



**Kenya plantation & Agricultural Workers Union v Unilever Tea [Kenya] Limited  
(Cause E023 of 2023) [2025] KEELRC 2398 (KLR) (29 August 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2398 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
CAUSE E023 OF 2023**

**J RIKA, J**

**AUGUST 29, 2025**

**BETWEEN**

**KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT**

**AND**

**UNILEVER TEA [KENYA] LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed its Statement of Claim on 27th October 2023.
2. The Claim is brought on behalf of 2 former Employees of the Respondent, who are members of the Claimant Union, Joseph Kirui and Joram Cheruyiot, [herein called the ‘Grievants.’ ].
3. The Grievants were employed by the Respondent on 1st July 2011, as General Workers.
4. They were assigned duty by the Respondent on 3rd February 2021, within the Respondent’s Harare village, to repair doorsteps and bathrooms.
5. In the course of their duty, they came across a waterborne toilet, that had been cordoned off and left open. On getting to the toilet, they found that some nails used to shut off the toilet had been removed.
6. They decided to remove some nails from timber which was inside the toilet, and try and shut the waterborne toilet.
7. While at it, a Security Guard, Janet Too, approached them, enquiring what they were doing in the toilet. They explained what they were doing, and Janet told them to continue working.
8. They were later on 25th February 2021 called to office by Assistant Manager Jared Mwema, and issued letters to show cause.
9. They were alleged to have attempted to vandalize the Respondents electricity meter box, in the waterborne toilet, in violation of the Respondent’s code of business principles and policies.



10. They replied on 26th February 2021, explaining that they were not vandalizing the meter box, but were trying to shut off the open toilet.
11. They were issued disciplinary hearing notices dated 27th February 2021. Hearing was scheduled for 1st March 2021.
12. They explained again at the hearing, that they did not vandalize the meter box, but were only fixing the toilet. The Security Guard Janet, in her statement alleged, that she found one of the Grievants touching the meter box. This was incorrect. The meter box was at height that would require the use of a ladder, to be touched. There was no witness to corroborate Janet.
13. The Grievants were issued letters of summary dismissal on 31st March 2021. They were advised that they had violated the Respondent's code of business principles and policies, and the CBA.
14. They lodged an Appeal. They were heard on 20th May 2021. The decision to summarily dismiss them was sustained.
15. The Claimant reported the existence of a trade dispute to the Ministry of Labour.
16. The parties were heard by the County Labour Officer Kericho. The Conciliator recommended that the Grievants are each paid 6 months' salary in compensation for unfair termination, and terminal benefits.
17. At the time of dismissal, they were earning Kshs. 15,931 each in monthly salary.
18. They submit that there was no valid reason, justifying dismissal. They were condemned on the evidence of a single witness, which was uncorroborated. They did not touch the electricity meter box. It was too high to be reached without a ladder.
19. They worked for more than 9 years each. Their disciplinary records were clean. They were dismissed without terminal benefits.
20. The Claimant prays for: -
  - a. Declaration that termination of the Grievants' contracts was unfair and unlawful.
  - b. Reinstatement.
  - c. Accrued salaries for the time the Grievants have been out of employment.
  - d. Alternatively,
    - i. Gratuity under the CBA.
    - ii. Notice.
    - iii. Leave.
    - iv. Leave traveling allowance.
    - v. Compensation equivalent of 12 months' salary.
    - vii. Damages for unfair and unlawful dismissal.
  - e. Costs.
  - f. Interest.
  - g. Any other suitable relief.



