



**Mburu v Tessler Limited (Cause E469 of 2023)
[2025] KEELRC 2198 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2198 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E469 OF 2023**

**L NDOLO, J
JULY 24, 2025**

BETWEEN

BERNARD KURIA MBURU CLAIMANT

AND

TESSERA LIMITED RESPONDENT

JUDGMENT

Introduction

1. By a Statement of Claim dated 2nd June 2023, the Claimant proceeds against the Respondent, seeking the following remedies:
 - a. A declaration that his dismissal was wrongful and unfair;
 - b. An order of reinstatement to the position of Strategic Lead, without loss of salary and benefits;
 - c. Kshs. 4,440,000 being 12 months' salary in compensation;
 - d. Punitive and aggravated damages;
 - e. Certificate of service;
 - f. A fine of Kshs. 100,000 for failure to comply with Section 51(1) of the *Employment Act*;
 - g. Costs plus interest.
2. The Respondent filed a Response dated 6th July 2023.
3. At the trial, the Claimant testified on his own behalf and the Respondent called Stella Mwachi. The parties further filed written submissions.



The Claimant's Case

4. In his Statement of Claim dated 2nd June 2023, the Claimant states that he was employed by the Respondent on 1st May 2020, in the position of Strategic Lead, earning a monthly salary of Kshs. 370,000.
5. The Claimant worked for the Respondent until 17th April 2023, when he was summarily dismissed. He avers that the dismissal was shrouded in unfairness, contrary to the provisions of Section 45 of the *Employment Act*.
6. He asserts that the dismissal was substantively and procedurally unfair for the following reasons:
 - a. The dismissal letter offered no valid reason for terminating the Claimant's employment, contrary to the requirements of Sections 43 and 45 of the *Employment Act*. The allegations of non-adherence to company policy on attendance, tardiness and absenteeism were vague, unfounded and malicious;
 - b. In its letter dated 17th April 2023, the Respondent maliciously relied on incidences that allegedly happened between 7th March 2023 and as far back as 26th October 2022, for which the Claimant had given a plausible defence, both verbally and in writing, to the satisfaction of his immediate supervisor at the time;
 - c. There was no form of fair disciplinary procedure as envisaged under Section 41 of the *Employment Act*, prior to the dismissal;
 - d. The Claimant disputes the grounds relied on by the Respondent to end his employment and by denying the Claimant an opportunity to defend himself against the alleged infractions, the Respondent condemned the Claimant unheard;
 - e. The Claimant was not issued with a notice to show cause containing charges or any other information detailing grounds upon which the Respondent was considering terminating his employment. No charges were levelled against him and he was not given time to prepare his defence;
 - f. The Claimant was never invited to any disciplinary hearing nor was he taken through any form of hearing leading to the Respondent's decision to terminate his employment.
7. The Respondent maintains that his dismissal was in bad faith, malicious, discriminatory, wrongful and unfair.

The Respondent's Case

8. In its Response dated 6th July 2023, the Respondent denies the Claimant's averment that he was wrongfully dismissed.
9. The Respondent maintains that there was a valid reason for the dismissal and that procedural fairness was observed. It is pleaded that the Claimant was given an opportunity to make the necessary representations. The Respondent asserts that it did not violate substantive or procedural law.
10. The Respondent denies the Claimant's entire claim and asks the Court to dismiss it with costs.

Findings and Determination

11. 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

12. On 17th April 2023, the Respondent wrote to the Claimant as follows:

“Dear Mr. Mburu

Re: Termination of Contract

After careful review and consideration, we inform you that your services to the Company have been terminated with effect from 17th April 2023 for non-adherence to company policy on attendance, tardiness and absenteeism.

Despite the matter being brought to your attention several times in the past, and the opportunity to rectify the same, you have continued to report to work late and been nonresponsive to emails sent to you asking where you are on said days. On 26th October you were absent from office and only clarified where you were once management reached out to you and on 1st December 2022 you were absent from office with no prior explanation and did not respond to the email sent to you.

An email reminder with housekeeping rules was sent to you on 31st October, 2022 clearly indicating the reporting time and what (sic) the processes in place for sick days, days absent from office and for any meetings outside the office on official work days.

Over and above several reminders, two warning letters were issued to you, the first on 5th December 2022 and the second on 7th March 2023 in reference to your continuous disregard of company policy, both of which you did not acknowledge. A reminder was sent on 14th March 2023 in reference to the second warning that was issued but to date you have not acknowledged nor responded.

In light of the above, the management has found your work ethic wanting and the decision has been made to summarily dismiss you. You will be entitled to pay for the month of April and payment for any leave days due. Kindly handover any company property to the Finance Director and any other pending issues that you may have. Your final dues will be processed to your bank account once compilation and clearance is complete, and all matters are signed off.

Please acknowledge receipt and understanding of the content of this letter, by signing a copy for our file.

Yours sincerely

Tessera Limited

(signed)

Stella Mwachi

Finance Director”

13. This letter gives the reason for the Claimant's dismissal as non-adherence to company policy on attendance, tardiness and absenteeism. In this regard, the Claimant was accused of unauthorised and unexplained absence from the office.



14. In advancing these accusations, the Respondent referred to several email correspondences by which the issue was raised with the Claimant. The Respondent further took issue with the Claimant's non-responsiveness to the concerns raised.
15. On his part, the Claimant defended himself, stating that in his position as Strategic Lead, he was required to undertake field activities. He claims to have explained every absence from the office to the Managing Director. He however did not adduce any evidence to support this assertion.
16. By failing to document his absence from the office, the Claimant placed himself within the crosshairs of violation of corporate protocols. As a result, he became liable for gross misconduct and the Respondent had a valid reason to terminate his employment, as required under Section 43 of the *Employment Act*.
17. The next question is whether in effecting the dismissal, the Claimant observed due procedure. The mandatory procedure, applicable to every employer considering termination of the employment of an employee is set out in Section 41 of the *Act*, in the following terms:
 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.
18. In its decision in *Donald Odeke v Fidelity Security Ltd* [2012] eKLR this Court held that an employee facing disciplinary action must be given adequate opportunity to respond to the charges, before action is taken against them. The Court went further to state that no matter what offence the employee is accused of, if the employee is not heard, the termination is ipso facto unfair.
19. In the present case, the Respondent made no effort to comply with the foregoing mandatory procedural fairness requirements, thus rendering the dismissal procedurally unfair.

Remedies

20. 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 his contribution to the dismissal. I have also considered the Respondent's failure to avail the Claimant an opportunity to be heard and to issue him with a certificate of service as required by Section 51(1) of the *Employment Act*.
21. I further award the Claimant one (1) month's salary in lieu of notice.
22. No basis was established for the claim for punitive and aggravated damages, which therefore fails and is disallowed.
23. Regarding the claim in the nature of a fine of Kshs. 100,000 for failure to issue the Claimant with a certificate of service, as required by Section 51(1) of the *Employment Act*, I am guided by the Court of Appeal decision in *Tribe Hotel Limited v Muoki* [2024] KECA 1673 (KLR) where it was held that this



Court could not lawfully convert the fine into an award to the offended employee; and instead directed that the employee be issued with a certificate of service.

24. Finally, I enter judgment in favour of the Claimant as follows:

- a. 2 months' salary in compensation.....Kshs. 740,000
- b. 1 month's salary in lieu of notice.....370,000
- Total.....1,110,000

25. This amount will attract interest at court rates from the date of judgment until payment in full.

26. The Claimant is also entitled to a certificate of service plus costs of the case.

27. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Manyara for the Claimant

Mr. Amolo for the Respondent

