



**Kamuri v Cleanshelf Supermarkets Limited (Cause 922 of 2018)
[2025] KEELRC 2278 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2278 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 922 OF 2018**

**L NDOLO, J
JULY 31, 2025**

BETWEEN

STEPHEN MURAYA KAMURI CLAIMANT

AND

CLEANSHELF SUPERMARKETS LIMITED RESPONDENT

JUDGMENT

Introductions

1. The issues in dispute as declared by the Claimant in his Statement of Claim dated 5th June 2018 and amended on 17th May 2021 are; unfair termination and failure to pay terminal dues. The Respondent filed a Statement of Defence dated 11th September 2018 and amended on 6th November 2023.
2. At the trial, the Claimant testified on his own behalf and the Respondent called its Human Resource Manager, Samuel Matheri. Thereafter, the parties filed written submissions.

The Claimant's Case

3. The Claimant states that he was an employee of the Respondent from February 2011 to September 2015, working in the position of Head of Bakery Section. His initial monthly salary was Kshs. 50,000 which was later increased to Kshs. 70,000.
4. On 3rd August 2015, the Claimant was issued with a letter sending him on a one-month compulsory leave, citing unsatisfactory performance. The Claimant complains that he did not receive his salary for the month of August 2015.
5. The Claimant avers that upon reporting back to work on 1st September 2015, he was verbally notified that the Respondent's Directors had made the decision to terminate his employment. Upon asking for official communication, the Claimant was issued with a termination letter of the same date.



6. The Claimant states that during his employment with the Respondent, his performance was never appraised nor was he issued with a warning letter on account of unsatisfactory performance.
7. The Claimant further states that he was not issued with a notice to show cause and he was not given an opportunity to be heard. He therefore terms the decision to terminate his employment as unlawful and unfair.
8. The Claimant asserts that the Respondent's actions were in breach of his contract of employment dated 3rd February 2011; particulars being:
 - a. Terminating the Claimant's employment without notice;
 - b. Withholding the Claimant's salary for August 2015;
 - c. Not paying the Claimant for leave days not taken;
 - d. Not paying the Claimant house allowance for the years worked;
 - e. Terminating the Claimant's employment without following due process.
9. The Claimant therefore claims the following:
 - a. A declaration that the termination of his employment was unlawful and unfair;
 - b. A declaration that the Respondent's decision to withhold the Claimant's terminal dues is a breach of his terms of service;
 - c. A declaration that the Respondent's action was unlawful, actionable and the Claimant is entitled to 12 months' salary in damages for unfair termination;
 - d. An order that the Claimant be paid service pay at one month's gross salary for every year worked from 2011;
 - e. An order that the Claimant be paid his salary for August 2015 when he was on compulsory leave;
 - f. An order that the Claimant be paid 21 accrued leave days;
 - g. An order that the Claimant be paid 1 month's salary in lieu of notice;
 - h. An order that the Claimant be paid house allowance at 15% of basic salary from June 2011 to September 2015;
 - i. Costs plus interest.

The Respondent's Case

10. In its Statement of Defence as amended on 6th November 2023, the Respondent admits that the Claimant was sent on compulsory leave, due to unsatisfactory performance of his duties. The Respondent claims that this action was necessary to facilitate investigations on issues raised by the Branch Manager.
11. The Respondent states that the Claimant's salary for August 2015, when he was on compulsory leave, was included in his terminal dues. The Claimant's one-month salary in lieu of notice is also said to have been included in the terminal dues.



12. The Respondent contends that the Claimant was issued with a letter dated 24th August 2015, summoning him to a disciplinary hearing, but the Claimant failed to attend. The Respondent adds that the Claimant was questioned by the Human Resource Manager and the Directors but he did not give a satisfactory explanation.
13. According to the Respondent, the decision to terminate the Claimant's employment was based on thorough investigations that revealed his gross misconduct that caused the Respondent to make losses.
14. The Respondent asserts that the Claimant was issued with a termination letter after investigations returned a finding that he was guilty of poor performance, gross misconduct as well as defrauding the Company of products.
15. The Respondent claims that the Claimant was given several verbal warnings by the Branch Manager.
16. The Respondent defends the decision to terminate the Claimant's employment, stating that several complaints had been raised by the Claimant's colleagues and supervisors, regarding the conduct of his duties. In this regard, the Claimant was accused of:
 - a. Poor planning of duties;
 - b. Making decisions without consulting fellow managers;
 - c. Lack of respect for junior staff especially female employees;
 - d. Using wrong protocol of work and defrauding the Respondent;
 - e. Conflicting with other staff;
 - f. Failing to report to work on time;
 - g. Failing to perform his duties and instead being on his mobile phone most of the time.
17. The Respondent avers that during his employment, the Claimant was advanced a loan facility by the Respondent's Sacco, which was guaranteed by the Respondent. According to the Respondent, at the time of termination, the Claimant had an outstanding loan balance of Kshs. 307,422, which was offset against his terminal dues amounting to Kshs. 359,622 leaving a balance of Kshs. 52,200.
18. The Respondent contends that the Claimant failed to return a laptop worth Kshs. 54,520 which sum was recovered from the balance of his terminal dues. The Respondent concludes that it is in fact the Claimant who owes the Company Kshs. 2,320 and that the Respondent does not owe him any money.
19. The Respondent states that following the Claimant's failure to return the laptop, it reported a case of stealing by servant to the Police, upon which the Claimant was arrested and charged at Limuru Law Courts.
20. The Respondent denies the Claimant's entire claim and asks the Court to dismiss it.

