



REPUBLIC OF KENYA



KENYA LAW
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**Walia v Sunflag Textiles and Knitwear Mills Limited (Cause
E442 of 2020) [2025] KEELRC 2183 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2183 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E442 OF 2020**

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

BETWEEN

SUMEET WALIA CLAIMANT

AND

SUNFLAG TEXTILES AND KNITWEAR MILLS LIMITED RESPONDENT

JUDGMENT

1. The Claimant commenced his claim against the Respondent by a Memorandum of Claim dated 12th August 2020. The Respondent responded by a Memorandum of Response and Counterclaim as amended on 11th November 2022. The Claimant filed a Reply to the Statement of Response and Defence to Counterclaim dated 30th January 2023.
2. At the trial, the Claimant testified on his own behalf and the Respondent called its Director, Human Resource and Compliance, Harrison Kinuthia. The parties also filed written submissions.

The Claimant's Case.

3. The Claimant states that he was employed by the Respondent in the position of Marketing Manager. He claims to have been given extra responsibilities of overseeing the Stores, between 13th December 2018 and 3rd January 2019, while the Head of Stores was on leave.
4. The Claimant avers that he was summarily dismissed after discovering fraudulent transactions amounting to Kshs. 603,243 that had taken place in the Stores Department, before and during the time he assumed a supervisory role in the Department.
5. The Claimant complains that despite being a mere whistle-blower, the Respondent coerced him to take responsibility for the fraud, forcing him to pay the sum of Kshs. 100,000 before summarily dismissing him on 14th March 2019.



6. The Claimant further complains that despite reporting and recording a statement at Industrial Area Police Station in respect of the fraud, the Respondent had failed to take any action against the fraudsters, who are well known to it.
7. The Claimant lays a claim of wrongful dismissal and tabulates his claim against the Respondent as follows:
 - a. 12 months' salary in compensation.....Kshs. 2,616,000
 - b. 1 month's salary in lieu of notice.....218,000
 - c. Leave pay for 31 days.....218,000
 - d. Punitive and/or exemplary damages
 - e. Certificate of service
 - f. Costs plus interest

The Respondent's Case.

8. In its Statement of Response and Counterclaim as amended on 11th November 2022, the Respondent admits having employed the Claimant in the position of Sales Manager.
9. The Respondent states that the Claimant was in charge of Stores, when fraud was discovered. The Respondent asserts that the Claimant was liable for the fraud, which he admitted in an agreement, without any coercion.
10. The Respondent maintains that it was the Claimant's responsibility, as Sales Manager, to ensure that no goods were released to customers before verification by the Finance Department that full payment had been made.
11. It is alleged that between 1st December 2018 and 2nd January 2019, sales transactions valued at Kshs. 1,434,273.88 were made to one customer, with the Claimant forwarding manipulated M-pesa deposit messages to the Finance Department. The Respondent avers that it was expected that as Sales Manager, the Claimant would verify any payments made by a customer.
12. Regarding liability, the Respondent states that on 4th January 2019, the Claimant, without coercion, signed an agreement admitting that he was responsible for the loss of Kshs. 603,243 which he undertook to make good. According to the Respondent, its reconciliation established that it had been defrauded the sum Kshs. 1,131,583 for which it holds the Claimant liable.
13. The Respondent denies the Claimant's allegation that he was wrongfully summarily dismissed and states that the Claimant was still in its employment as at 25th February 2019. The Respondent adds that the Claimant was lawfully dismissed on 14th March 2019.
14. In response to the claim for leave pay, the Respondent states that the Claimant's leave dues were applied towards recovery of the monies lost as a result of the aforementioned fraud.
15. In its Counterclaim, the Respondent states that on 2nd January 2019, in the course of monthly bank and customer account reconciliations, differences between invoice value and total amount received were noted. According to the Respondent, there were thirteen (13) invoices for which partial or no payment was received during the period between 1st December 2018 and 2nd January 2019.



16. The Respondent avers that it was established that the Claimant had made 13 sales transactions with one particular customer, between 1st December 2018 and 2nd January 2019, valued at Kshs. 1,434,273.88. It is alleged that the Claimant forwarded fake and/or edited M-pesa deposit messages to the Finance Department.
17. The Respondent claims to have summoned the Claimant in the presence of the subject customer, for interrogation. The customer is said to have revealed having been directed by the Claimant to deposit less cash than the invoiced amount and pay the difference to the Claimant directly.
18. The Claimant is said to have voluntarily accepted liability, offering to pay Kshs. 603,243 to discharge his liability in the loss. It is alleged that after the meeting, the Claimant deserted duty.
19. By a letter dated 22nd February 2019, the Claimant was summoned to a disciplinary hearing to be held on 26th February 2019. The Respondent states that during the hearing, the Claimant failed to give any explanation as to why he had stopped reporting to work.
20. Further, the Claimant is said to have admitted having failed to confirm with the Finance Department, whether payments made by the subject customer had been received, before releasing goods. The Respondent terms this as an act of gross negligence on the Claimant's part.
21. The Respondent therefore counterclaims the sum of Kshs. 1,434,273.88 from the Claimant.