21. The Respondent filed its Statement of Response dated 2nd December 2023. It is conceded that the Grievants were employed by the Respondent as pleaded. They were summarily dismissed on 31st March 2021, for breach of Respondent's code of business principles and policies on protection of the Respondent's property. They attempted to vandalize and steal the Respondent's electricity meter box.
22. They were issued letters to show cause. Their responses were unsatisfactory. They were heard, and a decision taken to summarily dismiss them. They acted in collusion with other persons.
23. The Respondent had valid reason to summarily dismiss the Grievants. They were issued Certificates of Service, dated 19th September 2023. The Respondent urges the Court to dismiss the Claim.
24. The Grievants, and the Respondent's Estate Manager Mercy Chirchir, gave evidence on 25th June 2025, closing the hearing.
25. The 1st Grievant, Joseph Kirui, relied on his witness statement and documents filed by the Claimant, in his evidence-in-chief. He reiterated the averments in the Statement of Claim, principally that he and his colleague were repairing the toilet, and not vandalizing or attempting in any way to steal, the electricity meter box.
26. Cross-examined, he told the Court that he was assigned repair work, on 3rd February 2021. He was found by Janet near the toilet, not in it. He had not been assigned duty at the toilet. The meter box was inside the toilet. Janet enquired what the Grievants were doing. The Grievants were issued letter to show cause. They responded. They were invited for disciplinary hearing. It was in accordance with the CBA and human resource policy. He was found to have acted against the Respondent's code of business principles and policies. Redirected, he underscored that he did nothing, beyond repairing the toilet.
27. Joram Cheruyiot likewise relied on his witness statement and documents filed by the Claimant. He was involved in masonry. He was assigned repair work on 3rd February 2021. He and his colleague found that the toilet also, needed some repair. They repaired the door which they found open. Janet found them at work and enquired what they were doing. They were thereafter heard and summarily dismissed.
28. Cross-examined, Joram confirmed that they had been assigned repair work. It was outside the toilet. He received the letter to show cause. He responded and was taken through a disciplinary hearing. It was in accordance with the CBA and human resource policy. Redirected, he told the Court that he did not go into the toilet, intending to steal the electricity meter box.
29. Mercy Chirchir adopted her witness statement and documents filed by the Respondent, in her evidence-in-chief. She explained that the Grievants were assigned duty at the village [workers' residences], within Koiwa Estate. They were found inside the toilet, which was not their assigned area of work. They were trying to remove the electricity meter box. They were issued letter to show cause. They replied. They were heard and summarily dismissed. Procedure was in accordance with the CBA, human resource policy and the *Employment Act*.
30. Cross-examined, Mercy told the Court that she was not aware of the Grievants' involvement in other fraudulent activities. Her witness statement states that their records were blemished. She did not have evidence of blemish.
31. She was informed about the attempted theft, by a Security Guard. The Guard recorded a statement. Mercy did not exhibit that statement. The Guard did not attend hearing. She was not cross-examined by the Grievants. They did not apply for her attendance. They were aware that the Guard recorded a statement. Mercy was not present at the disciplinary hearing. She was not involved in investigation.



There was a team which investigated. The Grievants were dismissed for violating the Respondents code of business principles and policies.

32. They tried to vandalize and steal the Respondent's meter box. There was no witness to vandalization and attempted theft, other than the Guard.
33. Redirected, Mercy clarified that the statement of the Guard, and the investigation report, were produced at the disciplinary hearing. The Grievants did not challenge their production.
34. The issues are whether the Grievants' contracts of employment were terminated by the Respondent following a fair procedure under Sections 41 and 45 of the Employment Act; whether termination was based on valid reason[s] under Sections 43 and 45 of the Employment Act; and whether the remedies sought are merited.

**The Court finds: -**

35. The Grievants are members of the Claimant Union. They were employed by the Respondent on 1st July 2011, as General Workers. The Respondent has a Recognition Agreement with the Claimant Union, and has concluded several CBAs with the Claimant Union.
36. The Grievants seem to have graduated from general work to masonry, and were assigned repair work by the Respondent, on 3rd February 2021, at the Koiwa Estate, at a village [ farm residences], christened Harare, after the Zimbabwean capital city.
37. Parties agree that repair work was assigned outside the waterborne toilet, but the Grievants were found by Janet the Security Guard, inside the toilet.
38. Procedure. After the Grievants were found at their undesignated area of work, suspected of attempting removal of the Respondent's electricity meter box, they agree that they were issued letters to show cause; the charges were communicated; they responded to the letters; they were invited to attend disciplinary hearing; they were advised of their right to be accompanied to the hearing by a colleague or shop steward; they were heard; a decision to summarily dismiss them was made, and communicated in the letter dated 31st March 2021; they appealed through the Claimant on 8th April 2021; the appeal was heard by a committee presided over by Divisional Manager Koiwa Estate, Walter Tanui; and the decision to summarily dismiss the Grievants sustained.
39. The Claimant Union reported the existence of a trade dispute to the Ministry of Labour. Parties were heard by the Conciliator, and a report dated 8th June generated.
40. Procedure was fair and in conformity with the minimum statutory standards of fairness under Sections 41 and 45 of the Employment Act. It conformed to the CBA and the human resource policy applicable to the Grievants' contracts of employment.
41. Validity. The evidence justifying summary dismissal was sketchy, and not sustainable. It was not enough for the Respondent to produce the investigation report and a witness statement at the disciplinary hearing, in light of the Grievants' denial that they were found vandalizing and attempting to steal the Respondent's electricity meter box.
42. Why was the investigator and the eyewitness not brought before the disciplinary hearing committee?
43. The employment offence alleged against the Grievants, was an inchoate employment offence. It was an attempted theft. It needed to be shown under Section 43 of the Employment Act, that indeed, the Grievants attempted theft. It needed to be shown that their presence at the waterborne toilet,



