



REPUBLIC OF KENYA



**KENYA LAW**  
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**Shikuku v Centurion Pharmacy Limited (Cause E534 of 2020)  
[2025] KEELRC 2197 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2197 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E534 OF 2020**

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

**BETWEEN**

**PAUL NDIA SHIKUKU ..... CLAIMANT**

**AND**

**CENTURION PHARMACY LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. In her Statement of Claim dated 25<sup>th</sup> May 2020, the Claimant seeks the following remedies against the Respondent:
  - a. A declaration that the termination of the Claimant’s employment was unlawful and unfair;
  - b. General damages for unfair termination;
  - c. Salary for the remainder of period of service (20 years);
  - d. One month’s salary in lieu of notice;
  - e. Aggravated and punitive damages for defamation;
  - f. Severance pay;
  - g. Permanent injunction restraining the Respondent from stipulating that the Claimant was dismissed on grounds of insubordination and theft;
  - h. Costs plus interest.
2. The Respondent filed a Statement of Defence dated 8<sup>th</sup> April 2021, to which the Claimant responded on 2<sup>nd</sup> June 2021.



3. The matter proceeded viva voce with the Claimant testifying on her own behalf and the Respondent calling two witnesses; Dr. Samuel Thuita, the Managing Director and Everlyne Mwikali, a Pharmaceutical Technologist. Thereafter, the parties filed written submissions.

### **The Claimant's Case**

4. By an employment contract dated 3<sup>rd</sup> July 2013, the Claimant was employed by the Respondent as a Pharmacist, earning a starting salary of Kshs. 25,000 which was subsequently increased to Kshs. 54,460.
5. The Claimant worked for the Respondent until 25<sup>th</sup> May 2018, when he was summarily dismissed on allegations of gross misconduct; particulars being insubordination and theft.
6. The Claimant avers that the summary dismissal was without justification and was contrary to and in breach of the Employment Act, principles of natural justice and the Constitution of Kenya, as hereunder:
  - a. The Claimant was dismissed on the basis of Section 41 of the Employment Act but he was not invited to show cause why he should not be dismissed;
  - b. The Claimant was not invited to appear for a hearing as provided in law;
  - c. Due process was not followed since the Claimant was not taken through any disciplinary process;
  - d. The Claimant was not issued with any evidence or an opportunity to face his accuser;
  - e. There was no evidence whatsoever that the Claimant was involved in any insubordination or theft to warrant summary dismissal; and
  - f. As such, it was malicious and ill intended to dismiss the Claimant when he had not been involved in any wrongdoing.
7. The Claimant therefore terms his dismissal as wrongful and unfair.

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

8. In its Statement of Defence dated 8<sup>th</sup> April 2021, the Respondent admits having employed the Claimant but denies that his summary dismissal was wrongful or unfair.
9. The Respondent states that the Claimant's tenure was characterised by confrontations, heated arguments and aggressive behaviour. The Respondent further accuses the Claimant of repeatedly failing to perform his duties, insubordination, unauthorised absenteeism, dishonesty, theft and assault.
10. The Respondent admits that the Claimant was summarily dismissed on account of issues stated in the dismissal letter.
11. The Respondent avers that the dismissal was preceded by a fair hearing and prior verbal and formal warnings.
12. The Respondent denies the Claimant's entire claim and asks the Court to dismiss it.

### **Findings and Determination**

13. 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

14. The Claimant was dismissed by letter dated 25<sup>th</sup> May 2018 stating as follows:

“Dear Paul,

RE: Summary Dismissal

This letter serves as notice for summary dismissal from the Company due to your actions of gross misconduct. You collected company cash and pocketed it on 25<sup>th</sup> May at closing time and only owned up when you heard that the CCTV footage was being reviewed. In addition, you refused to clearly state how and where you picked the cash from and instead caused such a nasty commotion in the shop in the presence of customers who were forced to walk out of the shop. To make it worse, you slapped Caroline W Gichuki for demanding to know where you picked the money from.

Having been suspended from the company on 8<sup>th</sup> February 2018 for two weeks due to another incident of misconduct, the company is left with no option than to dismiss you from service with immediate effect. You will be paid for the 25 days worked in the company including the balance of 17 leave days.

Yours faithfully,

(signed)

Dr Sammy M Thuita.

Director”

15. According to this letter, the Claimant was summarily dismissed on account of gross misconduct, particulars being that he pocketed company cash and turned violent when confronted about it. These actions, if proved, would constitute gross misconduct as defined in Section 44(4) of the [Employment Act](#).

16. And how is gross misconduct proved? It is by adhering to the following mandatory procedural steps set out in Section 41 of the Act:

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.

17. The requirements of this provision were summarised by my brother Radido J in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] eKLR as follows:

“The ingredients of procedural fairness...within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to



dismiss the employee. This gives a concomitant statutory right to be informed to the employee. Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly, if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

18. In its decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR this Court stated thus:

“...in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”

19. In the present case, the Claimant was confronted with accusations of theft and assault on 25<sup>th</sup> May 2018; and on the same day, he was summarily dismissed. There was no prior show cause notice nor was there a formal invitation to the meeting said to have been held on that day.

20. Clearly, the Claimant had no opportunity to respond to the very serious allegations levelled against him. Moreover, the Claimant denied admission of any wrongdoing as alleged by the Respondent and there was no independent evidence to support the Respondent’s assertion in this regard.

21. In his final submissions dated 21<sup>st</sup> March 2025, the Claimant referred to the decision of this Court in *Oloo v H Young & Co (EA)* [2022] KEELRC 3792 (KLR) where it was held that a charge that is not presented to the employee at the shop floor, with lead time for them to respond, remains unsubstantiated and unproved.

22. This is precisely what transpired in the present case and I have no difficulty in reaching the conclusion that the allegations levelled against the Claimant, which ultimately led to the end of his employment with the Respondent, were not proved at the shop floor as required by law.

23. Consequently, I find and hold that the Claimant’s dismissal was wrongful and unfair.

### **Remedies**

24. I therefore award him six (6) months’ salary in compensation. In making this award, I have considered the Claimant’s length of service and the Respondent’s failure to avail him an opportunity to prepare and present a defence to the allegations.

25. I further award the Claimant one (1) month’s salary in lieu of notice.

26. No basis was established for salary for the remainder of service period, general, aggravated and punitive damages as well as severance pay.

27. By virtue of this judgment, the Respondent’s declaration that the Claimant was dismissed on grounds of insubordination and theft is set aside.

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

- a. 6 months’ salary in compensation.....Kshs. 326,760



b. 1 month's salary in lieu of notice.....54,460  
Total.....381,220

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

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

31. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Haggai h/b for Mr. Lusiola for the Claimant

Ms. Wambua for the Respondent

