



Kenya Plantation and Agricultural Workers Union v Eastern Produce Kenya Limited (Siret Tea Estate) (Cause E025 of 2023) [2025] KEELRC 2080 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2080 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E025 OF 2023
MA ONYANGO, J
JULY 10, 2025

BETWEEN

**KENYA PLANTATION AND AGRICULTURAL WORKERS
UNION CLAIMANT**

AND

EASTERN PRODUCE KENYA LIMITED (SIRET TEA ESTATE) RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the [Labour Relations Act](#) to represent the employees in the agricultural and plantation sector as more specifically set out in the membership clause of its Constitution.
2. The Respondent is described in the Memorandum of Claim as a limited liability company registered under the [Companies Act](#) of the Laws of Kenya and situated at Kericho within Kericho County and carries on business of growing tea which is sold both in the local and international markets.
3. The Memorandum of Claim herein is dated 19th August, 2021 and was initially filed in the Employment and Labour Relations Court at Kericho as Kericho Cause No. E010 of 2021. It was transferred to the Employment and Labour Relations Court Eldoret by a ruling of Hon. Justice Hellen Wasilwa dated and delivered on 12th October, 2023 when the suit was registered under its current number.
4. It is stated in the Memorandum of Claim that the Claimant and the Respondent have a valid Recognition Agreement by virtue of which the Respondent has negotiated several Collective Bargaining Agreements (CBA)s with the Claimant.
5. The suit herein is filed by the Claimant on behalf of the Claimant's members Mr. Dominic Angoya Chadeya (herein after referred to as 1st Grievant) and Mr. Edward Walekhwa (herein after referred to as the 2nd Grievant).



6. The Respondent herein employed Mr. Dominic Chadeya (hereinafter referred to as the 1st Grievant) on 30th June 1994 as a tea estate worker at the Respondent's Sitoi Estate and later as a guard from 2013. He was on 1st April 2017, transferred to Siret Estate in the same capacity, a position the 1st Grievant remained until 24th January 2019 when his service was terminated.
7. The 1st Grievant was suspended on 24th January 2019, on allegations that he had been negligent in performing his duties resulting to the loss of company properties listed, a Makita 9" angle grinding machine tag no SRT/09/2018 and a tractor battery N70 Chloride Exide which had been mounted on tractor registration No. KTCB 539B.
8. The Respondent issued the 1st Grievant a notice to show cause and summon for disciplinary hearing letter dated 25th January 2019 with the hearing expected to be held on 29th January 2019.
9. On 29th January 2019, the disciplinary process took place and the 1st Grievant was summarily dismissed through a letter dated 2nd January 2019.
10. The 1st Grievant appealed against the disciplinary committee's decision via a letter dated 2nd February 2019. The appeal request was granted and conducted on 8th February 2019. The dismissal was upheld and by letter dated 11th February 2019 the 1st Grievant was notified.
11. At the time of his dismissal the 1st Grievant was earning a monthly salary of Kshs. 10,577.93.
12. The Respondent employed Mr. Edward Walekhwa (hereinafter referred to as the 2nd Grievant) on 5th December 1998 as a tea estate worker at the Respondent's Siret Estate. He was later transferred to guard duties, a position the he remained in until 24th January 2019 when his services were terminated.
13. On 24th January 2019, the 2nd Grievant was suspended on allegations that he had been negligent in performing his duties resulting to the loss of company properties listed as a company Makita 9" angle grinding machine tag no SRT/09/2018 and a tractor battery N70 Chloride Exide which had been mounted on tractor registration no KTCB 539B.
14. The Respondent issued the 2nd Grievant a notice to show cause and summon for disciplinary hearing letter dated 25th January 2019 with the hearing to be held on 29th January 2019.
15. On 29th January 2019, the disciplinary process took place and the 2nd Grievant was summarily dismissed through a letter dated 2nd January 2019.
16. The 2nd Grievant appealed against the disciplinary committee's decision via a letter dated 2nd February 2019. The 2nd Grievant's appeal request was granted and conducted on 8th February 2019. The dismissal was upheld by the Respondent and communicated to the 2nd Grievant through a letter dated 11th February 2019.
17. At the time of his unfair dismissal from work, the 2nd Grievant was earning a monthly salary of Kshs. 10,577.93.
18. The Claimant states that the dispute was escalated to the Ministry of Labour and a conciliator was appointed. The conciliator invited the parties to a conciliation meeting on 4th June, 2019 which both parties attended but did not agree. A certificate of disagreement was issued by the conciliator who also prepared a conciliation report.
19. The Claimant avers that the Grievants were not accorded a fair hearing during the internal disciplinary meetings before being unfairly relieved off their duties. That this is against the rules of natural justice since the Grievants followed the Respondent's Standing Instructions for Guards to the latter.



