



**Mundia v Ola Energy Kenya Limited (Cause 232 of 2020)  
[2025] KEELRC 2284 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2284 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 232 OF 2020**

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

**BETWEEN**

**ALVIN MUNDIA ..... CLAIMANT**

**AND**

**OLA ENERGY KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. By his Statement of Claim dated 20<sup>th</sup> May 2020, the Claimant proceeds against the Respondent, alleging unlawful and unfair termination of his employment. The Respondent denies the Claimant's claim by a Memorandum of Reply dated 20<sup>th</sup> October 2020.
2. The matter proceeded viva voce with the Claimant testifying on his own behalf. The Respondent called its Legal Counsel, Benedicta Karimi. Both parties also filed written submissions.

**The Claimant's Case**

3. Vide a letter of appointment dated 31<sup>st</sup> August 2012, the Respondent employed the Claimant in the position of Customer Service Cashier, effective 3<sup>rd</sup> September 2012. At the time of separation, the Claimant had risen to the position of Supervisor. His salary was also increased from an entry level of Kshs. 80,000 to Kshs. 177,819.73.
4. By letter dated 27<sup>th</sup> June 2019, the Claimant was suspended from duty to pave way for investigations into suspected fraudulent transactions on customer accounts. The Claimant states that he had no prior notice of any investigations targeting him and no alleged fraud had been brought to his attention.
5. After one month in suspension, the Claimant was served with a letter dated 30<sup>th</sup> July 2019, inviting him to attend a disciplinary hearing on 6<sup>th</sup> August 2019. This letter listed the allegations against the Claimant as; breach of Company Policies on Ethics and Conflict of Interest; and failure to follow written policies and procedures in the conduct of his job.



6. The Claimant complains that he was not given a copy of the investigation report, the names of witnesses, their statements or supporting documents.
7. The Claimant claims to have been put under pressure and intimidation by the Respondent's management aimed at inducing him to confess to wrongs he did not commit, on the promise of a pardon. On 8<sup>th</sup> July 2019, the Claimant met the investigation team and he admitted deleting entries and sharing his system password with a work colleague.
8. According to the Claimant, deleting entries was a common practice at the Respondent Company and was not a ground for disciplinary proceedings. He added that sharing of passwords was not specified as a violation of company policies and procedures.
9. The Claimant states that he appeared before the Disciplinary Committee on 6<sup>th</sup> August 2019, although the record shows that the hearing took place on 7<sup>th</sup> August 2019. He states that the Disciplinary Committee faulted the Respondent's procedures and communication processes and proposed a review.
10. The Claimant was summarily dismissed by letter dated 23<sup>rd</sup> September 2019. His two appeals dated 1<sup>st</sup> October 2019 and 8<sup>th</sup> November 2019 were disallowed. With respect to the second appeal, the Respondent is said to have admitted having departed from the recommendations of the Disciplinary Committee.
11. Further, the Claimant accuses the Respondent of ignoring his representations in the disciplinary process, in addition to denying him an opportunity to exit via an ongoing Voluntary Early Retirement (VER) program.
12. The Claimant also accuses the Respondent of violating its own disciplinary procedures and processes. In this regard, he points out that he was not aware of any complaint raised against him and he was not furnished with an investigation report. The Claimant also complains that he was kept on suspension beyond the established thirty-day threshold.
13. The Claimant reiterates that the Respondent ignored the recommendations of its own Disciplinary Committee and went ahead to summarily dismiss him. Moreover, his appeals were not heard within the timelines provided in the Respondent's disciplinary procedures. Additionally, the Claimant faults the Respondent's Manager, Human Resources/Public Affairs, Lucy Kisewa for presiding over both the first and second appeals.
14. The Claimant's claim is as follows:
  - a. A declaration that the termination of his employment by way of summary dismissal was wrongful and unfair;
  - b. A declaration that the Respondent violated its own policies and procedures as well as applicable law;
  - c. An order of reinstatement, with full pay from the date of suspension or in the alternative, Kshs. 55,479,755.76 in damages for unlawful and unfair termination of employment;
  - d. Costs plus interest.

### **The Respondent's Case**

15. In its Memorandum of Reply dated 20<sup>th</sup> October 2020, the Respondent states that by a contract of employment dated 31<sup>st</sup> August 2012, the Claimant was offered employment as a Customer Service



Cashier, in the Supply and Distribution Department. His commencement monthly salary was Kshs. 64,452 plus a house allowance of Kshs. 9,667.80 and a car allowance of Kshs. 5,000.

