



**Kamau v Chuna Sacco Society Ltd (Cause 1043 of 2021)
[2025] KEELRC 2413 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2413 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1043 OF 2021**

**K OCHARO, J
JULY 17, 2025**

BETWEEN

PETER MBOGO KAMAU CLAIMANT

AND

CHUNA SACCO SOCIETY LTD RESPONDENT

JUDGMENT

Contending that at all material times, he was an employee of the Respondent, whose employment the latter summarily dismissed him unfairly after nearly six and a half years of service, he sued them seeking a declaration that the dismissal was unfair, compensation for unfair dismissal, compensation for earned but untaken leave, unpaid salary for four months during his interdiction, notice pay, general damages for defamation, and issuance of a certificate of service in his favour.

1. Through their Statement of Defence dated 1st April 2022, the Respondent resisted the claim, denying the Claimant's cause of action against it, and his entitlement to the remedies sought.
2. After hearing the parties on their respective cases, this Court directed that they file their written submissions. They obliged.

The Claimant's Case

3. The Claimant adopted his witness statement dated 9th December 2021, as his evidence in chief, and tendered in evidence his documentary evidence, the documents filed under the list of documents of the same date.
4. He stated that he was first employed by Respondent on the 5th of July 2011 as an Accounts Assistant and was later promoted to the position of an accountant. At the time of his employment termination, he was earning a basic salary of Kshs. 117,424/- per month.



5. At all times during his tenure of employment, he performed duties assigned to him by the Respondent, diligently, faithfully and industriously.
6. On 18th December, 2020, by a letter of the same date, the Respondent interdicted him to enable investigations into an alleged financial misappropriation.
7. That on 29th March 2021, the Respondent served him with a letter outlining several allegations of financial misappropriation against him, and extending an invitation to him for a disciplinary hearing that was slated for 7th April 2021.
8. He asserted that before the hearing, he requested access to the accounts systems so that he could produce statements of account that could enable him to prepare his defence against the allegations.
9. Surprisingly, the disciplinary committee expressly declined his request for unlimited access to the document in the office and the system. They asked him to provide a list of what he needed so that the same could be emailed to him.
10. The Committee gave him a very limited time [two days] to identify the exact data he needed, request the CEO for the same, receive the said data, go through it, analyse it and appear before the disciplinary Committee on 10th April, 2021.
11. The documents he had asked for were shared in PDF format on 8th April 2021 at 6pm. This left him with insufficient time to prepare for the hearing that had been slated for 10th April 2021.
12. This notwithstanding, he appeared before the disciplinary committee and explained to them in detail how the funds were used and provided accounts for each financial dealing and authorisation, from his position as an assistant accountant.
13. He asserted that during the hearing, he explained to the disciplinary committee that his duties as an Assistant Accountant were all executed under the supervision of the board and the society's Chief Executive Officer, ■ now deceased.
14. He contended that the Respondent has ample checks and controls, that it is inconceivable that the Respondent could lose an amount in the tune it allegedly lost without immediate detection.
15. Inexplicably, some of the accusations that were levelled against him related to matters that occurred in 2009, and the letter dated 29th March 2021 is a testament to it, when he wasn't an employee of the Respondent, having been employed on 11th July 2011.
16. Furthermore, the disciplinary process didn't consider that his role at the material time was that of an Assistant Accountant, not the Society's Accountant. He was accused of matters that didn't fall under his jurisdiction, but those of the Accountant.
17. On 15th April, 2021, the disciplinary committee decided that he be summarily dismissed. The dismissal was communicated through the letter dated 15th April 2021.
18. He challenged the decision by way of appeal. The hearing in regard to the appeal was conducted on 19th June 2012; however, it wasn't until 5th November 2025 that the outcome thereof was hastily communicated following a demand letter by his Advocate for unfair termination.
19. In the said communication, the Respondent included a demand for payment of a sum of money amounting to Kshs. 260,236/= . The demand was without any legal basis.



20. He asserted that at the time of employment, or any time in the course of his service, he wasn't given a job description.
21. During his employment:
 - a. He worked from 7:00 AM to 5:00 PM every working day, resulting in one (1) hour of overtime without any compensation whatsoever.
 - b. He did not utilise his annual leave days or paid in lieu of the leave days not taken.
 - c. The Respondent unlawfully withheld salary for February, March, April and June 2021, which it has refused to pay despite several attempts to recover the said amounts.
22. Cross-examined by Counsel for the Respondent, he testified that he is a trained Accountant and therefore, conversant with accountancy traditional roles.
23. The letter dated 29th March 2021 raised six issues and seven accusations against him. All the matters that were raised in items 1[i] to [vi] of the letter didn't fall under his docket.
24. He could be allocated roles from day to day. The roles would sometimes go beyond the traditional accountant's roles, for instance, customer care and marketing.
25. Figures 59, 60, 61, 67, 118 on the journals presented in evidence by the Respondent did not relate to any period outside his tenure of employment.