20. The Claimant further avers that the unfair dismissal of the Grievants is clouded with acts of double standards, malice and witch-hunt since the circumstances giving rise to their dismissal involved other employees who were never subjected to similar procedures as the Grievants.
21. The Claimant avers that the dismissal of the Grievants was unlawful, illegal, wrongful and unfair.
22. The Claimant prays that judgment be entered in favour of the Claimant against the Respondent as follows:
 - a. To unconditionally reinstate the Grievants herein;
 - b. To pay the Grievants for the entire period within which they were dismissed.
 - c. To pay the Grievants in respect of all the leave days due to them at the time of reinstatement.
 - d. To pay the Grievants leave and travelling allowance.
2. Should prayer 1 above fail, an order directing, the Respondent to:
 - a. Pay the Grievants gratuity for the years she has served with the Respondent at the rates provided for in the CBA;
 - b. Pay the Grievants house allowance from the time of dismissal until the time of judgement.
 - c. Pay the Grievants monthly salary for a period of twelve (12) months.
 - d. Pay the Grievants in lieu of leave for the period dismissed;
 - e. Pay the Grievants leave travelling allowance for the period of dismissal;
 - f. Pay the Grievants in lieu of notice of termination;
 - g. Pay the Grievants damages for unlawful, illegal and unfair dismissal;
23. The Respondent filed a Replying Memorandum dated 26th October, 2021 through Kibichiy & Company Advocates. The Respondent denies that the Grievants were unfairly dismissed from service by the Respondent. It states that the Grievants were taken through a disciplinary process following which an amicable settlement was reached. A finding that they were guilty of misconduct was reached and they were issued with letters of summary dismissal. The Grievants appealed against their dismissal. The 1st Grievant's appeal was heard on 2nd February 2019 while the 2nd Grievant's appeal was heard on 8th February 2019. The Respondent upheld the decision to dismiss the Grievants and they were informed accordingly by letters dated 11th February, 2019.
24. The Respondent denies that the Claimant is entitled to any of the reliefs sought on its own behalf or on behalf of the Grievants and prays that the Claim be dismissed with costs.
25. At the hearing of the suit the Grievants testified as CW1 and CW2. The Respondent called two witnesses, Kiprotich Magut who testified as RW1 and Peter Kibet Goin who testified as RW2. The parties thereafter filed and exchanged submissions.

Claimant's case

26. CW1 testified that he was employed by the Respondent from 1994 to 2019 when his employment was terminated. He adopted his witness statement and documents filed on his behalf. He testified that on



- 21st January, 2019 he reported on duty at 2 pm and relieved Geoffrey Wanyonyi. He worked until 3 pm when the supervisor sent him home after working for only one hour.
27. In the witness statement the 1st Grievant states that on 19th January, 2019 his duty commenced at midnight which is essentially 20th January, 2019. He was allocated factory patrol duties by the supervisor. He took over from his colleague Mr. Geoffrey Simiyu, after ensuring everything was handed over as required by the Respondent's Standing Instructions for Guards. His shift ended at 6.00 am and he handed over to his colleague Mr. Peter Onyango after confirming everything was in order.
 28. On 21st January, 2019 his shift started at 10.00 pm and he relieved Mr. Edward Walekhwa the 2nd Grievant.
 29. His shift ended at till 6.00 am the following morning when he handed over to Mr. Godfrey Wanyonyi after confirming everything was in order according to policy.
 30. CW1 testified that at around 7.00 am he was called by Mr. Wanyonyi who told him that a tractor battery was missing. At around 10 am when they were at the parade Mr. Wanyonyi reported to the supervisor that a grinder had also disappeared.
 31. CW1 testified that on 25th January, 2019 he was issued with a show cause letter and subsequently summoned to a disciplinary hearing on 29th January, 2019 following which he was dismissed. He appealed and the appeal was not successful.
 32. He stated that the accusations by the Respondent that he was negligent were misplaced and totally in bad faith. That the Respondent had no valid reason to dismiss him from service. That the dismissal was unjustified, that he was a hardworking and disciplined employee and maintained a clean employment record for 25 years that he had worked with the Respondent.
 33. Under cross examination CW1 stated that when he handed over everything was in place, that the battery and grinder got lost after he left work. That he was informed one hour after handing over that the battery was missing and 3 hours after handing over that the grinder was missing.
 34. The Claimant stated that if there is a loss the person taking over is supposed to raise alarm. That the person he handed over to raised alarm after one hour.
 35. He stated that the person at the gate ought to see who reports to work before him as he was patrolling. That the person at the gate has a better view of the tractor which was about 20 meters from the gate.
 36. CW1 stated that he was shown at 9 am that a window had been cut, that at the time he handed over the window had not been cut.
 37. He stated that there were people with them who were not suspended. That Peter Onyango whom he handed over to on 19th was not suspended. That the sentry in the sentry box 20 meters from the tractor on 20th January, 2019 by the name Jerobon was not suspended.
 38. He stated all staff are required to report at 7 am. Some come for the parade then leave.
 39. The 2nd Grievant Edward Walekhwa testified as CW2. He testified that he was an employee of the Respondent from 5th December, 1998 to 27th February, 2019. He adopted his witness statement in which he stated that on 19th January, 2019 he reported to work at midnight and worked until early morning on 20th January, 2019, that he was allocated duties of manning the gate, taking over from Grace Samoei after taking over as was provided in the Standing Instructions for Guards. When his shift ended at 6.00 am he handed over the manning of the gate to his colleague Drucila Jelimo.



