



**Maingi v Mana Suppliers Limited (Cause 1247 of 2017)
[2025] KEELRC 2339 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2339 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1247 OF 2017**

**JW KELI, J
JULY 30, 2025**

BETWEEN

PATRICK MAINGI CLAIMANT

AND

MANA SUPPLIERS LIMITED RESPONDENT

JUDGMENT

1. Vide a memorandum of claim dated 1st July 2017, the claimant sued the respondent and sought the following Orders:-
 - a) A declaration that the claimant's dismissal was wrongful and unfair.
 - b) The claimant be and is hereby paid Kshs. 367,400/- as terminal benefits as set out in paragraph 16 above.
 - c) The Respondent to pay costs and interest.
2. The claimant in support of the claim filed his list of witnesses, witness statement, and list of documents with the bundle of documents attached, all filed on 4th July 2017.
3. The Respondent entered appearance through the law firm of Gathaara J. N. & Associates Advocates and filed a memorandum of defence dated 28th August 2017. In support of the defence, the respondent filed a witness statement of George Nderitu Macharia, witness statement of Geoffrey Macharia Maina, list of witnesses, and list of documents, all dated 28th August 2017.

Hearing and evidence

4. The claimant case was heard on the 22nd May 2025 with the respondent absent. The hearing date had been taken on the 12th February 2025 in the presence of the Advocate for the respondent. The claimant testified on oath and produced his documents as C-exhibits 1-4 and further adopted his



undated witness statement filed with his claim as his evidence. The respondent's case was marked as closed for non-attendance.

The Claimant's case in summary

5. The Claimant pleads that he was employed by the Respondent on 4th November 2010 as a driver at a monthly salary of Kshs. 11,180/-. He states that he was not issued with a written contract of employment. He worked from 3.00 am to 6.30 pm everyday including weekends and public holidays, but was never paid overtime. He was also never given housing or in the alternative, paid a house allowance. The claimant avers that on 29th April 2016, while he was undertaking his normal duties it started to rain heavily and he veered off the road and got stuck. He was rescued by his turn boy who was driving another vehicle, but in the process of driving back he rammed into the turn boy's car damaging the vehicle. After this incident, the claimant's employment was terminated on the same day, 29th April 2016, without notice, any valid reason and a hearing. The incident was also reported to the police. He states that following his termination from employment, he was not paid any terminal dues.

Respondent's case in brief

6. As per filed pleadings- While the Respondent admits that it engaged the claimant, it states that he was a relief driver employed in January 2012 to cover for permanent drivers when they were away on leave or because of emergencies, and to assist when there were increased orders in the Respondent's business. In this position he worked three to five days a week, and was always given one rest day per week. On working hours, the Respondent states that the claimant routinely worked from 8.00 am to 5.00 pm, save for two days a week when he was required to report from 4.00 am because his duties involved going to the market. The Respondent is, however, adamant that the claimant was given an option of taking up housing at the Respondent's premises on the said market days due to the early start times.
7. It is the Respondent's case that the claimant was negligent and careless on diverse dates during the performance of his duties. To illustrate the foregoing, they state that the claimant came to work intoxicated on several occasions; and concealed an accident which occurred on 19th February 2016 causing damage to the left hand side of the front bumper of the Respondent's motor vehicle, despite being aware of a company policy to report all accidents immediately they occurred, which had been communicated to all drivers vide a memo dated 19th November 2015. The Respondent adds that on the material day, namely 29th April 2016, the claimant diverted the Respondent's motor vehicle from its usual route back to the Respondent's premises after making deliveries, took a wrong turn, and plunged the Respondent's motor vehicle into a ditch where he was stuck for several hours. Instead of reporting the accident to the Respondent's management, he requested the assistance of his turn boy, who obliged by connecting cable wire from his own motor vehicle registration number KAV 412 T to the Respondent's motor vehicle and pulling it out of the ditch. Once the vehicle was freed, instead of returning to the Respondent's premises, the claimant drove the motor vehicle, followed by his turn boy to a nearby shopping center where he imbibed alcohol. Once he was done, he insisted on driving the Respondent's motor vehicle despite concerns raised by his turn boy that he was too drunk to drive. He instructed the turn boy to drive ahead of him with his hazards turned on so that he could follow him. Unsurprisingly, the claimant soon rammed into the turn boy's vehicle damaging it on its rear side. The damage was assessed at Kshs. 48,000/-. Again, the claimant failed to report this second accident to the Respondent's management, and they only became aware of it when the turn boy reported it.
8. Contrary to the claimant's allegations, the Respondent is insistent that the claimant and the turn boy were indeed summoned to the office of the Operations Manager of the Respondent to explain what had occurred on the night of 29th April 2016. Further, a disciplinary hearing was held by the Respondent's



