



Wangui v Kenya Red Cross Society (Employment and Labour Relations Cause 443 of 2017) [2025] KEELRC 2368 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2368 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 443 OF 2017**

K OCHARO, J

JULY 31, 2025

BETWEEN

MERANIA WANGUI CLAIMANT

AND

KENYA RED CROSS SOCIETY RESPONDENT

JUDGMENT

1. By a Statement of Claim dated 6th March 2017, the Claimant sued the Respondent Organisation seeking the following reliefs and orders;
 - I. Kshs. 600,000, - 12 months' gross salary as compensation for unfair termination of employment.
 - II. KShs. 55,000 - one month's salary in lieu of notice.
 - III. Mesne profits.
 - IV. General Damages.
 - V. Interest on [i] [ii] and [iv] above.
 - VI. Costs of the Claim plus Interest.
 - VII. Any other order the Court may deem fit to grant.
2. The Respondent opposed the Claimant's claim in their Statement of Response dated 20th June 2017. They denied the Claimant's cause of action and her entitlement to the relief sought, arguing that her summary dismissal from employment was both procedurally and substantively fair.
3. At the hearing, the parties adopted their witness statements filed herein as their respective evidence in chief, and had the documents filed admitted as their documentary evidence.



4. After hearing the parties herein on their respective cases, this Court directed them to file written submissions. The direction was complied with.

The Claimant's Case.

5. It was the Claimant's case that the Respondent first employed her on the 11th day of March 2013, as a medical attendant, at a monthly salary of KShs. 30,000 for the first year, which amount was later increased to KShs. 55,000. On 27 October 2016, she was summarily dismissed.
6. She asserted that the decision by the Respondent to dismiss her from her employment summarily was unlawful and unfair. The dismissal was made without any prior notice; the Respondent didn't provide her with reasons for their decision or an opportunity to be heard before the summary dismissal.
7. She further asserted that she was not issued a show-cause letter. She was merely summoned via a phone message, a mode which she considers inappropriate for formal notifications. The show-cause letter dated 13th September 2016, tendered in evidence by the Respondent, was not served on her at any time.
8. At all times during her employment, she discharged her duties per the terms of her employment, diligently and faithfully, and there was no complaint against her at all.
9. Her troubles began when she was instructed to attend an emergency. To exercise caution and avoid wasting resources, she had to inquire about the whereabouts of the crew assigned to that route to prevent duplication. In the end, she attended to the emergency.
10. On 4th October 2016, the Respondent summoned her to a meeting. During the meeting, she was asked to explain what happened regarding an emergency call from 5th Avenue Parklands. She stated that she responded to the emergency without any delay. Surprisingly, after her explanation, the panel discussed matters unrelated to the notice's subject matter, raising issues that had already been addressed earlier.
11. She asserted that she was neither negligent nor rude, as alleged by the Respondent. The Respondent's actions against her were a witch hunt. People within the Respondent Organisation were unhappy with her firmness on issues of accountability.
12. She further testified that earlier there was an incident involving a Makini School boy who had passed away. Her ambulance was delayed in reaching his school in good time due to heavy traffic, and her new ambulance driver was unfamiliar with the roads. Before they could reach the school, they received a call directing them to go to Nairobi Women's Hospital, where the school had taken the boy for treatment, as they could no longer wait for the ambulance at the scene. Unfortunately, the boy died immediately upon arriving at the hospital.
13. Cross-examined by Counsel for the Respondent, the Claimant stated that once an emergency call is received, the call centre can then identify the nearest ambulance to the location of the call, contact the medical attendant in that ambulance or the driver, and dispatch them. If the driver is contacted, he can hand over the call to the Medical Attendant.
14. The dispatcher would only call an ambulance that was best suited to attend the emergency.
15. The Claimant further stated that the show cause letter was only issued to her at the Boardroom during the above mentioned meeting.
16. Before the incident that led to her dismissal, she had been issued with a show-cause letter over another offence.



17. On 2nd March 2016, she received a final warning letter. She was accused of not being at the standby station when expected. When called at 8:00 am, she was at the logistics centre. She admitted that the EMT was supposed to be in the ambulance. At that time, she was collecting supplies from the store.
18. In her role, every minute was crucial. However, she claimed she didn't waste any time. She further explained that she couldn't evacuate the student because they hadn't reached the destination. The school nurse decided to use other means to take him to the hospital instead of waiting for the ambulance.
19. She stated that she attended a disciplinary hearing. She had been invited via SMS.
20. The summary dismissal letter contained the reasons for the summary dismissal. After receiving the letter, she appealed against the Respondent's decision to dismiss her. The appeal was subsequently declined.
21. In her evidence during re-examination, the Claimant stated that, contrary to the contents of the minutes of the meeting of 4th October 2016, she answered the call from 5th Avenue, which is evident from the call summary. She received the call at 12:07 pm. At that time, she was at the gate of Gertrude's Hospital. According to the movement register, she began moving at 12:06 pm. She had started moving earlier because she had received an earlier call.

