



**Mwangi v Solio Ranch Limited (Cause E034 of 2024)
[2025] KEELRC 2390 (KLR) (29 August 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2390 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E034 OF 2024
ON MAKAU, J
AUGUST 29, 2025**

BETWEEN

STANLEY NJOROGE MWANGI CLAIMANT

AND

SOLIO RANCH LIMITED RESPONDENT

JUDGMENT

1. The claimant worked for the respondent from 1st May 1993 to 25th February 2022 when he was summarily dismissed. By his Memorandum of Claim dated 12th August 2024 he contended that the dismissal was unfair and unlawful and prayed for the following reliefs: -
 - a. A declaration that his termination was unfair and unlawful.
 - b. Three months' salary in lieu of notice $(80,770 \times 3) = 242,310$
 - c. Compensation for unlawful termination at 12 months $(80,770 \times 12) = 969,240$.
 - d. Gratuity @ 15 days for 28 years completed $(80,770 \times 15/30 \times 28) = 1,130,780/-$
 - e. Leave days @ 30 days per year for the years 2018-2019, 2019-2020 and 2020-2021 $(80,770 \times 3) = 242,310$.
 - f. Ten (10) off days worked $(80,770 \times 10/30) = 26,923/-$
Total Kshs.2,611,563/-
 - g. Cost and interest.
2. The respondent filed a Memorandum of defence dated 8th November 2024 admitting that it summarily dismissed the claimant on 25th February 2022. However, it denied liability for unfair termination



contending that the reason for the dismissal was gross violations committed by the claimant. Therefore, it prayed for the suit to be dismissed with costs for lack of merits.

Facts of the case

3. The claimant was employed by the respondent as a Workshop Manager from 1st May 1993 starting with a basic salary of Kshs.55,000 which was later increased to Kshs.80,770. He worked for 28 years 10 months before he received a termination letter dated 25th February 2022. The reason for the termination was alleged theft of the employer's property that were found in the claimant's private property after investigations. The termination came after he was arrested by the police and charged in Nyeri CMCR case No.230 of 2022.
4. The claimant was acquitted of theft charges but was convicted for handling stolen property. He appealed in Nyeri HCCRA No.E065 of 2023 and the conviction was quashed and the court directed that the recovered items be returned to the claimant. The state attempted to appeal against the decision of the High Court out of time but without success as the Court of Appeal dismissed the application for extension of time.
5. During the hearing of this suit, the claimant testified as CW1. He basically adopted a written statement dated 12th August 2024 as his evidence in chief and produced 12 exhibits. In brief, his evidence is that he never stole anything from the respondent and he was also not accorded any opportunity to defend himself in a hearing before the termination. That he was denied a chance to produce documents to prove that he was gifted with the items. He contended that he was never served with any warning letter during his 28 years of service.
6. He prayed for the reliefs sought contending that he was not paid any of the items claimed in this suit. He contended that his appointment letter entitled him to gratuity pay at the rate of 15 days pay for each year served. He also contended that he had accrued leave for 2018-2021 plus 10 off days. Therefore, he prayed for the reliefs sought in his claim.
7. On cross-examination, he stated that he learned of the alleged theft when DCI officers arrested him at the place of work and took him to his house and pointed items that were from the respondent including seats, metal gates, water pipes, metallic water tank and water bowser. Despite explanation that the items were gifted to him by respondent's General Managers, the police charged him with stealing but he was acquitted and no appeal was pending in court.
8. On further cross-examination, he admitted that there were some items that he did not have documentary proof that they were gifted to him. He further admitted that there were no documents from the Board of Directors but only letters from General Manager Edward and others authorising him to take away the items. He admitted that he did not know whether Edward was the owner of the Company or a Director but all he knew was that he was the top most officer in the Ranch. He stated that the documents making the gifts were signed.
9. The respondent's General Manager, Mr. Kevin Carr-Hartley testified as RW1. He also adopted a written statement dated 27th January 2025 as his evidence in chief and then produced 8 documents as exhibits. In brief his evidence was that he joined the respondent as General Manager on 10th January 2022 and within weeks he received reports from the general staff about theft of company property. The items were said to be in persons' private homes.
10. He then notified the Board of Directors and photographs were taken before informing the police. DCI officers from Nyeri and Kiawara came to the Ranch and took the claimant and another employee,



David Chege and escorted them to their homes. Items belonging to the Respondent were recovered from claimant's private home but some were released to the claimant from Kiawara police station.

