



**Oliech v Komaza Forestry Limited (Cause E001 of 2023)  
[2025] KEELRC 1991 (KLR) (8 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1991 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
CAUSE E001 OF 2023**

**M MBARŪ, J  
JULY 8, 2025**

**BETWEEN**

**ALLAN OCHIENG OLIECH ..... CLAIMANT**

**AND**

**KOMAZA FORESTRY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The respondent employed the claimant as a sales manager on 28 September 2020 at a monthly salary of Ksh. 225,000. He worked until 16 September 2022, when he was summarily dismissed.
2. The claim is that the termination of employment was devoid of due process, and no payment of terminal dues was made. This caused the claimant mental anguish and financial embarrassment since he could not pay for his upkeep, his family and was unable to meet his financial commitments. The claimant claimed the following;
  - a. Damages for unlawful termination of employment for 12 months, Ksh.2,700,000;
  - b. Costs of the suit.
3. The claimant testified that upon being employed by the respondent, he worked diligently until he was issued the notice to show cause dated 26 August 2022. The respondent made four allegations against him that were incorrect. The respondent alleged that;
  - a. The claimant failed to follow pricing instructions as per the email dated 15 August 2022, in which it was proposed that all stock at Olkalou be offered at Ksh. 40 and stock at Ksh. 50 at the Kamakis depot.
  - b. The claimant confirmed by email on 15 August 2022 that he would implement the proposal. Further plans to deliver sawn timber to Gikomba Market were made, and KD materials were delivered on 19 August 2022; however, they were not sold at the proposed prices.



- c. The claimant proceeded to sell at a different price without obtaining approval for the price change. He failed to consult on the new price that he had offered, despite the WhatsApp group set up for real-time communication and consultation.
  - d. The claimant's update on WhatsApp stated that everything delivered to Gikomba had been sold, and there was no mention of rejects, which only came to light during the discussions on 22 August 2022. The claimant also mentioned that nobody would buy the Komoza kiln-dried material because it was of inferior quality, with cracks and bends. With this attitude and mindset, the claimant was unable to encourage the sales team to sell what was currently being produced.
4. The claimant denied these allegations, stating that upon receipt of Esther's email, he was not privy to the details set to his supervisee, Emmanuel, and hence could not address them.
  5. On 16 August 2022, he held a virtual meeting with his sales team to address the challenge and develop a plan for the new developments. He asked the team to meet at the Kamakis depot. He proposed new strategies to the sales team and updated Esther, the consultant.
  6. In response to the show cause notice, the claimant stated that the sales team members had been trained, and there was no formal request to review the sale prices in Gikomba. He asked Emmanuel to visit the market to generate interest before the material was delivered. He had a list of potential customers for the sales. The claimant had other markets to attend to in Ngong, and overall, he kept the sales team informed.
  7. Regarding the allegations made, the claimant denied they were accurate. The pricing issue in Olkalou and Kamakis was based on the supervisor's advice. At Gikomba market, the supervisor issued instructions on stock sales, and the team was tasked with engaging with customers.
  8. Regarding pricing, this was not part of his job description. The sales team had been assigned their respective mandates, and Emanuel was responsible. All time was sold at the specified price.
  9. Regarding the question of work attitude, the claimant testified that part of his duties included providing feedback to his superiors. Being in the market gave him a good perspective. He shared his views with the respondent.
  10. The claimant testified that after responding to the show cause notice, he was invited to a disciplinary hearing in the presence of his colleague. His case was that he had no warning or notice before the disciplinary hearing and was not provided with the minutes. The person taking the minutes was attending virtually from Kilifi while he was in Nairobi. He was then issued with a notice of summary dismissal. This caused distress and hardship, as he is a father and primary caregiver. Following the summary dismissal, he was unable to support his family or meet his financial commitments and was forced to relocate to the village. Due to the respondent's summary dismissal, he is unable to secure new employment and has also missed several job opportunities.
  11. Due to the unfair termination of employment, his claim should be allowed with costs.
  12. The claimant called Emmanuel Akuno as his witness. He testified that the claimant was his supervisor, who was supporting the sales team. The claimant gave him support and negotiated prices. On 18 August 2022, he made a sale at Gikomba Market, and the claimant was present.
  13. During cross-examination, the witness admitted that in his statement, he mentioned that at the time of his sales at Gikomba market, the claimant was in Ngong. The claimant was not present during the