40. CW2 stated that on 20th January his shift started at 02.00 pm on factory patrol duties relieving Mr. Peter Onyango. He worked until 10 00 pm and handed over to Dominic Chadeya according to policy.
41. On 21st January, 2019 at 4.30 pm he was allocated factory patrol duties after being recalled following a shortage of guards as Mr. Chadeya had been sent home. He took over from Isaiah Mwale and worked up to 10 pm when he handed over to Mr. Peter Onyango.
42. On 25th January, 2019 he was issued with a notice to show cause, summoned for a disciplinary hearing on 29th January, 2019 and was thereafter summarily dismissed after serving for 25 years with a clean record. His appeal was also dismissed. The union thereafter took over the matter and reported a dispute to the Ministry of Labour.
43. Under cross examination CW2 stated that the grinder and battery did not get lost during his shift. He stated that on 20th January he was at work from midnight and was manning the gate while Dominic Chadeya was doing patrol. That a guard at the gate and the guard on patrol work together. That when reporting to work at midnight he checked and everything was intact. He stated that he was informed about the theft while he was off duty.
44. He testified that the grinder is used during the day. He stated that theft can occur during the day or at night. He stated that there had never been a theft while he was at work. He stated that during the disciplinary hearing and the appeal hearing he was never allowed to explain his case.
45. On re-exam CW2 stated he did not report any loss as there was none during his shift.

Respondent's case

46. RW1 Ambrose Kiprotich Magut testified that at the time material to this suit he was working for the Respondent as Senior Factory Manager and he knows the Grievants. He adopted his witness statement filed on 28th March, 2022 which is undated as his evidence in chief. He further adopted the documents filed by the Respondent as part of his evidence.
47. He testified that the incident that led to the dismissal of the Grievants occurred at around 6 am on Monday morning.
48. Under cross examination by Mr. Saya, counsel for the Claimant, RW1 stated that the theft occurred between 6 pm on Sunday and 6 am on Monday, that the value of the grinder was about Kshs. 25,000 while the battery was about Kshs. 10,000. He stated that the Respondent was not interested in the recovery of the items but to ensure that the premises were safe, that they looked for the items in the morning but did not find them.
49. RW1 could not remember if the incident was reported to the police. He stated there were 4 guards on duty, that the Respondent has standing instructions for handing over by the guards which require that they go round the factory to confirm everything was in order including confirming that all doors are locked, then prepare a report. That there are 2 reports, one for the gate and the other for the factory.
50. He stated that Mr. Dominic Angoya Chadeya, the 1st Grievant who had worked for the Respondent from 1994 and Edward Walekhwa, the 2nd Grievant who had worked from 1998 had no prior disciplinary issues.
51. RW1 testified that the area that was supposed to be covered by the guards measures 5 to 6 acres and has a chain-link and live fence. That one guard is supposed to cover the entire area. That the primary role of the guard at the gate is to check who is coming in and what is going out. That the tractor was parked approximately 20 meters from the sentry box for the guard at the gate but is blocked by the



