can be categorised as those related to the claim for unfair termination/wrongful termination and those that are not. As I consider whether any of the reliefs were grantable to the appellant in the context of the dispute, I keep this in mind.
37. Having found that the summary dismissal against the Appellant was fair, thus upholding the learned trial Magistrate's decision, I conclude that notice pay under section 35, as read together with section 36, and compensation pursuant to section 49[1][c] of the *Employment Act* were reliefs that could not be availed to the Appellant. The learned trial magistrate was correct in not granting these reliefs.
38. The Appellant claimed an amount of KShs.1, 173, 657.60 calculated as follows: 15% x 27,168 x 288. This claim was specific and required specific proof. It seems reasonable to conclude that the amount was determined by applying a uniform monthly salary over the 288 months, treating the salary of KShs. Twenty-seven thousand one hundred sixty-eight received at separation, consistent with his monthly salary during his entire tenure. However, the pay slips presented convey a different narrative.
39. The pay slips presented in evidence by the Respondent, which the Appellant did not challenge in any way, clearly demonstrate that the Appellant had an itemised pay slip and that house allowance was one of the items being paid thereunder.
40. By parity of reasoning, [paragraphs 38 and 39], the claim for compensation for unpaid leave and overtime would fail. The learned trial court correctly declined to award the same.
41. Remittance by employers of contributions to the National Health Fund is a statutory obligation imposed by the relevant statute, with sanctions for failure to remit and mechanisms to enforce these sanctions. Therefore, any claim alleging default must be initiated and pursued according to the stipulations of the statute, which was not the case in this matter. The learned trial magistrate didn't decline to grant relief under the head "unpaid NHIF".
42. In the upshot, I find the Appellant's appeal lacking merit. It is hereby dismissed with costs.

READ, SIGNED AND DELIVERED THIS 12TH DAY OF JUNE 2025.

OCHARO KEBIRA



JUDGE.