The Respondent's Case

22. The Respondent presented on witness, Lucy Hudson, its Human Resource Manager, to testify on its behalf.
23. The witness stated that the Claimant first joined the Respondent's workforce as an intern in its operations department on 3rd January 2012 for three months, with a possibility of extension. Subsequently, on 7th March 2012, she was employed as a Medical Stores Assistant. On 30th November 2015, her position was changed to Medical Stores and later to Emergency Medical Technician.
24. During her work, she consistently behaved rudely and disrespectfully towards her colleagues. Furthermore, she on several occasions argued with the ambulance dispatcher whenever she was called to respond to an emergency, despite her role being extremely sensitive in saving lives. The claimant was negligent in her duties, as she failed to answer some calls or delayed responding to calls from the dispatcher.
25. As a result, on 12th February 2016, the claimant was issued with a show cause letter regarding her failure to respond promptly to an emergency call raised by the dispatch office. When the claimant did not satisfactorily respond to the show cause, a final warning was issued to her through a letter dated 2nd March 2016.
26. She had been dispatched to Makini School to attend to a child in distress. She took nine minutes to respond, which was longer than the expected time. By the time she arrived at the school, the child had already died.
27. A few days later, on 24th April 2016, she was dispatched to Mombasa Road to respond to a call but declined, insisting that another crew be sent instead. Dispatch decisions are made by the dispatcher, who can see the location of each ambulance and which one is closest to the emergency. In practice, even if the person called to respond had an issue, they must proceed to the emergency to save lives, then complain afterwards. She pleaded for leniency. Though she had been served with a final warning, she was pardoned.



28. Unfortunately, on 29th August 2016, she was at it again. She declined to go to 5th Avenue Parklands after a call. She complained that she should not be called so often. The argument delayed the call. Consequently, she was issued a notice to show cause letter dated 13th September 2017.
29. The Claimant was invited to and attended a disciplinary hearing on 4th October 2016. The panel decided to dismiss the Claimant summarily for gross misconduct related to delaying patient care in an emergency. The Claimant appealed this decision. A disciplinary appeal hearing was scheduled, and notice of this was sent to the Claimant by a letter dated 11th November 2016. The appeal was heard on 22nd November 2016, and the decision to uphold the summary dismissal was confirmed. She was notified of the outcome of the appeal in a letter dated 28th November 2016.
30. The Claimant was not treated maliciously at any point during her employment. In fact, she was treated well, even after numerous complaints about her work, and was given enough time to improve. Unfortunately, her ongoing behaviour of putting the lives of those in need of emergency care at risk is contrary to the organisation's mandate to alleviate human suffering.
31. Referring to the documents presented by the Claimant in evidence, specifically the Ambulance movement register, the witness asserted that it was not authentic. It does not bear the Respondent's logo or stamp, nor is it signed. Moreover, the document is self-contradictory; for example, at one point it indicates that the dispatcher received a call at 12:10 p.m., yet the dispatcher phones the Claimant at 12:07 p.m.
32. Furthermore, the Ambulance register shows that the motor vehicle started moving at 12:06:29pm, but she asserts she received the call at 12:10. The vehicle was stopped at 12:18:26pm. The call summary indicates that the arrival at the destination was at 12:27 pm. The movement register and call summary should align.
33. The subject issue is not that she refused to pick up the call, but the time she took to act on the call, which is moving from the point where the ambulance was, to the point of emergency.
34. She concluded that the Claimant had a history of slowness in action.
35. Cross-examined by the Claimant's Counsel, the witness reaffirmed that the Claimant was consistently rude and disrespectful to her colleagues. The warning letters presented in evidence by the Respondent serve as proof. The issue of her rudeness was also discussed during the disciplinary hearing.
36. She admitted that the Respondent didn't tender any audio evidence to show that the Claimant didn't move immediately, but opted to argue with the dispatcher. The Respondent does not keep audio records.
37. The Respondent's backend system logs the call time, ambulance arrival time, and nurse hospital arrival time, and these records can be printed. However, for this case, the Respondent did not produce any printed records.
38. She further testified that, according to the Claimant's job description, it isn't the paramedic who is supposed to move but the driver.
39. She further testified that the disciplinary meeting took place on 4th October 2016. The Claimant refused to sign the minutes of the hearing.
40. The last warning letter issued to the Claimant was dated March 2, 2016. It referenced a show-cause letter from February 16, 2016, and a disciplinary hearing held on February 18, 2016. The Respondent did not submit the minutes of this meeting to the court. She was accused of not being at her station



by 8:00 a.m. Among the documents presented by the Respondent, none addressed this specific requirement.

41. She admitted that the show cause letter dated 12th February 2016 shows the time of standing at the station as 7:30 a.m., while the warning letter mentions 8:00 a.m.

Analysis and Determination.