- weighbridge. That the tractor battery is normally not covered. He testified that the guard at the gate Sally Jerobon was not questioned and did not attend disciplinary hearing but wrote a statement. That she was not disciplined for being negligent at work.
52. RW1 stated that the Respondent may not be able to know when the theft occurred, that Walekhwa handed over at 6 pm and said he saw the grinder, which is usually inside the workshop. He stated that the guards are supposed to see the items they sign for and cannot sign for what is inside a locked building.
 53. He stated that there was a problem in the handing over and that is why all the 4 guards were taken through disciplinary hearing.
 54. Under re-examination RW1 stated that Geoffrey Wanyonyi who took over duties at 6 am and who reported the loss was taken through disciplinary hearing and given a final warning.
 55. RW1 reiterated that he could not tell what time the theft occurred between 6pm and 6am. That the items were present the day before as there were workers who were using them. He stated that Godfrey Wanyonyi was charged with not being serious at the time of handing over and was allowed to continue working because he was the one who brought the theft to light.
 56. RW2, Peter Kibet Goin testified that he worked with the Respondent as General Manager, West Operations. He adopted his witness statement dated 26th February, 2024. He stated that he chaired the hearing of the appeals by the Grievants and is familiar with their case.
 57. Under cross examination RW2 testified that the theft of grinder and battery were reported to the police but they did not follow up the case as they did internal disciplinary process.
 58. He stated that under the Respondent's Standing Orders for guards anything missing is supposed to be reported. That there is an OB at the gate. That another guard can take over when items are missing so long as it is recorded for follow up.
 59. He stated that the battery was in the equipment store while the grinder was in the workshop.
 60. He stated that according to the disciplinary hearing Chadeya, the 1st Grievant presented a false report because the number of the tractor was recorded wrongly. He stated that Walekhwa, the 2nd Grievant was not represented and must have declined representation during the appeal hearing.
 61. He stated the area the Grievants were guarding is probably an acre and a half with buildings, that it is viable to have one guard on patrol.
 62. He stated that the items loss was discovered on the morning of 21st January.
 63. On re-examination RW2 stated that if there is anything missing both the guard handing over and the one taking over are responsible.

The Claimant's submissions

64. The Claimant submitted on three issues whether the termination of the Grievants was wrongful and unjustified; whether the Grievants are entitled to the reliefs sought in the Claimant's Memorandum of Claim and whether the Claimant is entitled to costs.
65. The Respondent submitted that the threshold for termination of employment is set out in sections 43 and 45 of the *Employment Act*, Articles 41 and 50 of the *Constitution* and section 4 of the *Fair Administrative Action Act*. For emphasis the Claimant relied on the decisions in *Anthony Yamo Ibito v*



[Basco Products \(Kenya\) Limited](#) [2022] eKLR and [Kenfreight \(EA\) Limited v Benson K. Nguti](#) [2016] eKLR.

66. For Dominic Chadeya the 1st Grievant it was submitted that he handed over to Geoffrey Simiyu on 20th January, 2019 at 6 am as per Standing Instructions for Guards after ensuring everything was in order. That on 21st January his shift started at 10 pm relieving Edward Walekhwa the 2nd Grievant. That he handed over to Godfrey Wanyonyi at 6 am after confirming that everything was in order.
67. It is submitted that it is only at 7 am, an hour later, that Mr. Wanyonyi reported that the tractor battery was missing. And that again it is not until 9 am that Mr. Wanyonyi reported the grinder was missing. It is submitted that the allegations of negligence against the 1st Grievant were never substantively supported or proved.
68. It is submitted that although the battery alleged to have been lost was only 20 meters away from the gate Sally Jerobon who was manning the gate from 10 pm to 6 am did not record any suspicious activities while Mr. Chadeya was doing patrol duties alone on the expansive factory premises.
69. It is submitted that the Grievant had worked for the Respondent for 25 years without any disciplinary issues.
70. For the 2nd Grievant Edward Walekhwa, it was submitted that he reported to work on 19th January, 2019 at Midnight and was allocated gate duties taking over from Grace Samoei. That when his shift ended at 6 am in the morning of 20th he handed over to Drucila Jelimo.
71. That the 2nd Grievant again reported for duty on 20th January at 2 pm relieving Peter Onyango who was relieved by Mr. Walekhwa.
72. That at 4.30 pm on 21st January, 2019 he was recalled and allocated factory patrol duties when there was shortage of guards. That he took over from Mr. Isaiah Mwale and worked until 10 pm. That he handed over to Mr. Onyango.
73. It is submitted that at the time of reporting of the loss at 7 am on 21st January 2019 Mr. Walekhwa was off duty and there is no way he could have been negligent.
74. It is submitted that the 2nd Grievant had worked for the Respondent for 21 years with a clean record. That there was no valid reason for termination of his employment.
75. The Claimant submitted that having demonstrated that there was no valid reason for termination of the employment of the Grievants, the Claimant is entitled to the remedies sought on behalf of the Grievants. The Claimant relied on the decision in [Kenfreight case \(supra\)](#) and [Iyego Farmers Cooperative Sacco v Kenya Union of Commercial Food and Allied Workers](#) [2015] eKLR.
76. On the prayer for costs the Claimant relied on section 27(1) of the [Civil Procedure Act](#) and section 29 of the [Employment and Labour Relations Court \(Procedure\) Rules](#), 2016 which refers to section 12(4) of the Act.