Human Resource Manager after the incident. The Respondent therefore states that the claimant was given every opportunity to defend himself, but refused to give a written statement of the incident. He was given a fair hearing, where the reasons for considering termination of employment were explained. After the accident, the claimant absconded duty and refused to pay the turn boy for the damage to the motor vehicle. The Respondent company had no option but to terminate the claimant's employment for gross misconduct. It paid all his dues.

Determination

Issues for determination

9. The claimant identified the issues for determination in this case to be-
 - i. Whether the termination of the claimant was substantially and procedurally fair and just.
 - ii. Whether the Claimant is entitled to the prayers sought.
 - iii. Who should be condemned to pay costs.
10. The respondent did not attend the hearing and no submissions were filed. The court adopted the issues identified by the claimant for determination.

Whether the termination of the claimant was substantially and procedurally fair and just.

11. 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 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).
12. Section 43 provides for proof of reasons for termination as follows:- '43. Proof of reason for termination
 - (1) 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."
13. The claimant stated that he was employed on the 4th November 2010 and on 29th April 2016 dismissed from employment without a valid reason and without notice. The claimant, during the hearing, told the court that he was asked to return the company goods and told he would be called. He was called and issued with a dismissal letter (page 7 of claim). He did not know he would be dismissed. He talked to



the director called Macharia and was given the letter. That he was not paid anything. The claimant told the court that he did not abscond work as the following day 30th April 2016 he was at work till 1 pm.

14. The respondent's case was closed by the claimant for non-attendance. The response was dated 28th August 2017 and alleged that the claimant had on diverse dates been negligent and careless and would report to work intoxicated, that he had been involved in an accident with the company motor vehicle on the 19th February 2016 and concealed the same to the employer. That on the material date of 29th April 2016 the claimant (driver) was involved in an accident where he hit another motor vehicle of the respondent, driven by their turn boy while intoxicated, which accident was reported by the turn boy and not the claimant. The respondent had informed the claimant that he would be responsible for the Motor Vehicle accident damages assessed at Kshs. 48,000. That the claimant did not pay and absconded work after the incident. That the claimant was given to opportunity to defend himself and declined to do so or even give a written account of the incident. How much weight can the court give to filed pleadings of which the party does not appear in court to produce? The court was of the opinion that the pleadings by the respondent remained mere assertions as no witness was called. Unless admitted by the claimant they are just mere assertions.
15. The claimant produced the summary dismissal letter dated 6th May 2016 which stated as follows:-

6th May, 2016

Patrick Maingi,

Dear Sir,

Re: Summary Dismissal From Employment

We regret to inform that your employment with Mana Suppliers Limited has been summarily dismissed for having committed the under-listed gross misconducts on the night of 29th April 2016:-

1. While in course of your duties of driving vehicle KAQ 575U you happened to have consumed alcohol rendering yourself completely incapable to control the vehicle.
2. In the same evening and being under the influence of alcohol you caused a serious accident to vehicle Reg: KAV 412T damaging it at the rear resulting to damages of Kshs.48,000/-. The accident was reported to Kasarani Police Station under OB NO:04/30/04/2016.
- 3) Suffice to say, as a result of this accident the company vehicle KAQ 575U which you were driving also suffered several damages e.g. front cabin, bumper, grill and other parts calling for repairs amounting to Kshs.37,500/- plus labour of Kshs.15,000 both totaling to Kshs.52,500.

The above offences constitute serious misconducts warranting your summarily dismissal from employment under section 44(1) of *Employment Act* 2007 Laws of Kenya without recourse to any warning effective 29th April 2016.

Kindly return any company property that may be in your possession.