The Respondent's Case.

26. The Respondent presented one witness, Andrew Abuga, its Internal Auditor. The witness stated that the Claimant was employed as an Account Assistant by the Respondent on 5th July, 2011 and was then promoted to the position of Accountant.
27. In the year 2016, the Sacco Societies Regulatory Authority (SASRA) conducted an onsite inspection of the Respondent SACCO as mandated by law. The inspection revealed that the Respondent had a substantial amount, Kshs. 670 million that could not be accounted for.
28. Following the findings and recommendations of the inspection report, the Commissioner for Co-operatives Development instituted an inquiry into the business conduct and model of the Respondent. He subsequently transmitted his report to the Respondent. In the report, he made a number of recommendations, among them that the Respondent needed to change its governance system and adopt the delegates model of running the Respondent's affairs. This was adopted and ratified during an SGM held in July of 2018.
29. He stated further that during the first annual delegates meeting of 2019, and in the meeting, it was resolved inter alia that the Respondent would initiate and have conducted a forensic audit to trace the substantial amount of Kshs. 670 million that remained unaccounted for.
30. Pursuant to this resolution, an audit was conducted. The auditor released his preliminary reports on 4th, 5th and 6th December 2020, which were all encapsulated in the Factual Findings Report (Forensic Audit Report) dated 13th July 2022.
31. Pending the writing of the report, the Claimant and other employees who had been implicated in the preliminary findings were interdicted to enable the auditors to carry out their audit without interference. The Claimant's interdiction was on 18th December 2020 in accordance with section 5(a) of the collective bargaining agreement.



32. On 29th March 2021, he was notified, vide a letter of the investigation's results and was given a chance to defend himself before a disciplinary committee on 7th April 2021, in which he appeared and requested for more time and to be allowed to appear before the committee again on 10th April 2021. The request was granted by the Respondent.
33. The witness asserted that following his unsatisfactory responses to the various accusations levelled against him, the Claimant was issued with a dismissal letter on 15th April 2021. He subsequently appealed against the dismissal on 24th April 2021.
34. The Appeal hearing was conducted on 19th June 2021. The decision of the disciplinary committee was upheld. On 5th November 2021, he was notified of the outcome of the appeal.
35. Given the grave infractions by Claimant, and the fact that he was afforded a fair hearing, this Court should find that the dismissal was fair and dismiss the claimant's case.
36. Cross-examined by Counsel for the Claimant, the witness stated that at the time of separation, the Claimant was serving as an Accountant. This was after he had been promoted from his initial position.
37. The witness admitted that when the Claimant was employed, he wasn't given any job description. Additionally, during the period under review, he didn't have a job description.
38. He asserted that the period under review was 2011-2018. The matters that were raised against the Claimant were specifically for this period.
39. The Claimant was interdicted on 18th December 2020. The interdiction was investigatory.
40. The Respondent did not file in this matter the full investigation report, but excerpts due to data protection requirements. The report touched on several personalities, some very senior in this Country.
41. The Claimant was informed of the charges against him through a show cause letter dated 29th March 2021. The show-cause letter was issued four months after the interdiction. The independent Auditor had to conclude their report before the Respondent could take a decision on the next course of action.
42. The Respondent presented a report herein dated 13th July 2022, after the termination of the Claimant's employment. The report was prepared in anticipation of the litigation regarding the termination.
43. Prior to the report, there was an interim report of December 2020. The Report was not availed before this court as evidence.
44. He further testified that during the period under review, not all financial controls were in place at the Respondent's. Per the organisational structure of the Respondent, the final authority of finance matters lies with the Senior Accountant and the CEO, not the Claimant.
45. The Claimant was paid his terminal dues. His last pay slip could be a testament to this. However, the slip was not tendered in evidence by the Respondent.
46. The Claimant was issued with a letter dated 8th May 2023, reminding him to attend the offices of the Respondent to clear with them and pick his dues.

Analysis and Determination

47. I have carefully considered the pleadings and evidenced by the parties, and their counsel's respective submissions, and the following principal issues emerge for determination:
 - I. Was the Claimant summarily dismissed from employment unfairly?



