



H Young & Co. (EA) Ltd v Kilungya (Employment and Labour Relations Appeal E022 of 2024) [2025] KEELRC 2223 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2223 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E022 OF 2024**

DKN MARETE, J

JULY 23, 2025

BETWEEN

H YOUNG & CO. (EA) LTD APPELLANT

AND

JULIUS MUTUKU KILUNGYA RESPONDENT

JUDGMENT

1. This matter arises from a Memorandum of Appeal dated 26th January, 2024 challenging the judgment of the lower court delivered on 8th December, 2023 awarding the Respondent a sum of Kshs.535,476 as compensation for wrongful termination of employment. The Appellant seeks to set aside this judgment and substitute it with an order dismissing the Respondent's claim in its entirety.
2. The Respondent, was employed by the Appellant as a mechanic earning Ksh.39,652.00 per month. On 6th January, 2022, the Appellant's security department reported the loss of a gearbox part (Range Group) of the Motor Vehicle KAU 964L Lorry No 35(L35) valued at Kshs.1,103,800.00, a vehicle under the Respondent's repair. The matter was reported to Kipevu Police Station under OB No. 04/6/1/2022. The Appellant issued the Respondent with a Notice to Show Cause (NTC) on 18th January, 2022, alleging negligence and theft. The Respondent failed to respond to the NTC or attend subsequent disciplinary hearings scheduled for 24th and 26th January, 2022. Consequently, the Appellant summarily dismissed the Respondent on 1st February, 2022 under Section 44(4)(a) of the [Employment Act](#), 2007, citing gross misconduct.
3. The Respondent challenged his dismissal in the Magistrates' Court, claiming unfair termination and seeking compensation. The trial court found in his favour, awarding him Kshs. 535,476. The Appellant now appeals this decision, arguing that the termination was lawful and procedurally fair.
4. The issues for determination therefore are;
 1. Whether the Respondent's termination was substantively and procedurally fair.



2. Whether the Respondent was entitled to the reliefs granted by the trial court.
5. The 1st issue for determination is whether the Respondent's termination was substantively and procedurally fair. Termination of employment under Kenyan law must satisfy both substantive and procedural fairness as outlined in Sections 41, 43, and 45 of the [Employment Act](#), 2007.
6. On this substantive fairness, the appellant contends that the Respondent's dismissal was justified under Section 44(4)(a) of the [Employment Act](#), 2007 which permits summary dismissal for gross misconduct, including theft or negligence causing significant loss. The Appellant alleges that the Respondent's failure to account for the missing gearbox part constituted theft.
7. However, as observed in the authority of *Dungani v West Kenya Sugar Co. Ltd* [2023] mere suspicion of misconduct is insufficient. The employer must prove the allegations complained of on a balance of probabilities. The Appellant provided no direct evidence such as CCTV footage, witness testimonies, or police findings linking the Respondent to the theft. The Respondent's role as the mechanic in charge of the vehicle does not, without corroborating evidence establish culpability.
8. The trial court correctly found that the Appellant failed to discharge its burden under Section 43(1) of the [Employment Act](#), 2007 which requires the employer to prove the reason(s) for termination. The allegation of theft was unsubstantiated thus rendering the termination substantively unfair.
9. On procedural fairness, Section 41 of the [Employment Act](#) mandates that an employee be given a fair hearing before termination. The Appellant claims it issued the Respondent with a notice to show cause and invited him to disciplinary hearings, which he ignored. The Respondent, however, denies receiving the notice to show cause or hearing notices, asserting that the email address used, (juliusmutuku05@gmail.com), was not his.
10. The Appellant's reliance on unsigned notice to show cause acknowledgments and unverified emails falls short of proving proper service. In the authority of *Peter Wafula Juma & 2 Others v Republic*, the court emphasized that evidential burden shifts where prima facie evidence is rebutted. Here, the Respondent's denial was not adequately countered by the Appellant. There was no coordinated evidence of service of the notice to show cause.
11. Moreover, the Appellant's failure to explore alternative means of communication like phone calls or physical delivery undermines its claim of procedural compliance. As held in *Pius Machafu Isindu v Lavington Security Guards Ltd* [2017] eKLR procedural fairness requires genuine efforts to afford the employee a hearing. The Appellant's actions did not meet this threshold.
12. On the second issue of entitlement to reliefs, the trial court awarded the Respondent Kshs.535,476, comprising compensation for unfair termination and notice pay. The Appellant challenges this award, arguing that summary dismissal precludes notice pay and that the compensation was excessive.
13. On notice pay, Section 44(1) of the [Employment Act](#), 2007 permits summary dismissal without notice for gross misconduct. However, where termination is deemed unfair, notice pay becomes payable. Since the Respondent's dismissal was unjustified. The trial court correctly awarded one month's salary in lieu of notice.
14. On compensation for unfair termination, under Section 49(1)(c) of the [Employment Act](#), 2007 compensation for unfair termination is capped at 12 months' salary. The trial court's award of Kshs.535,476.00, equivalent to 12 months' salary was discretionary, guided by principles set out in *Alphonse Maghanga Mwachanya v Operation 680 Ltd* [2013] eKLR.



15. The Appellant argues that the Respondent contributed to his dismissal by failing to attend hearings. However, as observed earlier in this judgment, the Appellant did not prove proper service of the notice to show cause or hearing notices thereby justifying such compensation.
16. The award was also consistent with precedents such as *Kangethe v Bic East Africa Ltd* [2024], where the court upheld maximum compensation for egregious unfair dismissal. The trial court's exercise of discretion was neither misdirected nor manifestly unjust, as per *Mbogo & Another v Shah* [1968] EA 93.
17. The Appellant has failed to establish substantive or procedural fairness in the Respondent's termination. The trial court's judgment was well-reasoned and aligned with the *Employment Act*, 2007 and judicial precedents.
18. I am therefore inclined to dismiss the appeal with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Miss Moriranjia instructed by MCKAY & Company Advocates for the Appellant.

Miss Mburia instructed by Samuel, Mburia & Company Advocates for the Respondent.