16. The Respondent defends the Claimant's suspension as lawful and justifiable, in line with its Disciplinary Procedures Manual.
17. The Respondent states that upon conclusion of internal investigations into suspected fraudulent transactions pertaining to customer accounts, areas that touched on the Claimant were identified upon which he was, by letter dated 30<sup>th</sup> July 2019, called upon to attend a disciplinary hearing.
18. The Respondent denies the Claimant's averment that he was not provided with the investigation report or supporting documents, with respect to the charges levelled against him.
19. The Respondent adds that any admissions made by the Claimant to the investigation team were never coerced or induced.
20. The Respondent counters the Claimant's position that sharing of passwords was not specified as a violation of the Respondent's Computer User Responsibilities Reference Guide. The Claimant is said to have voluntarily admitted having shared his password with his colleague and he did not make any effort to change it or report this fact to his Supervisor or ICT as required.
21. Regarding the variance in the date of the disciplinary hearing, the Respondent states that this is a pure human error, which does not alter the accuracy and integrity of the record of the proceedings. The Respondent points out that the Claimant does not challenge the content of the proceedings, having signed the record on each page, in acceptance that it is a true reflection of the disciplinary proceedings of 6<sup>th</sup> August 2019.
22. On the issue of departure from the recommendations of the Disciplinary Committee, the Respondent states that Section 6 of its Disciplinary Procedures Manual provides that the disciplinary action to be meted out against an employee is at the sole discretion of the Respondent's management. The Respondent asserts that the recommendation by the Disciplinary Committee was not binding.
23. The Respondent admits having received the Claimant's two appeals but denies that the summary dismissal was wrongful. The Respondent further denies the Claimant's claim that he was denied an opportunity to exit through the VER program, stating that the program was rolled out on 25<sup>th</sup> September 2019, three months after the Claimant's disciplinary process had been commenced and finalised.
24. The Respondent denies the allegation that it violated its own procedures and maintains that it complied with the Disciplinary Procedure Manual as follows:
  - a. The Claimant was placed on suspension by letter dated 27<sup>th</sup> June 2019 to pave way for investigations, into suspected fraudulent transactions pertaining to customer accounts;
  - b. Once the investigations were completed and there were suspected violations of the Respondent's policies touching on the Claimant, he was informed of the charges that he was facing and invited to a disciplinary hearing, by letter dated 30<sup>th</sup> July 2019, to explain himself on the charges;
  - c. A Disciplinary Committee was constituted and the Claimant was heard by a duly constituted panel;
  - d. The Claimant was supplied with all the information requested by him to enable him defend himself;



- e. The Respondent's management took the decision to summarily dismiss the Claimant, upon considering all the evidence, admission by the Claimant of breach of Company Policies and Procedures, and also upon considering the severity of the misconduct that the Claimant was accused of.
25. The Respondent denies the Claimant's averment that he was not found guilty of misconduct as set out in Part 2 of the Disciplinary Procedure Manual. The Respondent insists that the Disciplinary Committee found that the Claimant had failed to follow written policies and procedures, in the conduct of his job.
26. The Respondent concedes the delay in processing the Claimant's first appeal, which it attributes to the fact that the appeal was heard by the General Manager, who had been unable to hear it earlier due to inevitable work requirements.
27. The Respondent denies that the first and second appeals were presided over by the same person, Lucy Kisewa. In this regard, the Respondent states that the first appeal was presided over by the General Manager and the second appeal was considered by the Respondent's Director.
28. The Respondent maintains that Lucy Kisewa only attended the first appeal hearing at the invitation of the General Manager to witness the appeal hearing. The Respondent adds that the letter confirming the outcome of the appeal was executed by Lucy Kisewa by virtue of her position as the Human Resources Manager.

### **Findings and Determination**

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

### **The Dismissal**

30. The Claimant was dismissed by letter dated 23<sup>rd</sup> September 2019, stating as follows:

“Dear Alvin

Re: Summary Dismissal

I am writing to inform you that, following the disciplinary hearing held on 6<sup>th</sup> August 2019, having considered your representations at the said disciplinary hearing, and in view of the seriousness of this matter, it has been decided that your employment with OLA Energy Kenya Limited (the Company) should be terminated without notice for gross misconduct.

The reason for your dismissal is that:

- 1. you breached the Company's Ethics Policy; and
- 2. you failed and/or refused to follow written policies and procedures in the conduct of your job.