II. Is the Claimant entitled to the reliefs sought?

48. Where a Court is tasked to determine whether or not termination of an employee's employment or summary dismissal from employment was unfair or wrongful, the Court is enjoined to consider two statutory aspects, procedural and substantive fairness. Statutory, as they are provided for in the *Employment Act*. This, Counsel for the parties have appreciated in their respective submissions, and extensively submitted on the two statutory aspects. Also see *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR and *Pius Machafu Isundu vs Lavington Security Guards Limited* [2017] eKLR.
49. Section 41 of the *Employment Act* provides a procedure that any employer contemplating terminating an employee's employment must adhere to. The procedure entails; the employer notifying the employee of the grounds informing the intention; the employer according the employee an adequate opportunity to prepare and make a representation on the intention and the grounds, the employer allowing the employer to be accompanied by a colleague of his choice or a Trade Union representative during the hearing; and then considering the representation made before taking a decision.
50. The onus of proving that the procedure was adhered to is always on the employer. The question that springs up is, did the Respondent demonstrate the presence of procedural fairness in the process leading up to the dismissal of the Claimant?
51. There is no dispute that by its letter dated 29th March 2021, the Respondent explicitly informed the Claimant that they were contemplating taking disciplinary action against him, and the reasons for the contemplation, in detail. Additionally, through the same letter, the Claimant was invited to a disciplinary hearing, which was scheduled for 7th April 2021.
52. The Claimant asserted that before the specified date, he had written to the Respondent requesting additional time to prepare for the hearing, but his request was denied. The Court observes that, in the meeting minutes, the Respondent confirmed that the Claimant made this request. However, the request was rejected because granting an adjournment would delay resolving the matter beyond the deadlines set by the Human Resource Manual and the Collective Bargaining Agreement in effect.
53. The Respondent did not produce the Manual as part of their evidence to assist the Court in determining whether the disciplinary proceedings were time-bound. In his submissions, its Counsel failed to identify or argue any specific clause that addresses timelines.
54. I have carefully considered Clause 5[b][ii], tendered in evidence by the Respondent, and discern that the only timelines given are in respect of completion of investigations, in situations where an employee has been placed under an investigatory interdiction or suspension, not the disciplinary process.
55. At this point, it becomes essential to point out that in light of the foregoing premises, the Respondent didn't have any reasonable reason flowing from either its Human Resources Manual or the Collective Bargaining Agreement to deny the Claimant the extension that he sought. This leaves this Court with an impression of the Respondent as an employer who was in a hurry to conclude the proceedings without regard to the impact of it on the fairness of the disciplinary process.
56. After the hearing on the stated date, and the minutes bear it, the Claimant requested, copy of the minutes of the Disciplinary meeting, a copy of the Forensic Audit Report, Access to the system, and some documents per his earlier email to the CEO.



57. The Committee resolved that he would be given the minutes; however, the Forensic Audit couldn't be made available to him as it was sensitive; however, the Claimant would request in writing detailing the specific issues to be provided. As regards access to the system, the Committee was to consult and revert.
58. The Claimant complained that he gave a reason why he needed limited access to the system, to print out statements relevant to his defence. He was not allowed to have access at any time. I note that despite the resolution by the Committee that it was going to get back to him, on whether the Respondent was to allow him or not, they didn't. Considering the nature of the accusations against him, the transactions that were allegedly in issue, and the amounts involved, I take the clear view that his request was not unreasonable. An adequate preparation for his defence required that he access the statements. A reasonable employer could allow supervised access.
59. Again, in the circumstances of the matter, the forensic audit report was a document that, in my view, was vital to the Claimant. If, indeed, the Respondent was of the view that it was a sensitive document, nothing could have been easier than allowing him supervised access and reading of the same.
60. The Claimant asserted that he was sent some documents on 8th April 2021 via email at around 6:00 PM. He complains that this left him with one day to prepare and further respond to the charges on 10th April 2021. Considering the gravity of the accusations against him and the documents that were involved, I hold that the time was inadequate for him to prepare sufficiently for his further defence.
61. This Court hasn't lost sight of the admission by the Respondent's witness that at no time was the Claimant given a complete version of the Auditors' report, and the report by the Commissioner of Cooperatives Development. The dictates of procedural fairness and more specifically, under the component of hearing the affected employee, require that the employee be accorded by the employer all relevant documents necessary to enable them to fairly and sufficiently defend themselves against the allegations against them. It becomes more imperative when the employee has requested them.
62. In light of the foregoing, I am inclined to and hereby hold that the dismissal of the Claimant was procedurally unfair.
63. Section 43 of the *Employment Act*, 2007, places a duty upon the employer in a dispute regarding termination of an employee's employment to prove the reason for the termination. In my view, under this provision, it cannot be enough for the employer to simply state that the employee's employment was terminated for this or that reason. There has to be more than the statement. It must be demonstrated that indeed, the reason existed.
64. Section 45 [2] of the Act places a further duty upon the employer to show that the reasons were fair and valid.
65. The accusations [the alleged reason[s] for dismissal] against the Claimant related to an alleged manner in which he discharged his duties during the material time. The tone of the evidence by both the Respondent's witness and the Claimant was that in the accounts department, the Claimant wasn't alone. He could undertake tasks that could be allocated to him on a day-to-day basis. He didn't have a Job description at all.
66. Considering the accusations against the Claimant, and the period under review, it was necessary for the Respondent to show by way of a Job description or any other sufficient evidence on a balance of probabilities that it was the responsibility of the Claimant to do those things that he was accused of not having done or did negligently. Additionally, to directly link him to those transactions in issue.