11. RW1 confirmed that the claimant was dismissed after receiving evidence from the police that the respondent's property was found in the claimant's private home. He contended that the claimant did not have any documents to prove that he was gifted the items by the Board of Directors. He contended that, only the Board of Directors can gift an employee with Company items through a letter.
12. On cross examination, he stated that the photographs produced as exhibits were taken at the claimant's home before the police went for the claimant at the Ranch. He contended that the police told him they found and photographed motor cycles loaded with the company items ready to leave the claimant's home. Other items were found covered with freshly cut nappier grass.
13. He contended that the claimant was convicted by the trial court for handling suspected stolen goods but the High Court quashed the conviction on appeal. He contended that the office of prosecution had preferred an appeal.
14. He reiterated that the claimant was found with company property in his private home without any written authority and he was dismissed from employment. He admitted that the claimant was never accorded any disciplinary hearing but he was paid all his terminal dues. He denied that the claimant was dismissed while due for retirement in order to deny him terminal dues. He admitted that the respondent did not file claimant's leave records or any evidence to prove that he was paid gratuity.
15. After the close of the hearing, both sides filed written submissions. Having considered the pleadings, evidence and the submissions the following issues fell for determination: -
 - a. Whether the respondent terminated the claimant's employment contract unfairly/unlawfully
 - b. Whether the reliefs sought are merited.

Unfair termination

16. Section 45 (1) & (2) of the [Employment Act](#) provides that:

- “(1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employee's conduct, capacity and compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”

17. The above provision is clear that for termination to pass muster, it must be grounded on a valid reason, and fair procedure must be followed. It is also clear that the burden of proving the said essential



elements of fair termination rests with the employer once the employee contests the termination as unfair and unlawful.

Reason

18. The reason for the termination of the claimant's employment was captured in the termination letter dated 25th February 2022 which is copied below: -

“Letter of Termination

To Mr. Stanley Njoroge Mwangi

National ID No.4XXXXX

Solio Ranch Ltd, regret to inform you that we hereby issue you with a Letter of Termination with instant dismissal.

This is due to your (Mr.Stanley Njoroge Mwangi) Arrest and on going investigations by the National Criminal Investigation Department (CID) and the Regional Police Department.

The arrest and on-going investigations for the theft of Solio Ranch Limited items, equipment and property, which you had removed from Solio and taken to your private property without senior management written authorization or permission from the Board of Directors.

It is with the evidence found by the CID and Regional police and witness confirmations that we are writing this Termination Letter with instant dismissal letter and ending your employment at Solio Ranch Ltd with immediate effect.

We request you to hand over all company property to the management and that you vacant the company property with immediate effect.

Yours Sincerely,

Mr.K.CARR-Hartley

General Manager of Solio Ranch Ltd”

19. There is no doubt that the reason cited for the dismissal was the claimant's arrest and the investigations that were on going about theft of respondent's property that were found at his private home without written authority from Senior Management or the Board of Directors. The claimant averred that he had the written authority from the General Managers of the respondent but he was not given opportunity to produce them as defence before the dismissal. He however admitted, during cross-examination that there were some items he did not have written evidence that they had been gifted to him.