42. I have carefully considered the pleadings, the evidence and submissions by the parties, and the following issues emerge for determination: -

I. Whether the summary dismissal against the Claimant was unfair.

II. Whether the Claimant is entitled to the reliefs sought.

43. For a termination of an employee's employment to pass the fairness test, it must be demonstrated that the termination was substantively and procedurally fair. It is essential to note that the employer has the responsibility to establish this. See also, *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR.

44. Section 41 of the *Employment Act* sets up a mandatory procedure that must be adhered to by any employer contemplating terminating an employee's employment on the grounds of misconduct, poor performance or physical incapacity. The employer shall inform the affected employee of the reasons for contemplating termination of the employee's employment. Secondly, the employee should be given a proper opportunity to prepare and make a representation regarding the grounds. Put it another way, state his case. Lastly, the employer must consider any representation by the employee before deciding to terminate the employee's employment or impose any sanction.

45. The Respondent asserted that on 13th September 2016, it issued a show cause letter on the issue that eventually led to the summary dismissal of the Claimant from employment. The Court notes that the letter reads in part;

“.....On 29th August 2016, a call came to dispatch requesting for an ambulance. This Call was from Farhid, a Jamati member who had a sick patient by the name Roshan. The patient was 80 years old with weakness and shivering plus plus. She was to be picked from 5th Parklands and taken to AKUH. Since you were the nearest, dispatch raised you to go for the call, and you became argumentative, stating that you were being harassed. When dispatch tried to explain to you that you were the nearest to call, and the other nearest ambulance was at Uhuru Park, you hung up the phone on them. Teresia called you back to ask if you would go for the call, but you strongly said no.

At this point, Teresia escalated the matter to the dispatch supervisor, who also reported to me. When I called you to ask why you didn't for the call, you said that you had not refused any call.

A complaint came into dispatch at 1216 hours from Zahid, saying the Ambulance had taken too long to arrive and the patient was deteriorating.

I called you and we had a talk. I asked you to give me a statement on what exactly happened on that particular day. You have not done it to date.

Declining a call is totally unacceptable. I therefore need you to show cause why disciplinary action shouldn't be taken against you.”



46. From the evidence on record, it is undisputed that this show-cause letter was served on the Claimant. Moreover, the letter was detailed enough regarding the allegations against her. The Claimant was subsequently summoned to a disciplinary hearing on 4th October 2016. She argued that she was invited via a phone SMS, which she considered an improper mode of invitation.
47. Having confirmed that the show-cause letter was served, and that it detailed the allegations against the Claimant, I find no merit in her complaint that she was invited to the disciplinary hearing via SMS. In this modern age of technological progress, correspondence through such methods should be expected and accepted. Anyone complaining that the use of such a mode was inappropriate must then demonstrate why and what prejudice they suffered in the circumstances.
48. The Claimant admitted that she attended the meeting on 4th October 2016, and that she was asked to explain what happened on the 29th August 2016. This Court notes from the minutes of the meeting that the Claimant attended and was allowed to explain herself regarding the accusations that had been levelled against her.
49. This Court has not overlooked the Claimant's assertion that, during the meeting, issues beyond the subject of the show cause letter were discussed, and that this was unfair. I have thoroughly reviewed the minutes of 4th October 2016, and with all due respect, I note that the assertion is unfounded. The panel simply observed that the Claimant had committed various infractions prior to the one that resulted in her dismissal. Such factors are typically considered to inform an appropriate sanction against an employee who has been found guilty of misconduct.
50. In sum, I find that the decision to dismiss the Claimant summarily was procedurally fair.
51. Section 43 of the *Employment Act* 2007 places a duty on the employer to prove the reason for terminating an employee in a dispute. Otherwise, the termination shall be deemed unfair under section 45 of the Act. Section 45 further requires the employer to demonstrate that the reasons were valid and fair. From these sequential burdens of proof, it is clear that the employer cannot merely state that they dismissed the employee for a certain reason without also proving that the reason genuinely existed. An employer may have a valid reason for termination or dismissal, but can still fail to defend a claim of unfair termination or wrongful summary dismissal if they do not establish that the reason was valid and fair. A valid and fair reason is one that is capable of legitimately forming a basis for summary dismissal of an employee or termination of an employee's employment.
52. I have thoroughly reviewed the Claimant's evidence and notice that it was initially vague and, secondly, did not address the reason for her dismissal from employment, as outlined in the show cause letter dated 12th September 2016 and the dismissal letter dated 27th October 2016. She overly concentrated on events prior to the one that led to her dismissal, as if they were part of the reason she was dismissed. It is on this point that I conclude she did not establish a prima facie case that the summary dismissal was wrongful, thereby not warranting the evidential burden to shift to the Respondent to prove the substantive justification for the dismissal. Her claim failed at this stage as she did not discharge her legal burden under section 47[5].
53. In the upshot, I find that the summary dismissal against the Claimant was substantively and procedurally fair. The claim is hereby dismissed.

READ, SIGNED AND DELIVERED THIS 31ST DAY OF JULY 2025.

OCHARO KEBIRA

JUDGE.