The Respondent's submissions

77. The Respondent in its submissions identified the issues for determination to be
 - a. Whether there were valid grounds for the termination of the Grievants' contract of employment,
 - b. Whether the proper procedure was followed in the termination, and



- c. Whether the Claimant is entitled to the reliefs sought.
78. The Respondent submitted that the Grievants were issued with suspension notices dated 24th January, 2019 informing them of the reasons for suspension them pending further internal investigations. That investigations revealed that they were negligent in the performance of their duties. That they were issued with show cause letters and summoned to disciplinary hearing. It is submitted that the minutes of the disciplinary hearing produced by the Respondent at pages 1-18 of its bundle of Documents are proof of the same. That the Grievants were dismissed after the disciplinary hearings.
79. It is submitted that the acts of the Grievants constituted fundamental breach of their contracts of employment. Relying on the decision in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR the Respondent submitted that it had valid reasons to dismiss the Grievants.
80. The Respondent further submitted that as held in the case of *Kenya Revenue Authority v Reuvel Waitbaka Gitabi & 2 others* [2019] eKLR, all an employer needs to demonstrate is that it had well founded suspicion of gross misconduct to enable it subject an employee to disciplinary action.
81. On the second issue for determination the Respondent submitted that by letters dated 24th January, 2019 it suspended the Grievants pending investigations. That by letters dated 25th January, 2019 the Grievants were invited for disciplinary hearing which took place on 29th January, 2019.
82. That upon their appeal the Grievants were invited for hearing of the appeals and afforded an opportunity to make representations. That the decision of the disciplinary panel was upheld.
83. It is submitted that the letters of dismissal informed the Grievants of the reasons for dismissal and notified them of their final dues. That the letters communicating the decision of the appeal panel also informed the Grievants of the reasons for rejecting their appeals. That the proceedings of both the disciplinary and appeal hearings are recorded in the minutes which were produced in court.
84. Relying on the decision in *Janet Nyandiko v Kenya Commercial Bank Kenya Limited* [2019] eKLR, the Respondent submitted that it adhered to the provisions of the *Employment Act* and procedures set out therein in terminating the employment of the Grievants.
85. On the prayers sought in the claim the Respondent submitted that having demonstrated that the terminations were for valid reason and complied with fair procedure, the Claimant is not entitled to any of the prayers sought. That the claim is without basis and should be dismissed with costs.

Analysis and Determination

86. Having considered the pleadings and evidence on record as well as the submissions by the parties, the court finds that the issues falling for determination herein are:
- i. Whether the termination of the Grievant's employment was unfair or unlawful;
 - ii. Whether the Claimant is entitled to the orders sought in the Statement of Claim on behalf of the Grievants and on its own behalf.

Whether the termination of the Grievant's employment was unfair/unlawful;

87. The Grievants were dismissed for loss of a tractor battery and a grinder. The tractor, according to evidence on record, was parked about 20 meters from the sentry house at the gate while the grinder was in the workshop.



88. The evidence on record is that the Respondent has Standing Instructions for Guards which provides at paragraphs 6 and 7 that:
6. The security guard prior to taking up his assigned guard duty will be briefed by the security supervisor to ensure he is fully aware of what is required of him.
 7. Security guards when relieving other guards must ensure the guard going off duty briefs him and shows him what he is guarding. The incoming guard must ensure he physically sees items he is responsible for.
89. It is on record that both Grievants handed over at the end of their shifts and went home. The losses were reported by Godfrey Wanyonyi at 7 am and 9 am respectively, an hour and 3 hours respectively, an hour after he took over from Chadeya in the case of the tractor battery, and 3 hours in the case of the grinder. Both Grievants were not on duty when the loss was reported.
90. It was stated that both Grievants were doing patrols at the material time. They were working with other security guards who were manning the gate at the time. The gate was only about 20 meters from where the tractor was parked. The guards manning the gate were never as much as treated as suspects. It is not clear whether they were required to write statements of what transpired while they were at work at the material time. These are Grace Samoei and Sally Jerobon. The gate OB was not produced in court and no evidence was adduced to show whether any person or vehicle entered or left the premises during the relevant period. Was it not more probable for a person 20 meters away to see or hear tampering with equipment as compared to someone who might be patrolling one and a half acres or 5 to 6 acres away?
91. RW1 testified that the area the guards on patrol were required to cover is between 5 and 6 acres. RW2 on the other hand stated that the area is about an acre and a half, with buildings. Clearly whether the area was one and a half acres or 5 to 6 acres, it is clear that one guard cannot effectively patrol such a big area, with buildings. Such an area is too vast and it is humanly impossible for one guard to see or hear what happens all over the place at the same time.
92. Further, both RW1 and RW2 stated that it is not known exactly when the items got lost and no evidence was adduced to indicate when either of the items was lost.
93. The grinder was inside the workshop which was locked. RW1 stated that the guards would only be required to ensure the doors were locked and not to sign for anything inside locked premises which of course they would not be able to see and verify. It is therefore not clear why the Grievants were found guilty for the loss of an item locked inside the workshop which they were not required to take over or hand over.
94. The handing over notes were not produced in court and neither were the statements of Mr. Wanyonyi who reported the losses. There was no investigation report produced in court.
95. The documents titled Minutes of Disciplinary Hearing for both Grievants at pages at pages 19 and 23 do not state what exactly transpired at the hearing or what was said by the Grievants or any of the witnesses who were called to testify.
96. At page 27 of the Respondents Bundle is another document titled “Minutes Of Hearing For Mr. Dominic Chadeya Held In Siret Group Manager’s Office Starting 12.40 Pm”
97. The said minutes read at page 28 as follows in respect of Chadeya:

The chairman proceeded to read the charges raised against the accused as per notification to appear before disciplinary hearing issue on 4th January 2019.



As stated by the chairman, and in the notification to attend a disciplinary enquiry, the notification served to inform the accused of the following breach of company rules procedures.

Negligence in performing duties assigned to him and in particular on Sunday 20th January, 2019 between midnight and 6.00a. . doing factory patrol and between 10pm and 6.0a.m. doing factory patrol whereby the following items were lost.

- i. Makita 9” angle grinding machine tag no. SRT/09/2018
- ii. Tractor battery N70 chloride Exide which had mounted to tractor registration No. KTCB 539B parked approximately 20m away from the guard sentry box belonging to out grower green leaf transport contactor.

The chairman asked the accused if he pleaded guilty or not guilty to the charges.

The accused pleaded not guilty to the charge levelled against him.

The complaint was then called upon to state their case, which she did as follows:

Complainant

The complainant sated as follows:

That the accused was on duty between midnight and 6.00am. on Sunday 20th January, 2019 and 10p.m to 6.0 am. On Monday 21st January 2019.

Two items (Makita angle grinder and tractor battery N70 for tractor KTCB 539B were removed from the company premises and yet the accused who was given the talk of manning the premises did not realize/nor prevent the items from getting stolen. This demonstrated that the accused was negligent in his work and his actions put the company’s name in disrepute.

The accused stated his case as follows:

That he reported to work on 20th January at 10.p.m and took over duty from M. Walekhwa.

They went round the premises as per the standing instructions and checked all items and doors in the premises including the workshop door. They also checked through the door and saw the grinder on the work bench. They checked all the vehicles and satisfied that was well, they ready through the hand over nots and both signed as per procedure.

The accused confirmed that the two items reported to have been lost were available as he was taking over from Mr. Walekhwa and that his colleague Godfrey Wanyonyi took over the same items from him when he left his shift at 6.00pm.

That while handing over to Mr. Wanyonyi, he followed the same procedure where all items and doors were tested, checked and confirmed.

That after one hour, Mr. Godfrey Wanyonyi who had taken over duty from him called to inquire about a missionary. The accused came back one hour after the call at around 8.00a.m. to attend parade.

The accused confirmed that it was not normal for the grinder to be in the workshop as it is usually kept in stores or latheroom during manufacturing hours.



The accused stated that while on parade with other guards, they also received a report that the grinder was missing. The accused together with his colleagues went round in search of the lost items.

The accused further stated that while he was handing over duty to Mr. Wanyonyi, the factory compound was quiet, and that there was no one else in the premises except himself, his colleague and the guard running the factory gate.

Prosecution called in the first witness (Drusilla Jelimo)

The witness stated that she reported to work at 5.20am on Monday 21st January and took over the factory gate from Sally. She took over the sentry box including all items Sally reported that Mr. Chadeya was on patrol and was assisting the MRH team to load MTH team to load their items on the trailer.

The tractor came to the gate where it was inspected and allowed to leave the gate. Shortly after, Mr. Chadeya came to the witness, greeted her and left. The factory clearing team reported on duty shortly before Mr. Chadeya left and proceeded with their clearing works. Mr. Chadeya had handed over duty to Mr. Wanyonyi and about an hour after he left. The witness heard Mr. Wanyonyi complaining that the handing over notes written by Chadeya had handed over duty to Mr. Wanyonyi and about an hour after he left the witness hear Mr. Wanyonyi complaining that the handing over notes written by Chadeya indicated that the battery was available and yet he had been informed by Mr. Chadeya that the battery was missing and was expecting corresponding report. He took his phone and called Mr. Chadeya to confirm the anomaly.