Findings and Determination

21. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.



The Termination

22. The Claimant's employment was terminated by letter dated 1st September 2015 stating as follows:

“To: Stephen Muraya

From: Human Resource Office

Ref: Termination on Performance Issues

This is serves (sic) as a termination letter with Cleanshelf Supermarket. This comes as a result of numerous complaints from the operation director regarding your performance as the head of bakery. He has numerously given verbal warning and discussed with you on improving on performance of the bakery section but no improvement has being (sic) seen on your side.

There are also numerous expiries that have being (sic) reported from the branches due to over ordering of bakery products that have being (sic) reported by the operation department.

With this entire allegation, the management has no choice but to terminate your services with Cleanshelf with immediate effect from 1st September 2015. We shall communicate on when to collect your final dues.

For HR Office

S. Matheri

Human Resources”

23. This letter accuses the Claimant of poor performance of his duties as Head of Bakery. The procedure for dealing with cases of poor performance was established in *Kenya Science Research International Technical and Allied Workers Union (KSRITAWU) v Stanley Kinyanjui and Magnate Ventures Ltd* (Cause No 273 of 2010) in the following terms:

“The proper procedure once poor performance of an employee is noted is to point out the shortcomings to the employee and give the employee an opportunity to improve over a reasonable length of time. In our view 2-3 months would be reasonable.”

24. In *Jane Samba Mkala v Ol Tukai Lodge Limited* [2013] eKLR my sister Mbaru J held that an employer alleging poor performance on the part of an employee, must demonstrate the existence of an objective performance evaluation system as a benchmark for assessing performance and providing support for improvement.

25. The termination letter issued to the Claimant makes reference to verbal warnings issued to him regarding his performance. There was however no evidence of any performance appraisal conducted or a performance improvement plan put in place as support to the Claimant to improve.

26. The Respondent's conduct in addressing the Claimant's performance issues was rather strange; instead of being supported to improve, the Claimant was sent on a one-month compulsory leave effective 4th August 2015 to 1st September 2015. The suspension letter which was dated 3rd August 2015, required the Claimant to hand over all company assets entrusted to him.

27. In my view, an employer who sends a poor performing employee on compulsory leave has no intention of supporting that employee to improve.



28. The Respondent alleges that prior to the termination, the Claimant was issued with a letter dated 24th August 2015, inviting him to a disciplinary hearing, but he failed to attend. The Claimant denied receiving any such letter and the Respondent did not adduce any evidence of service upon him. Of significance is that the letter of 24th August 2015 is not mentioned in the termination letter of 1st September 2015.
29. What is clear is that the Claimant was not subjected to any disciplinary process prior to termination of his employment, as required by Section 41 of the *Employment Act*, which provides as follows:
1. 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.
 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.
30. In view of the foregoing, I find and hold that the Respondent has failed to establish a valid reason for terminating the Claimant's employment, as required under Section 43 of the *Act*.
31. Before pronouncing the final award, I need to address the Respondent's decision to apply the Claimant's terminal dues to offset a Sacco loan owed by him. The Respondent defends its action in this regard, on the ground of its close association with the Sacco.
32. On his part, the Claimant accused the Respondent of using the Sacco loan as a pretext to withhold his terminal dues unlawfully. He told the Court that the outstanding loan was recovered from his guarantors. In its decision in *Njenga & 4 others v Motor Boutique Limited* [2024] KEELRC 2206 (KLR) this Court held that in the absence of express authorisation by an employee, an employer cannot withhold the employee's terminal dues under the guise of recovering an outstanding loan on behalf of a Sacco that is not a party to the proceedings.
33. The Respondent did not adduce any evidence to show concurrence by the Claimant that his terminal dues be paid to the Sacco, nor was there proof that the said funds were actually moved from the Respondent to the Sacco. In the result, I find and hold that the Respondent's action regarding application of the Claimant's terminal dues was unlawful.

Remedies

34. Pursuant to the foregoing, I award the Claimant six (6) months' salary in compensation. In arriving at this award, I have taken into account the Claimant's length of service and the finding that he did not contribute to the termination.
35. I have further factored in the Respondent's failure to undertake an appraisal of the Claimant's performance prior to termination and the apparent lack of support to the Claimant towards improvement of his performance.
36. I further award the Claimant one (1) month's salary in lieu of notice.



37. In the absence of proof of payment of the Claimant's salary for August 2015, this claim succeeds and is allowed.
38. Similarly, in the absence of leave records to the contrary, the claim for leave pay also succeeds and is allowed.
39. According to the payslips availed by the Respondent, he was paid house allowance and deductions were made towards his National Social Security Fund (NSSF) contributions. The claims for house allowance and service pay are therefore without basis and are declined.
40. Finally, I enter judgment in favour of the Claimant as follows:
- a. 6 months' salary in compensation.....Kshs. 420,000
 - b. 1 month's salary in lieu of notice....70,000
 - c. Salary for August 2015.....70,000
 - d. Leave pay $(70,000/30*21)$49,000
- Total.....609,000
- Less cost of un-surrendered laptop...(54,250)
- Amount payable to the Claimant....554,750
41. This amount will attract interest at court rates from the date of judgment until payment in full.
42. The Claimant will have the costs of the case.
43. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Kisotu h/b for Makumi for the Claimant

Ms. Nzioki for the Respondent