Yours faithfully Mana suppliers Ltd.,

Joseph. N. Kariuki



16. The claimant sent a demand letter to the Respondent which he produced (page 8 of claim). In the letter the court found that the claimant admitted that he hit the motor vehicle driven by the turn boy though he stated it was the turn boy who braked abruptly. The claimant said he worked on 30th April 2016 up to 1 pm. The court finds that the defence that the claimant absconded was not true. The letter of dismissal dated 6th May 2016 (supra) does not state so. It is true there was an accident, but the employer did not prove to have taken the claimant through the process under section 41 of the *Employment Act* to establish the reasons for the termination. The claimant had worked for approximately 5 years as a driver and deserved to be heard before the termination. Accidents happen on our roads all the time and there was need to establish the case of negligence. A mere accident is not evidence of negligence by the driver. To pass the fairness test the termination 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). Section 41 states:- ‘41. Notification and hearing before termination on grounds of misconduct
- (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.” The court holds that there was no procedural fairness in this case.
17. In the upshot the court holds the summary dismissal was unlawful for lack of valid reason for the termination and unfair for failure to comply with procedural process under section 41 of the *Employment Act*.

Whether the claimant was entitled to relief sought

18. The court issues a declaration that the claimant’s dismissal was wrongful and unfair. On claim for Kshs. 367,400/- as terminal benefits as set out in paragraph 16 above.
19. The termination was unfair. Notice is allowed for the monthly salary of Kshs. 11,180.
20. On claim for untaken leave- The claim for leave was not controverted. The claimant did not demonstrate that he applied for leave and it was denied. The same is allowed and limited to 18 months under section 28(4) of the *Employment Act* to wit:- ‘(4) The uninterrupted part of the annual leave with pay referred to in subsection (3) shall be granted and taken during the twelve consecutive months of service referred to in subsection (1) (a) and the remainder of the annual leave with pay shall be taken not later than eighteen months from the end of the leave earning period referred to in subsection (1) (a) being the period in respect of which the leave entitlement arose.” Untaken leave in lieu awarded for sum of Kshs. 16770.
21. Claim for unpaid house allowance- The documents filed by the respondent did not indicate house allowance. The same was due at rate of 15% under the General Wages Order as read with section 31 of the *Employment Act* to wit:- ‘31. Housing



- (1) An employer shall at all times, at his own expense, provide reasonable housing accommodation for each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, as rent, in addition to the wages or salary of the employee, as will enable the employee to obtain reasonable accommodation.” The same is awarded as pleaded for the sum of Kshs. 100,620 as pleaded.
22. Claim for Overtime.-The court noted from documents by the respondent before the court that overtime was paid. The court noted that the claimant had no evidence of ever seeking overtime during employment and that made the court believe he was paid overtime while working as per documents filed by the respondent. Section 20 of the *Employment and Labour Relations Court Act* guided the court in taking consideration of documents filed by employer and fact that there was no reply to the response.
23. Service pay is allowed under section 35(5) of the *Employment Act* Kshs. 33540.
24. On Compensation for the unfair termination - the court took into consideration of period of service of 5 years, the claimant to some extent, by fact of the accident, contributed to the termination, the fact that being a driver the court had no reason to doubt he could get a similar job and indeed he told the court he was a driver(see section 49(4) of the *Employment Act* on factors to consider in decision on compensation for unfair termination). The court then finds compensation equivalent of 6 months is an adequate compensation as the compensation is never made to punish the employer. The compensation is computed for 6 months salary for the total sum of Kshs. 67,080.
25. In conclusion, the claim is allowed, judgment is entered for the claimant against the respondent as follows:-
- a. A declaration that the claimant’s dismissal was wrongful and unfair.
 - b. Notice pay of Kshs. 11,180.
 - c. Compensation for unfair termination Kshs. 67080.
 - d. Untaken leave in liue (18 months) Kshs. 16770
 - e. Unpaid house allowance Kshs. 100,620
 - f. Service Pay Kshs. 33540
 - g. The total sum of Kshs. 229,190 (b to f above) is payable with interest at court rates from date of filing suit until payment in full.
 - h. Costs of the suit.
26. Stay of 30 days is granted.
27. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30TH DAY OF JULY, 2025.

**J.W. KELI,
JUDGE.**

In The Presence Of:

Court Assistant: Otieno



Claimant: Ochieng h/b Khalwale

Respondent: undefended

