



**H. Young & Company (EA) Ltd v Njega (Appeal E036 of 2024)  
[2025] KEELRC 2216 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2216 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E036 OF 2024  
NJ ABUODHA, J  
JULY 25, 2025**

**BETWEEN**

**H. YOUNG & COMPANY (EA) LTD ..... APPELLANT**

**AND**

**KENNETH KIMARI NJEGA ..... RESPONDENT**

*(Being an appeal from the Judgment and decree of Hon. P.K Rotich  
(SPM) delivered on 31st January, 2024 in CMEL NO. E1089 of 2020)*

**JUDGMENT**

1. Through the Memorandum of Appeal dated 21<sup>st</sup> February, 2024 the Appellant appeals against the Judgement of Hon. P.K Rotich (SPM) delivered on 31st January, 2024 in CMEL NO. E1089 of 2020. The Appeal was based on the grounds among others that:
  - a. The Learned Trial Magistrate erred in Law and fact in finding that the Respondent was unfairly and unlawfully terminated.
  - b. The Learned Trial Magistrate erred in law and fact in finding that there were no valid reasons to terminate the Respondent's employment.
  - c. The Learned Trial Magistrate erred in Law and fact in awarding the Respondent Kshs.589,944.00.
2. The Appellant therefore prayed that the appeal be allowed and the judgment be set aside and the costs of the appeal be awarded to the appellant.
3. The Appeal was disposed of by written submissions.



## Appellant's Submissions

4. The Appellant's Advocate Mr. Onsare submitted among others that the learned trial magistrate fundamentally erred on two interconnected aspects: first, in finding that the termination was unfair and unlawful and second, in concluding there was no valid reasons for termination. These findings could not be sustained in the light of the evidence on record. The appellant's termination rested on compelling technological evidence from sophisticated GPS and fuel monitoring system, supported by a fair procedure that afforded the respondent full opportunity to be heard.
5. The uncontroverted testimony of Systems Engineer David Kagiri Nderitu established that at precisely 12:16 pm on August, 20, 2020 the system recorded an abrupt 20 litre loss of fuel. His expert evidence distinguished between normal gradual fuel consumption patterns and suspicious sudden drops. Notably this vehicle had no prior history of fuel losses making the incident unprecedented.
6. The reliability of the fuel monitoring system stood unchallenged. Each company vehicle was equipped with a fuel sensor connected directly to the tank and linked to a centralised monitoring system creating real-time data tracking of fuel levels. No contrary technical evidence was presented to challenge the systems integrity. This technological evidence gained additional weight when viewed against the respondent's documented history of fuel related infractions evidenced by prior warning letters dated 28<sup>th</sup> October, 2019 and 6<sup>th</sup> June, 2020 demonstrating recurring issues with unauthorised fuel usage and misconduct on the part of the respondent.
7. The appellant meticulously followed a clear disciplinary process. A notice to show cause was issued on 26<sup>th</sup> August, 2020, the respondent submitted his written response and disciplinary hearing conducted before issuing a detailed termination letter citing specific grounds. The respondent's own admission confirmed receiving the notice to show cause, responding to the same, attending the disciplinary hearing and receiving a termination letter. These facts demonstrate a substantive compliance with section 41(1) of the *Employment Act*.
8. According to Counsel, the position of trust held by the respondent involved significant responsibility in handling valuable company assets. His role demanded integrity in fuel management, a critical operational cost. The sudden unexplained fuel loss constituted a fundamental breach of essential trust element. The trial court's finding overlooked the precision of technological evidence, the respondent's documented disciplinary history, his admissions regarding the disciplinary process, the importance of asset protection and modern workplace monitoring realities. Counsel relied on the case of Thomas Sila Nzivo v. Bamburi Cement Limited [2014] eKLR and Galgalo Jarso Jillo v AFC [2021] KEELRC 323.
9. On the issue of the award of maximum compensation, counsel submitted that this was excessive and not supported by reasoned analysis. The judgment failed to demonstrate any consideration of statutory factors that guides such awards. According to counsel, section 49 of the Act provided clear parameters for compensation in unfair termination cases. While the Act permitted awards of up to a maximum of 12 months' salary, this represented a maximum ceiling and not a default position. The trial court failed to explain why the maximum award was warranted in this case.
10. According to counsel, the respondent's length of service was relatively brief-approximately three years. The modest tenure did not justify the maximum award typically reserved for long serving employees. Secondly, the respondent's own conduct significantly contributed to the termination. He had previously received prior warnings regarding fuel usage and unauthorised activities. Counsel relied on the case of Ol Pejeta Ranching Ltd v David Wanjau Muhoro [2017] eKLR where the Court of Appeal stated that compensation awards must be justified through reasoned analysis of relevant factors.