- was inconsistent with their role of general work or masonry. Their explanation for being at the toilet, needed to be discounted.
44. The Respondent pleads that the offence was committed in collusion with others. These others did not feature in the evidence before the disciplinary hearing committee, or indeed the evidence presented before this Court by the Respondent.
  45. The allegation appears to have been speculative, never graduating into genuine and valid reason, under Section 43 of the *Employment Act*.
  46. The Grievants gave a reasonable account of their presence inside the waterborne toilet. They found the toilet in need of repair. They explained that they were removing some nails from some timber inside the toilet. They intended to use the nails, to repair and shut off the toilet.
  47. They explained further, that the meter box was fixed high up, and they would need a ladder, to reach it.
  48. All this in the view of the Court, was reasonable explanation, which was not discounted by eye-witness account of the Guard, or any other witness.
  49. It is noted that the Grievants were General Workers, and repair of a toilet would seem to the Court, to be within their normal duty. The toilet was open. The Grievants were not alleged to have broken into the toilet. They found it open, and took the initiative to immediately repair it, so that it does not remain open.
  50. If they undertook repair at the toilet in good faith, and in the absence of evidence that they were attempting to steal the meter box, they would be deemed to have acted in protection of the Respondent's physical asset. They appear to have acted in accordance with the implied duty to act in good faith, by repairing the Respondent's broken toilet.
  51. The Respondent states in the letter of summary dismissal, that its decision was based on the evidence of all the parties. It does not specify which evidence by the Respondent, established that the Grievants were caught vandalizing, and attempting to steal, the Respondent's meter box.
  52. Mercy Chirchir's evidence before the Court, did not help the Respondent in establishing validity of reason.
  53. She told the Court that:-
    - a. I was informed about the attempted theft by a Security Guard.
    - b. I was not at the scene.
    - c. The Guard recorded a statement.
    - d. I have not exhibited the statement.
    - e. The Security Guard did not attend the hearing.
    - f. There were no witnesses who witnessed vandalization and the attempted theft, other than the Guard
  54. The evidence relied on by the Respondent in justifying termination, was tenuous, and did not satisfy the demands of substantive justice, under Sections 43 and 45 of the *Employment Act*.
  55. On this account, the Court is persuaded that termination was unfair.



56. Remedies. The prayer for reinstatement is foreclosed under Section 12 [1] [vii] of the *Employment & Labour Relations Court Act*, which places a limit of 3 years on grant of the remedy, from the date of termination. Termination was on 31st March 2021, over 4 years ago.
  57. The prayer for payment of back salaries, in the absence of an order for reinstatement, is unsustainable.
  58. On the alternative prayers, the CBA negotiated, executed and registered by the parties, restricts gratuity to Employees with a minimum of 10 years' service.
  59. The CBA does not extend the benefit to Employees such as the Grievants, with 9 years of service. Parties should perhaps re-negotiate the clause, so that the minimum years of service is lowered, or even the benefit extended to all exiting Employees on pro rata basis. 9 years' service is a long period, to walk away from employment without recognition and reward.
  60. The Claimant does not seek other forms of service benefits, and the prayer for gratuity under the CBA is declined.
  61. Clause 25 [c] of the CBA provides for notice of not less than 2 months, for Employees with over 5 years' continuous service. Both Grievants qualify for this benefit, and are granted notice of 2 months, at Kshs. 31, 862 each.
  62. Leave, leave traveling allowance and general damages for wrongful dismissal are prayers that have not been supported by the evidence availed to the Court by the Claimant. It is not specified what annual leave and leave traveling allowance was owed to the Grievants, at the time of termination. The Claimant has not justified the pursuit of general damages, in addition to statutory compensation.
  63. The prayer for compensation is merited. The Grievants worked for 9 years each. They were paid nothing on termination. They did not cause, or contribute to the circumstances leading to termination. Their records were clean. They both told the Court that they have remained unemployed. The Conciliator found that they were not entitled to gratuity, and recommended compensation equivalent of 6 months' salary.
  64. The Court has taken into account the period the Grievants served, and their lack of access to gratuity, and is of the view that they merit more than 6 months' salary in compensation. They are granted equivalent of 9 months' salary each in compensation for unfair termination, at Kshs. 143,379.
  65. Costs to the Claimant.
  66. Interest allowed at court rate, from the date of Judgment, till payment is made in full.
- It is ordered: -
- a. It is declared that termination was unfair on account of lack of valid reason.
  - b. The Respondent shall pay to the Grievants through the Claimant: 2 months' notice at Kshs. 31,862 each; and compensation for unfair termination, equivalent of 9 months' salary each, at Kshs. 143, 379 – total Kshs.175, 241 each.
  - c. Costs to the Claimant.
  - d. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, PURSUANT TO RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 29<sup>TH</sup> DAY OF AUGUST 2025.**

**JAMES RIKA**



**JUDGE**