- negotiations, and he sold timber for Ksh. 31. This was against policy. He consulted the supervisor, Muthama, rather than the claimant, who was his direct supervisor.
14. In response, the respondent admitted that the claimant was employed under a contract dated 28 September 2020 as a sales manager. The claimant had his job description, yet he failed to perform his duties diligently.
  15. On 16 September 2022, the claimant was dismissed from his employment for justifiable cause. Under his contract, the claimant was required to perform his duties efficiently and satisfactorily, supervise and support the sales officers by monitoring the implementation of sales by the sales team, and track and record sales activities and data for internal reporting. As the claimant breached the terms of his contract, the respondent had the right to terminate his employment. Summary dismissal was allowed when the claimant failed to follow lawful and proper directions from the employer.
  16. On 22 August 2022, a report of the claimant's misconduct was submitted to the respondent's Talent Services Department by Esther Muthama, the respondent's Business Development and External Relations Consultant. On 26 August 2022, the claimant was issued with a show cause notice on the basis that;
    - a. The claimant had failed to follow the pricing instructions as per the email of 15 August 2022, which proposed that all timber stock at the Ol Kalou depot be offered at Ksh. 40 and all timber stock at the Kamakis depot will be offered at Ksh. 50.
    - b. Selling the timber at a different price from the one instructed,
    - c. Providing misleading communication on the timber sales,
    - d. Failing to exercise professionalism by making unprofessional utterances on the quality of the time, despite being responsible for driving the sales.
  17. The claimant responded to the notice in writing on 30 August 2022, and it was deemed unsatisfactory. By letter dated 5 September 2022, the respondent invited the claimant to a disciplinary hearing scheduled for 9 September 2022, at which he was to bring another employee of his choice.
  18. The claimant attended the disciplinary hearing and made his representations. The disciplinary panel considered the respondents and established that the claimant;
    - a. Had failed to supervise and provide adequate support to his sales team, resulting in the sale of the respondent's timber stock at less than the fixed price, resulting in losses.
    - b. Failing to monitor and implement sales activities by leaving an enormous task to a sales officer without supervision,
    - c. Failing to report sales activities concerns arising on the required channels and deviating from express instructions from his supervisor without any consultations or communication,
    - d. Failing to exercise professionalism by making unprofessional utterances on the quality of the timber, despite being the person in charge of driving the sales.
  19. According to his contract, the respondent summarily dismissed the claimant via a notice dated 16 September 2022. The claimant was paid his terminal dues of Ksh. 217,500, less statutory deductions. This included salary up to 19 September 2022, and 10 accrued leave days. The claimant had a right of appeal, which he failed to address.



20. Regarding the bonus claim, it is paid quarterly, with the third quarter for 2022 accrued in October 2022. The claimant's sales target for the third quarter was Ksh. 13,803,720, and he achieved 77%, amounting to Ksh. 10,563,164.29. The claimant was entitled to Ksh. 135,882.35 less statutory deductions of Ksh. 102,734. The bonus was paid on 14 October 2022.
21. The claim for unfair termination is without merit and should be dismissed with costs.
22. In evidence, the respondent called Peter Aminga, the human resource consultant. He testified that the claimant was a sales manager supervising the sales team. The claimant was supervised by Esther Mutuma, who reported acts of misconduct and failures to follow pricing instructions as per communication made on 15 August 2022. The supervisor instructed the claimant, as the sales manager overseeing the sales team, to sell timber at Ol Kalou for Ksh. 40 and the stock at Kamakis for Ksh. 50. However, the sales team sold the timber at Ksh. 31, resulting in losses for the respondent.
23. The claimant was found to have provided inaccurate and misleading information to his sales team and was unprofessional in sharing information about the quality of timber, despite being the sales manager.
24. There were four major complaints against the claimant. His conduct was contrary to the respondent's policy. In response to the show cause notice, the claimant failed to provide proper explanations. He was invited to a disciplinary hearing, and it was established that the claimant failed to offer support or supervision to the sales team. He failed to report sales activities, resulting in different prices without the respondent's approval. This resulted in the termination of his employment, as per a notice dated 19 September 2022, and he received his terminal dues.
25. At the close of the hearing, both parties agreed and filed written submissions.