98. The minutes do not mention what transpired during the hearing of the case of Walekhwa.
99. In the letters of dismissal the Grievants are accused of negligence. The letters which are identical, read as follows:

Eastern Produce Kenya Ltd

Private & Confidential

EPK/19/L035/JMJ/CK

2 January 2019

Edward Elekera Walekhwa

C/R NO 550130

Factory Division

Siret estate

Dear Edward

Dismissal Of Service

You are herewith advised that your service with the company has been summarily dismissed following the outcome of a disciplinary enquiry held against you on 29th January 2019 at 11.25 am for breach of the following company rule and/or standards.

Negligence of duty- This happened on Sunday 20th January 2019 between midnight and 6.00am while manning the factory gate and on 21st January 2019 between 2.00pm and



10p.m while doing factory patrol. Your negligence led to loss of the following Company Property.

- iii. Makita 9” angle grinding machine tag no. SRT/09/2018
- iv. Tractor battery N70 chloride Exide which had mounted to tractor registration No. KTCB 539B parked approximately 20m away from the guard sentry box belonging to out grower green leaf transport contactor.

You are advised that, in terms of your Employment Contract, you would be entitled to:

1. No notice pay because of a summary dismissal
2. Record of service
3. Outstanding money in lieu of leave and all days worked.

You are furthermore advised that you have the right to appeal, within two working days of the date of this letter against the outcome of the disciplinary enquiry. Any such appeal must be lodged in writing, addressed to Assistant General Manager, clearly stating the grounds for appeal, which are.

Signed

100. From the evidence on record, it is not clear why the Respondent did not find Wanyonyi more guilty or as guilty, as both the 1st and 2nd Grievants, having taken over duty after confirming that he had received everything in good order from Chadeya as provided in the Standing Instructions for Guards. The reason given by the Respondents that he was considered innocent because he was the one who reported the loss is not convincing. There was no explanation for his failure to notice the loss at the time of taking over as per the Standing Instructions for Guards. He is the one who was negligent for taking over without confirming that everything was in order and must take responsibility for that. Further, there was no reason not to trust both Grievants and trust Wanyonyi when it was obvious Wanyonyi had not complied with the Standing Instructions for Guards.
101. There is no evidence to prove that the losses did not happen between the time Wanyonyi took over and the time when he reported the losses. Further, from the time he took over to the time he reported the losses there is evidence that there were other persons within the premises who could have caused the loss during the time when Wanyonyi was on duty after he took over from Chadeya.
102. There is further no reason why the guards at the gate were not suspected as no mention was made about any breach on the fence around the compound through which the items could have been removed other than through the gate.
103. Section 43 of the Act requires an employer to prove the reasons for termination of an employee. The evidence before the court does not point to the reasons why the Respondent should have picked on the Grievants when there were so many other persons who could have been investigated, more so Wanyonyi whose explanation for reporting the losses an hour and 3 hours after taking over has not been explained.
104. I thus find that there was no reason at all for finding the Grievants guilty of the loss of the tractor battery and grinder.
105. On the disciplinary process, the Grievants stated that they were not allowed to explain what transpired during the hearing. As I have stated above, the minutes on the document titled “Minutes of Disciplinary Hearing” for both Grievants at pages at pages 19 and 23 do not state what exactly transpired at the hearing or what was said by the Grievants or any of the witnesses who were called to



testify. I therefore find that the Respondents did not rebut the averments of the Grievants that they were not given a fair hearing.

106. Other than the averments about having been denied an opportunity to state their case the rest of the process was by and large in conformity with section 41 of the Act.
107. Section 45(2) of the *Employment Act* provides that there must be both valid reason and fair procedure for termination to be fair. Having found that there was no valid reason for the termination, I find that the termination of the Grievants was unfair.

Remedies

108. I will now consider if the Claimant is entitled to the remedies sought in the Memorandum of Claim.
109. The first prayer is an order directing the Respondent to
 - a. Unconditionally reinstate the Grievants
 - b. To pay the Grievants for the entire within which they were dismissed
 - c. To pay the Grievants in respect of all the leave days due to them at the time of reinstatement
110. Reinstatement is provided for in section 49(3) of the *Employment Act* as follows:
 - (3) Where in the opinion of a labour officer an employee's summary dismissal or termination of employment was unfair, the labour officer may recommend to the employer to—
 - (a) reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated; or
 - (b) re-engage the employee in work comparable to that in which the employee was employed prior to his dismissal, or other reasonably suitable work, at the same wage.
111. Section 49(4)(c) and (d) provide that before recommending reinstatement the court must consider -
 - i. the practicability of recommending reinstatement or re-engagement;
 - ii. the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances;
112. The *Employment and Labour Relations Court Act* further provides at section 12(3) that an order for reinstatement of any employee may only be ordered within three years of dismissal.
113. The Grievants were dismissed in February, 2019. The remedy of reinstatement is therefore no longer available to them due to the fact that it is more than 3 years since they were dismissed from employment.
114. The other prayers sought by the Claimant in the alternative to reinstatement are:
 - a. Pay the grievants gratuity for the years she has served with the Respondent at the rates provided for in the CBA;
 - b. Pay the grievants house allowance from the time of dismissal until the time of judgement.
 - c. Pay the grievants monthly salary for a period of twelve (12) months.
 - d. Pay the grievants in lieu of leave for the period dismissed;
 - e. Pay the grievants leave travelling allowance for the period of dismissal;