20. Section 43 (1) and (2) of the *Employment Act* provides that: -

- “ 1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
- 2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”



21. In addition, section 44 (4) entitled an employer to dismiss his employee summarily for:
- “(f) in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within fourteen days either released on bail or on bond or otherwise lawfully set at liberty; or
 - (g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer’s property.”
22. In this case, the claimant was arrested on 24th February 2022 and the respondent dismissed him on 25th February 2022, just two days after the arrest and arraignment in court. It follows that his arrest was not a valid ground for his dismissal because under section 44(4)(f) above, the right to dismiss on ground of arrest and confinement occurs when the employee is not released from the custody within 14 days.
23. As regards the property recovered from the private home, the claimant contended that he had documentary evidence signed by the past General Managers of the respondent confirming that they had gifted him with the recovered items. However, during cross-examination, he admitted that there were some items found in his home which he had no documentary evidence to prove that they were gifted to him.
24. In view of the said admission, I find that the respondent had reasonable grounds to suspect or believe that the claimant had stolen those items he had no evidence of gifting. As such, it was entitled to dismiss him under section 44(4)(g) aforesaid, because it constituted a criminal offence against the employer. Taking away employers’ property without permission and keeping it in a private home until it is recovered using police assistance amounted to theft which is a valid reason justifying summary dismissal under section 44(4)(g), supra.

Procedure

25. Section 41 of the *Employment Act* provides that: -
- “(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”
26. In this case, RW1 admitted under oath that no disciplinary hearing was conducted before dismissing the claimant. He confirmed that the dismissal was on the basis of the information given by the police officers who investigated the matter.



27. In the case of *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR, the court held that:

“ 14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers’ human resource manual or as set out in the *Employment Act* or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee’s guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.”

28. In this case, the fact that the claimant was caught red handed with the respondent’s property did not take away his Constitutional right to fair labour practices and fair administrative action which requires that an employee has a right to be heard before any disciplinary action is taken against him.

29. Having found that the claimant was dismissed without being heard, I now hold that the dismissal, though grounded on a valid reason, was rendered unfair by the failure to follow a fair procedure.

Reliefs

30. In view of the foregoing conclusion, I find that the claimant has proved his case on a balance of probabilities and he is entitled to declaration that the termination of his employment was unfair and unlawful within the meaning of section 45 of the *Employment Act*. Accordingly, he is entitled to compensation for unfair termination plus salary in lieu of notice.

31. The claimant served the respondent for over 28 years without any warning letter but I note that he caused his dismissal through misconduct. Consequently, I award him six months gross salary as compensation for unfair termination being $\text{Kshs.}80,770 \times 6 = \text{Kshs.}484,620$.

32. As regards salary in lieu of notice he prayed for 3 months salary which is supported by paragraph 7 of his appointment letter. Consequently, I award him the same as prayed being $\text{Kshs.}80,770 \times 3 = \text{Kshs.}242,310$.

33. The prayer for gratuity is also granted based on paragraph 11 of his appointment letter. Hence $\text{Kshs.}80,770 \times 15/30 \times 28 = 1,130,780$.

34. He further prayed for leave for 2018-2019, 2019-2020, 2020-2021 being 90 days based on 30 days leave per year under paragraph 5 of his contract. The respondent confirmed that it did not file leave records to rebut the claim for leave. Consequently, I award the claimant $\text{Kshs.}80,770 \times 90/30 = \text{Kshs.}242,310$. I further award him 10 off days being $\text{Kshs.}80,770 \times 10/30 = \text{Kshs.}26,923$.

Conclusion

35. I have found that there was valid reason for dismissing the claimant but the dismissal rendered unfair by the respondent’s failure to follow a fair procedure. I have further found that the claimant has proved his



case on balance of probabilities and he is entitled to the reliefs sought. Consequently, I enter judgment for him as follows: -

- a. The termination of his employment contract was unfair and unlawful.
- b. The respondent is ordered to pay him:
 - Notice.....Kshs.242,310.00
 - Compensation.....Kshs.484,620.00
 - Leave.....Kshs.242,310.00
 - Off daysKshs. 26,923.00
 - Gratuity.....Kshs.1,130,780.00
 - Kshs.2,126,943.00
- c. The award is subject to statutory deductions.
- d. The claimant is awarded costs plus interest at court rates from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NYERI THIS 29TH DAY OF AUGUST, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