### **Determination**

26. Based on the pleadings, evidence, and written submissions analysed, the issues that emerge for determination are whether there was an unfair termination of employment and whether remedies should be issued.
27. Through a notice dated 16 September 2022, the respondent dismissed the claimant from his employment because;
  - a. Poor management of the Gikomba sales and failure to provide adequate support to the sales officer, Emmanuel,
  - b. Entrusted the sales to a sales officer without an adequate supervisor,
  - c. Failed to take proactive steps in communicating the issue to your supervisor and in professionally handling the next steps.
28. The claimant was found to have failed in his duties, resulting in his summary dismissal. The particulars were detailed under each charge.
29. Under Section 44 of the *Employment Act*, an employer is permitted to terminate employment by summary dismissal if the employee breaches a fundamental condition of the employment contract, such as failing to take proper instructions from the employer. For such breaches, the employer is permitted to invite the employee to attend and make their representation, as per Section 41(2) of the *Employment Act*, as held in *Unilever Tea Kenya Limited v Kenya Plantation & Agricultural Workers Union* [2025] KECA 830 (KLR). The court should consider the entirety of the evidence before it, including evidence presented during cross-examination, and focus on the sufficiency and credibility of the evidence in support of the allegations.



30. In the case of *Elsa’s Kopje Limited v Mwendwa* [2025] KECA 725 (KLR), the court stated that an employer can dismiss an employee without notice if their conduct is deemed a fundamental breach of the employment terms.
31. Under the employment contract dated 28 September 2020, clause (6) outlined the claimant’s core duties under Schedules 1 and 3.
- The core duties included;
- a. Supervise the sales team (80%),
  - b. Create sales plans and strategies with the sales operations director (20%),
  - c. Manage yard sales officers.
32. The claimant admitted he received the email dated 15 August 2022, but it was addressed to Emmanuel. He received an email from Chris on the same date, confirming the mass market sales strategy, which he then forwarded to the sales team as his supervisor. On 16 August 2022, he held a virtual sales team meeting to discuss sales, as communicated by his supervisors.
33. The claimant testified at length that he guided his sales team on the sales properly and that the sales made by Emmanuel at Gikomba Market were according to the pricing list. He was present but had to leave for Ngong to undertake other duties.
34. Emmanuel was called as a witness. Initially, he testified that he received support for the claimant. Still, upon cross-examination, he admitted that at the time of negotiating and making sales at Gikomba Market, the claimant was not present. He had left for Ngong.
35. At the heart of the dispute here is the claimant’s role in supervising his sales team, developing sales plans and strategies with the sales operations, and managing yard sales officers.
36. As a result of failing to manage the Gikomba market sales, the claimant left Emmanuel unsupervised, instead of selling timber at Ksh. 50, he sold it at Ksh. 31, which was not the recommended price. Emmanuel confirms in evidence that he had no support from his supervisor, who left him to see what he could do.
37. It is apparent from the email communications on 15 August 2022 that the respondent was concerned with pricing and sales at the Ol Kalou and Kamakis depots. This led to directives on pricing at Ksh 40 and Ksh 50, respectively. The role of the claimant was to adequately supervise the sales officers to ensure they followed the policy guidelines. As the sales manager, the claimant was responsible for the sales team and could not decline responsibility where the team under his supervision failed in their duties. To assert that each employee had a job description and the sales officers, including Emmanuel, had duties separate from their own is to miss the point. As the team leader, the overall job description for the claimant was to ensure the sales officers had adequate supervision, which was lacking when he sold timber at Ksh 31 instead of the recommended price of Ksh. 50.
38. Regarding the alleged failure to proactively communicate with his supervisor professionally, as the claimant submitted, as the sales manager, he had a duty to provide feedback to the respondent. Stating that the products in the market were of poor quality constitutes such feedback. Labelling this as unprofessional is a refusal to accept input. Using this matter as a reason for summary dismissal due to failure to follow lawful and proper instructions is subjective and constitutes a refusal to consider alternative views.



39. The grounds for summary dismissal due to breach of contract only relate to the claimant's failure to support the sales officer at Gikomba and to provide adequate supervision. These were rated highly as performance indicators under his contract, at 80% and 20% respectively.
40. The claimant was given due process, allowed to urge his case, and called Emmanuel as his witness. The responses were taken into consideration, leading to termination of employment by summary dismissal.
41. The court finds the grounds for summary dismissal were justified. The claimant received his final dues, including earned bonuses for the sales made. The claim for compensation does not arise when summary dismissal is deemed justified.
42. Accordingly, the claim is without merit and is dismissed. Each party is to bear its costs.

**DELIVERED IN OPEN COURT AT MALINDI, THIS 8 JULY 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Davis Wekesa

..... and .....