- f. Pay the grievants in lieu of notice of termination;
- g. Pay the grievants damages for unlawful, illegal and unfair dismissal;
- h. Pay the claimant the cost of the cause;
- i. Interest on (a), (b),(c),(d),(e),(f) and (g)above;
- j. Any other relief this Honourable Court deems fit to grant.

115. The Grievants are entitled to gratuity as provided in Clause 36 of the parties CBA which provides that an employee whose services are terminated after completion of 10 years is entitled to gratuity at the rate of 21 days based on the last salary. The Grievants are thus entitled to gratuity which I award them as provided in the CBA. The Clause reads as follows:

36. Gratuity

- a. An employee who resigns, retires or his/her services are terminated on completion of 10 years continuous and meritorious service with the Associated Companies shall be entitled to 21 days' pay for each completed year of service by way of gratuity, based on the Employee's wages or salary at the time of such resignation or retirement or termination of his/her services.
- b. An employee who is retired on medical grounds on completion of 5
- c. years continuous and meritorious service shall be entitled to 21days pay for each completed year of service.
- d. An employee who is dismissed or terminated for gross misconduct shall not be entitled to gratuity.
- e. An employee whose service is terminated by way of death after serving for five years continuous service shall be entitled to 21 days for each completed year of service.

116. The Grievants are further entitled to 2 months' notice as provided in clause 29 of the CBA which provides as follows:

Termination Of Contract Of Service

After completion of probationary period, employees shall on resignation or nation of service, be entitled to notice or payment in lieu of notice as follows:-

- a. After probationary period up to and including 3 years an employee, except in the case of gross misconduct, shall be entitled to one month's notice of termination of service or pay in lieu and similarly shall give one month's notice to his Employer, or payment in lieu should he/she wish to leave employment.
- b. For employees of 3 to 5 years' continuous service, the employee, except in the case of gross misconduct, shall be entitled to not less than forty five days' notice of termination of service or pay in lieu, and similarly shall give forty five days' notice to his Employer or payment in lieu should he/she wish to leave employment.



- c. For employees of over 5 years continuous service, the employee except in the case of gross misconduct, shall be entitled to not less than 2 months' notice of termination of service or pay in lieu and similarly shall give two months' notice to his Employer or payment in lieu and should he/she wish to leave employment.
- d. A permanent employee shall except in case of gross misconduct receive three warnings in cases of misdemeanor in the presence of the Union representative or if unavailable, the representative to be notified within 24hours. The employee shall be liable to termination on the fourth occasion, but the union representative may be allowed to consult the Management prior to termination.
- e. Management will carry out disciplinary procedures in accordance to The [Employment Act](#) 2007.
- f. Nothing in (a), (b), and (c) above shall prejudice the right of either party to terminate a contract summarily for Lawful cause.
- g. Employees whose services are terminated by way of dismissal, resignation, termination or retirement shall qualify for one way fare to their home of domicile.

- 117. The Claimant did not clarify what the prayer for 12 months' salary at prayer (c) is for. The Prayer is declined for being none specific and therefore vague.
- 118. The Grievants are entitled to leave earned but not taken up to the date of dismissal together with prorated leave travelling allowance as per clause 8 and 9 of CBA.
- 119. The Grievants are entitled to damages for unfair termination in the form of compensation. In this case both Grievants had worked for the Respondent for more than 20 years and were terminated for no valid reason. They each had clean service records. They went home with nothing after working for so many years. Taking into account all these and all the relevant factors in section 49(4) of the Act, it is my view that maximum compensation of 12 months' salary is reasonable in the circumstances. I award each of the Grievants 12 months' salary as compensation.
- 120. The Respondent shall pay Claimant's costs which I assess at Kshs. 100,000 all-inclusive to cover reimbursements and reasonable expenses associated with the suit in view of the fact that the Claimant was represented by an official of the union.
- 121. Interest shall accrue at court rates from date of judgment.
- 122. The Respondent will tabulate the terminal dues according to this judgment and share with the Claimant for consensus. A mention date will be taken at the time of delivery of judgment for confirming the amount payable to each Grievant and for final judgment on the quantum.

DATED, SIGNED AND DELIVERED VIRTUALLY ON

THIS 10TH DAY OF JULY, 2025

MAUREEN ONYANGO

JUDGE