## Respondent's Submissions

11. Counsel for the respondent Mr. Kiare on the other hand submitted that the appellant's reason for terminating the respondent's service was unreasonable. It was the appellant's case that there was a sharp decline leading to loss of 20 litres of fuel. This was allegedly supported by the appellant's fuel report which was the only evidence adduced before the trial court showing fuel loss. The report was inconclusive for the reason that the level of fuel indicated before the alleged fuel loss was not supported by any other document. The respondent could not have known the amount of fuel in the said vehicle or its fuel usage since it was his first time to use the vehicle in question. No report of previous fuel consumption of the vehicle was produced for comparison.
12. Counsel further submitted that no evidence was provided to show that the respondent stopped the vehicle along the way to raise a possibility of fuel siphoning. The appellant could not confirm the location where fuel was allegedly stolen yet the appellant's witness Mr. Kagiri stated that they could monitor the location of the vehicle. Further, the appellant's witness during cross-examination confirmed that their vehicles had fuel seals yet no investigation was conducted to establish whether the seal had been tampered with or not. It was clear from the termination letter that the appellant terminated the services of the respondent on grounds of fuel theft yet there was no evidence linking the respondent with the alleged theft. Counsel in this respect relied on the case of *Nicholas Muasya Kyula v Farmchem Ltd* [2012] eKLR
13. Concerning procedure followed before dismissal, counsel submitted that the appellant was issued with a show cause letter dated 26<sup>th</sup> August, 2020 and a summary dismissal letter dated 27<sup>th</sup> August, 2020. He was never issued with a letter of invitation to a disciplinary hearing. The appellant's contention that this was orally done only arose during cross-examination of its witness on Duncan Nyabuto.
14. Further, the appellant produced minutes of the alleged disciplinary hearing however the minutes are partly typed and partly handwritten. No reason was offered for this raising the suspicion that they could have been doctored. Even if it was to be argued that the alleged disciplinary hearing took place, the termination would still be unlawful for the reason that the appellant was never given reasonable time to prepare for his defence. The notice to show cause was issued on 26<sup>th</sup> August and the alleged disciplinary hearing took place on 27<sup>th</sup> August. The time given could not have been sufficient for the respondent to prepare his defence against the charges.
15. On the prayers sought and granted by the trial Court, Counsel submitted that since the appellant did not have a reason to terminate the respondent's service, he was entitled to payment in lieu of termination. On the issue of 12 months' salary as compensation for unfair termination, counsel submitted that the respondent had proved his case on a balance of probabilities that the termination was unlawful for lack of reason and unfair procedure in the termination. In this regard counsel relied on the case of *Benjamin Langwen v. National Environment Authority* [2016] eKLR and *Coca-Cola EA Ltd V Maria Kagai Ligaga* [2015] eKLR. Counsel further submitted that the court in awarding the 12 months' salary exercised its discretion judiciously as per the law.

## Determination.

16. The principles which guide this court in an appeal from a trial court are now well settled. In *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal stated that;

“[A]n appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are



that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect”

17. This appeal revolves around the question whether the trial court erred in finding that the appellant had no justifiable reason for terminating the services of the respondent and that the termination was not carried out through a fair procedure. The appellant further took issue with the award of 12 months’ salary as compensation for unfair termination.
18. As an appellate Court, the Court though required to analyse the evidence presented before the trial court vis-à-vis the finding of the trial court thereon, must refrain in that process from replacing its opinion of the judgment it could have arrived at if it was the one trying the matter in the first instance. The judgment or decision of the trial court if reasonably based on the evidence presented before the trial court will be upheld by this court regardless of any opinion that it could have arrived at a different judgment or decision.
19. The Court has carefully considered the pleadings, evidence presented before trial court and the evidence. The Court has further considered and reviewed the decision of the trial court and is satisfied that the trial court did not err in finding that the appellant had no justifiable reason to terminate the respondent’s service. The appellant despite alleging that the vehicle in question was fitted with tracking technology and that the tanks had fuel seals, did not present any evidence that the respondent at some point stopped in an unauthorised location where the fuel could have been siphoned. Further, the appellant never presented any evidence that the tank seals were tampered with. There was further no evidence presented before the trial court to show the level of fuel in the vehicle prior to being handed over to the respondent. In the circumstances the trial court was justified in reaching the conclusion that the appellant had no justifiable reason for terminating the respondent’s service.
20. Regarding procedure followed in the termination, the respondent was issued with a notice to show cause on 26<sup>th</sup> August, 2020 and the alleged disciplinary hearing took place on 27<sup>th</sup> August 2020 (the following day). The trial court was therefore right in finding that the procedure followed in the termination was unfair as the respondent was not accorded reasonable time and opportunity to prepare his defense.
21. On the award of 12 months’ compensation, the appellant was justified to complain that the trial magistrate never had reasonable justification for making the award. The respondent had worked for the appellant for about three years and had previous disciplinary warning letters relating to the issue of fuel loss. The maximum award of 12 months’ salary was therefore excessive in the circumstances. The Court will therefore revise this to four months’ salary. That is to say Kshs.181,512.40. This ground of appeal therefore succeeds.
22. In conclusion, apart from appeal against the award of 12 months’ salary as compensation for unfair termination which hereby succeeds as above, the rest of the grounds of appeal are found unmerited and are hereby dismissed.
23. The appeal being partially successful, each party shall bear their own costs of the appeal.
24. It is so ordered.

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY, 2025**

**DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF JULY, 2025**

**ABUODHA NELSON JORUM**



**PRESIDING JUDGE-APPEALS DIVISION**