The basis for these findings is that:



## **1. Breach of Company's Ethics Policy**

- 1.1 You used your ACCPAC account access to create fraudulent receipts to customers on prepayment terms (Bankers Cheques Before Delivery) in order to enable their accounts to be invoiced before actual payments were received by the Company from the said customers.
- 1.2 In contravention of the Ethics Policy, you falsified receipts on customer accounts with the intention to deceive the Company that payment for product had been received in order to facilitate the delivery of product to these customers.
- 1.3 In further contravention of the Ethics Policy, you knowingly and intentionally concealed the fraudulently raised receipts by deleting the same with the intention to interfere with evidence of your falsification of Company records. The Ethics Policy requires compliance with the standards of integrity throughout the Company and does not allow achievement of results via violation of the law or by dealing dishonestly.
- 1.4 There were approximately twenty eight (28) instances in the period between March and June 2019, where customers on prepayment terms, were invoiced using your access "ZMUNDIA" before their actual payments were posted in their accounts. On 25<sup>th</sup> June 2019, for instance you created and deleted a receipt of Ksh 2,000,000 for Hatimi Service Station ("Hatimi") to enable processing and release of Hatimi's order before payment was received (see the Company's copy of list of receipts for Hatimi).
- 1.5 You failed to comply with the Company's Ethics Policy which required you, as the Company's employee to comply with Company's standards of integrity. It is the Company's Policy that all transactions are reflected in the books of accounts and records and that they are accurate, documented and appropriately approved and supported. The Company's Ethics Policy strictly prohibits falsification of books and records.
- 1.6 Your deliberate breach of the Ethics Policy was despite being well aware of the said Policy and having been trained on the same before, including on 19<sup>th</sup> September 2018 during the Human Resources & Foundation Policies Training which you attended.

## **2. Failure to follow written Policies and Procedures in the conduct of your job**

- 2.1 In breach of the Processing Goods Returned and Credit Note Procedure ("the GRCN Procedure"), you failed to route the reversal of receipts created to the Customer Service Back Office Supervisor and subsequently, the Customer Service Manager, the CS, Supply and Logistics Manager for endorsement and approval. You also failed to indicate the reason for reversing the receipt as required by the GRCN Procedure which was well within your knowledge.
- 2.2 In breach of the Order of Entry & Credit Check Procedure ("Order Entry Procedure"), you admitted at the Investigatory meeting of July 8, 2019 to having processed an unauthorized receipt of KES 1,300,000.00 in the account of Hatimi Service Station to facilitate delivery prior to payment for product whereas the receipt was not based on confirmed payment by the Company's Head Office Treasury team. The Order Entry Procedure provides that the Customer's account should be checked



a day before delivery to confirm compliance with credit terms. In breach of this procedure, you disregarded the requirement to confirm the Customer's credit terms and knowingly processed the unauthorized receipt.

- 2.3 In breach of the Company's Computer User Responsibilities Reference Guide, the contents of which are well within your knowledge, you failed to protect the integrity and security of your ACCPAC account by sharing your password with a Customer Service representative. You admitted at the Investigatory meeting held on July 8, 2019 having shared your ACCPAC password with the said colleague.

You have the right of appeal against your dismissal. If you wish to appeal, you must do so in writing to the undersigned, by 3<sup>rd</sup> October 2019 stating your grounds of appeal in full. You will then have a full opportunity to present your case at an appeal hearing in accordance with the Company's disciplinary procedure which has already been provided to you. You may be accompanied at the hearing by a fellow employee.

The following arrangements apply with immediate effect (but may be varied or revoked in the event of a successful appeal):

- a. Your dismissal takes effect from 24<sup>th</sup> September 2019 and your final day of employment is therefore 24<sup>th</sup> September 2019.
- b. This being summary dismissal for gross misconduct, you are not entitled to any period of notice or payment in lieu of notice.
- c. Your leave entitlement for this year, calculated pro rata up to your final day of employment is 15.5 days. You have taken 16 days. You have nil outstanding leave days.
- d. You will be reimbursed for any genuine expense claims as at 24<sup>th</sup> September 2019 submitted by 3<sup>rd</sup> October 2019 with your final payment of dues.
- e. You must return any property including any confidential documents belonging to the Company in good condition by 3<sup>rd</sup> October 2019.
- f. Your final salary payment (for the period up to 24<sup>th</sup> September 2019) will be made on 30<sup>th</sup> September 2019, subject to normal deductions of tax and statutory contributions.
- g. Please make arrangements to fill in the Company's Employee Clearance Procedure unless there is a pending appeal from this summary dismissal.
- h. Kindly contact the Company Human Resources Department for your P9 in May 2020.
- i. You will remain bound by the provisions of Security of Information in your contract of employment in respect of your obligation not to at any time make public or disclose to any person any information as to the practice, business dealings or affairs of the Company or any of its customers or as to any other matters which came to your knowledge by reason of your employment with the Company and your obligation not to make available to any competitor of the Company any information, formulae, trade secrets or other knowledge or any document containing any confidential or proprietary information belonging to the Company or acquired during or in the course of your employment as aforesaid.