67. It is important to point out that the Respondent, in its wisdom, decided to tender in evidence extracts from the forensic audit report and not the complete report. The incomplete document, looked at keenly, does not in any clear way provide a basis from which one can conclude that, on a balance of probabilities, the Claimant is guilty of the alleged misconduct.
68. In cross-examination, the Respondent's witness answering why the full report wasn't placed before this Court, stated that the report is sensitive, and it touched on 'very senior' people in the Government. Justice differentiates not between the downtrodden and the sacred in society. It applies to all uniformly and fairly. The Respondent ought to have known the risk of not producing the forensic audit report in the name of shielding the "very senior people" mentioned therein. I am not hesitant to make an adverse inference that had the report been produced in its whole, it would have been prejudicial to the Respondent's case.
69. The Respondent presented an Audit report dated 13th July 2022, which admittedly was prepared after the summary dismissal of the Claimant. The Respondent's witness, in his evidence under cross-examination, stated that the report was so prepared in anticipation of litigation on the dismissal. This points to an employer who wasn't certain that the dismissal was unfair and could be challenged.
70. In the upshot, I am not persuaded that the Respondent discharged their duty under sections 43 and 45[2] of the Act. The summary dismissal was substantively unfair.
71. Having found that the summary dismissal was unfair, I now turn to consider the issue of the reliefs sought.
72. Section 49 [1][c] of the *Employment Act* empowers this Court to grant compensatory relief in favour of an employee who has successfully assailed, through litigation, their employer's decision to terminate their employment or summarily dismiss them from employment. However, it is essential to point out that the exercise of the power is discretionary. It is exercised depending on the circumstances of each case.
73. I have carefully considered the circumstances under which the Claimant's employment was terminated, the Respondent's non-compliance with the law and more specifically regarding procedural and substantive fairness, their act of selectively presenting documentary evidence before this court, and the length of service by the Claimant, and conclude that he is entitled to the relief and hereby grant him, five months gross salary.
74. Having found that the summary dismissal was unfair, and noting that as late as 8th May 2023, during the pendency of this matter that the Respondent was calling the Claimant to pick up his dues, I have no reason the basis on which I can deny the Claimant the salary that he wasn't paid during the time he was under interdiction.
75. The dismissal was without notice. Under the CBA tendered in evidence by the Respondent, he was entitled to three months' termination notice. I hereby grant him pay in lieu of notice.
76. The Claimant sought general damages for defamation [KShs. 2,000,000]. The Claimant didn't place sufficient evidence before this Court to demonstrate that employment defamation or any defamation occurred. I decline the relief.
77. By reason of the foregoing premises, Judgment is hereby entered for the Claimant in the following terms:
 - I. A declaration that the summary dismissal against the Claimant was unfair.



- II. Compensation pursuant to the provisions of Section 49[1][c] of the *Employment Act*, five [5] months' gross salary, KShs. 587, 120.
- III. Unpaid salary during the time he was under interdiction, KShs. 293,660.
- IV. Notice pay, three months' salary, KShs. 352, 272.
- V. A certificate of service to issue in his favour.
- VI. Interest on the sums awarded above at court rates from the date of this judgment till full payment.
- VII. Costs of this suit.

READ, SIGNED, AND DELIVERED THIS 17TH DAY OF JULY 2025.

OCHARO KEBIRA

JUDGE