Findings and Determination.

22. There are three (3) 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;
 - c. Whether the Respondent has made out a proper counterclaim against the Claimant.

The Dismissal.

23. The Claimant was dismissed by letter dated 14th March 2019, stating as follows:

“Dear Mr. Walia,

RE: SUMMARY DISMISSAL

This follows the incident that took place on 2nd January 2019, where during Monthly Bank and Customer reconciliations, it was discovered that the Company had lost Kshs. 1,131,583.88 (One Million one hundred and thirty one thousand five hundred and eighty three eighty eight cents) through fraudulent Mpesa transactions presented to Accounts Department by you on behalf of one Customer.

As sales Manager it is your responsibility to ensure no goods are released to cash customers until you have verified with Finance Department that full payment has been deposited and reflected in the Company's Bank Account before releasing the goods.

In this particular incident you made thirteen sales transactions with one Customer, all valued at Kshs. 1,434,273.88 between 1st December 2018 and 2nd January 2019 and you forwarded Mpesa deposit messages to Finance Department knowing very well they were fraudulently manipulated to reflect full payments of the Invoices in question, yet actual deposits realised in the Company's Bank Account were either nil or far much less than the



actual invoiced amounts, yet you went ahead and released the goods with full knowledge that full payments were neither being remitted nor received.

During the Monthly Bank and Customer Account reconciliation, it was established the Mpesa messages you were forwarding to the Finance Department were not genuine, as they did not tally with actual cash realized in the Company's Bank Account.

The summary of the invoice details, amount received and balance outstanding is as follows:

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INV AMOUNT

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AMOUNT DEPOSITED

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UNPAID BALANCE

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152,437.92

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1,131,583.88

When summoned and interrogated by Management in the presence of the customer, you were unable to give any reasonable excuse. The Customer went ahead to reveal to Management in your presence that you were directing him to deposit less cash than the amount invoiced, into the Company's Account and instructing him to pay the difference directly to you in cash, which he did on diverse dates in the Office, then at around Mareba, off Lunga Lunga Road, and along Jogoo Road.

In a disciplinary meeting held on 26th February 2019, you were informed that during the period 1st December 2018 to 2nd January 2019, you sold Fabric valued at Kshs. One Million four and thirty four thousand two hundred and seventy three, eighty eight cents (1,434,273.88) through thirteen (13) invoiced transactions without first confirming with Accounts Department to ensure payments were being received, before releasing goods to the Customer, resulting in loss of Kshs. 1,131,583.88 through fraudulent M-pesa transactions.

In your verbal and written explanations during the meeting, you stated that you were not involved in the loss, but admitted that you were not confirming with Accounts Department whether the payments



were being received or not, before releasing the Goods, because the predecessor Simon a (Clerk) was not doing likewise.

This is found totally unacceptable and irresponsible, in view of the seniority of your position. You are aware the Customer had transacted business with the Company since February 2018 with no issue regarding payments, until you took over in early December 2018 that irregularities manifested leading to the loss.

Consequently, you are summarily dismissed from employment for gross misconduct, in accordance with Section 44 sub-section 4(a, c, e & f) of the Employment Act 2007.

The matter was further reported to Industrial Area Police Station for further investigation and prosecution.

In the meantime the cash loss totalling Kshs. 1,131,583.88 shall be recovered from your terminal dues, and should the amount not be sufficient to cover the loss, you will be required to make up the difference. The part payment of Kshs. 100,000 deposit you surrendered to the Company shall form part of the payment.

Your terminal dues, which are subject to statutory deductions, will be paid as follows:-

1. Days Worked upto and including 8th January 2019.
2. Accrued leave 2017/2018-26 days
3. Accrued leave 2018/2019-5 days

Less: Loans & Advances

Please return any Company property entrusted to your care to the Plant Manager to facilitate your clearance.

Yours faithfully,

FOR SUNFLAG TEXTILE & KNITWEAR MILLS LTD

(signed) (signed)

Chris Mukung' H.M. Kinuthia

GROUP H.R. MANAGER GROUP GENERAL MANAGER”

24. This letter accuses the Claimant of complicity in manipulation of Mpesa transactions made by the Respondent's customer, leading to a loss of Kshs. 1,131,583.88.
25. Prior to the dismissal, the Claimant had signed an agreement of acceptance of liability dated 4th January 2019, stating as follows:

“I undersigned Mr. Sumeet Walia, Kenyan resident having national ID number 13490485 accepts my liability of Ksh. 603,243 (Kenya Shillings Six Hundred Three Thousand Two Hundred Forty Three Only) towards fraud happened with my employer Sunflag Textiles & Knitwear Mills Limited, Kitui Road, Nairobi Kenya while I was given responsibility by my employer during the period December 2018 and January 2019.