We have enclosed herewith your certificate of service for your records.



If you have any questions, please do not hesitate to contact the undersigned.

Yours sincerely,

Ola Energy Kenya Limited

(signed)

Shamim Chanzu

**Manager, Human Resources/Public Affairs”**

31. By this letter, two broad charges were levelled against Claimant; breach of the Respondent’s Ethics Policy and failure to follow written policies and procedures.
32. With respect to the second charge, the Claimant was accused of deleting record entries and sharing his password contrary to the Respondent’s Computer User Responsibilities Reference Guide. The Claimant is said to have specifically admitted these offences, in the course of investigations.
33. On his part, the Claimant acknowledges having met the Respondent’s investigation team on 8<sup>th</sup> July 2019, when he admitted having deleted some entries and sharing his password with a colleague. Although he claims that this admission was procured through coercion and intimidation, on the promise of a pardon, he did not adduce any evidence to support this averment.
34. The Claimant further states that deleting of entries was a common practice at the Respondent Company and that sharing of passwords was not a violation of company policies and procedures. He however did not adduce any evidence to support this proposition.
35. In every claim of unlawful and unfair termination of employment, the employer’s primary duty is to establish a valid reason that caused the termination. In this regard, Section 43 of the Employment Act, sets the following standard:
  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 with 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.
36. In discharging the foregoing mandate, the established threshold is on a balance of probability and reasonableness of the action taken by the employer. In its decision in *Evans Kamadi Misango v Barclays Bank of Kenya* [2015] eKLR this Court stated the following:

“The burden placed on the employer by Section 43 is to demonstrate a valid reason which would cause a reasonable employer to terminate the employment of an employee.”
37. In its written submissions dated 28<sup>th</sup> May 2025, the Respondent cites the decision in *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR) where the Court of Appeal stated the following:

“It is improper for a court to expect that an employer would have to undertake a near forensic examination of the facts and seek proof beyond reasonable doubt as in a criminal trial before it can take appropriate action subject to the requirements of procedural fairness that are statutorily required. The standard of proof is on a balance of probability, not beyond



reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist”, causing it to terminate the employee’s services...it is not for the court to substitute its own ‘reasonable grounds’ for those of the employer.”

38. In the case now before me the Claimant admitted a significant portion of the charges levelled against him and his claim that he was forced into admission was not supported by any evidence. In the circumstances, I have no hesitation in reaching the conclusion that the Respondent had a valid reason for terminating the Claimant’s employment as required in law.
39. But the Claimant faults the Respondent for departing from the recommendation of its own Disciplinary Committee. In its defence, the Respondent maintains that the decision regarding the disciplinary action to be meted out was at the sole discretion of its management, which was not bound by the recommendation of the Disciplinary Committee.
40. In my understanding, the role of a Disciplinary Committee is to facilitate shop floor disciplinary processes and the final decision must remain the domain of the employer, acting through its management. This would explain why members of the Disciplinary Committee are not joined as parties in employment disputes.
41. It follows therefore that unless an employer departs from findings established in the course of shop floor disciplinary processes, they cannot not be faulted for taking a final disciplinary action that is at variance with the views of the Disciplinary Committee.
42. I will now proceed to examine the disciplinary process adopted by the Respondent against the beams of Section 41 of the *Employment Act*, which sets the mandatory procedural fairness requirements.
43. The employer’s duty under Section 41 was summarised by Radido J in *Alphonse Maghanga Mwachaya v Operation 680 Limited* [2013] eKLR as follows:
  - a. Explain to the employee, in a language the employee understands, the reasons why termination is being considered;
  - b. Allow a representative of the employee, being either a fellow employee or a shop floor representative to be present during the explanation of the reasons;
  - c. Hear and consider any explanations by the employee or his representative;
  - d. Where the employer has more than 50 employees, it has complied with its own internal disciplinary rules, as required under Section 12 of the *Employment Act*.
44. From the evidence on record, the Respondent complied with most of the foregoing requirements but missed the 30-day suspension deadline set by its own internal policies and procedures. For this reason and to this extent only, the termination was procedurally unfair.

## Remedies

45. Pursuant to the foregoing findings, I award the Claimant two (2) months’ salary in compensation. In making this award, I have taken into account the Claimant’s length of service, moderated by the finding that the termination was justifiable and the fact that the Respondent substantially complied with the established procedural fairness requirements.
46. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 355,639 being two months’ salary in compensation for unfair termination of employment.
47. This amount will attract interest at court rates from the date of judgment until payment in full.



48. The Claimant will have the costs of the case.

49. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Musiega for the Claimant

Ms. Kavagi for the Respondent