I hereby agree to settle some funds by 05th January 2019. I also agree to inform Sunflag Textiles & Knitwear Mills Limited by 05th January 2019 by when balance funds will be remitted to my employer.



I am accepting my liability towards Sunflag Textiles & Knitwear Mills Limited with my full consent and without any kind of pressure from Sunflag Textiles & Knitwear Mills Limited.

Accepted by:

(signed)

Sumeet Walia

Kenya National ID No.-13490485

Date: 04th January 2019

Witnessed by:

(signed)

Viral Parikh

ID No.-831373

Date: 04th January, 2019”

26. The Claimant claims to have been coerced to sign the foregoing agreement. The law is well settled that a party alleging coercion bears the primary burden of proof. Black’s Law Dictionary (Tenth Edition) defines coercion as:

“Compulsion of a free agent by physical, moral, or economic force or threat of a physical force.”

27. In *Alfred Nzomo Kithusi v Hillcrest Investments Limited* [2012] eKLR it was held that a settlement agreement between an employer and an employee is a binding contract, which can only be vitiated by proof of coercion, fraud, mistake, misrepresentation or undue influence.

28. In its decision in *Patel & another v MJC & another (Suing as the guardians of PJP)* [2022] KECA 364 (KLR) the Court of Appeal stated the following:

“It should also be appreciated that apart from specifically pleading undue influence, coercion and fraud, the same has to [be] specifically proved by cogent evidence and not on the balance of probabilities...Proof has to be higher than on the balance of probabilities but slightly lower than proof beyond reasonable doubt.”

29. Apart from his word that he was coerced into signing the agreement of acceptance of liability dated 4th January 2019, the Claimant did not plead nor prove any ingredients of coercion. It is to be noted that the Claimant held a fairly senior position within the Respondent’s establishment and the equality of arms gap was therefore reduced, to the extent that the Claimant was in a position to put his case forth.

30. He could, for example, have denied the allegation of any complicity in the fraud, thus shifting the burden to the Respondent to prove its allegations against him. Further, in the impugned agreement, the Claimant was clear and exact as to the extent of his liability, thus dispelling any doubt regarding his full understanding and acceptance of his liability to the Respondent.

31. In the circumstances of this case I have no reason to interfere with the Claimant’s admission of liability as contained in the agreement dated 4th January 2019.

32. That said, I find and hold that the Respondent had a valid reason for dismissing the Claimant as required under Section 43 of the *Employment Act*.



33. The next question is whether in effecting the dismissal, the Respondent observed due procedure. The mandatory procedure is set out in Section 41 of the Act as follows:
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.
34. The Claimant testified before the Court that he attended a meeting with the Respondent's Managing Director, Sales Manager and Finance Manager, at which the subject loss was discussed. He further testified that he attended a subsequent meeting in the presence of the customer involved in the fraudulent transactions.
35. Additionally, the Claimant admitted having stayed away from his workplace after the first week of January 2019; this coincided with the time when he signed the liability agreement. He also conceded having received the Respondent's letter dated 22nd February 2019 accusing him of desertion of duty and inviting him to a disciplinary hearing.
36. Taking account of the totality of the proceedings at the shop floor, leading to the Claimant's dismissal, I am satisfied that the Claimant was availed adequate opportunity to respond to the charges levelled against him, as required under Section 41 of the *Employment Act*.
37. The claims for compensation, notice pay and punitive/exemplary damages are therefore without basis and are dismissed.
38. The claim for leave pay was admitted in the dismissal letter and is therefore due and payable.

The Respondent's Counterclaim.

39. The Respondent's Counterclaim against the Claimant, in the sum of Kshs. 1,131,583.88 is based on a tabulation prepared by the Respondent's Finance Controller, Jessica Agravat, showing invoiced amounts against amounts received and the resultant shortfall. The Respondent did not however avail the source documents used in preparing this summary.
40. For this reason, other than the amount of Kshs. 603,243 admitted by the Claimant in the agreement dated 4th January 2019, the Respondent's Counterclaim fails.

Final Orders.

41. Finally, I make the following orders:
- a. The Claimant's claims for compensation for wrongful dismissal, notice pay and punitive/exemplary damages are dismissed;
 - b. The Claimant's claim for leave pay for 31 days is allowed;



- c. The Respondent's Counterclaim is allowed to the tune of Kshs. 603,243 less Kshs. 100,000 paid by the Claimant;
- d. The Claimant is entitled to a certificate of service;
- e. Each party will bear their own costs.

42. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Kirui h/b for Mr. Njeru for the Claimant

Mr. Muimi for the Respondent

