



**Ngatia v Baltic Textile Trading Limited (Cause E028 of 2024)
[2025] KEELRC 2392 (KLR) (28 August 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2392 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E028 OF 2024
ON MAKAU, J
AUGUST 28, 2025**

BETWEEN

MARY NYAWIRA NGATIA CLAIMANT

AND

BALTIC TEXTILE TRADING LIMITED RESPONDENT

JUDGMENT

1. The claimant was employed by the respondent as a Store Manager from December 2018 till 29th January 2024 when she was dismissed. Her monthly salary was Kshs.24,500.52. By a Statement of Claim dated 9th July 2024, she contested the dismissal as unlawful and unfair within the meaning of section 41, 43 and 45 of the *Employment Act*. Therefore, she prayed for the following reliefs: -
 - a. Declaration that the claimant’s services were unprocedurally, unlawfully and unfairly terminated and in the circumstance the claimants are entitled to compensation of her terminal dues as outlined above.
 - b. The sum of Kshs.880,880 as set out above plus interest thereto.
 - c. Costs of this suit and interests at court rates from time of filing the suit until payment in full and
 - d. Any other relief the Honourable Court may deem just and fit to grant.
2. The respondent filed a Response to the claim dated 24th October 2024 admitting the employment relationship with the claimant but denied the alleged unlawful and unfair dismissal. On the contrary, it averred that the dismissal was justified by a valid reason and a fair procedure was followed. Therefore, it prayed for the suit to be dismissed with costs.



Facts of the case

3. On 26th October 2023, an Audit was conducted on the respondent's shop which was managed by the claimant and it was discovered that there were many items lost from some stocks while others were in excess. It was also discovered that the record keeping was incomplete and not updated. As a result, claimant was required to explain and she did so vide letter dated 27th October 2023 whereby she apologised for the mistake of failing to keep proper records of the stocks.
4. Upon consideration of the explanation, the respondent issued her with a first warning vide the letter dated 1st November 2023 and placed her under one-month period of performance evaluation.
5. On 21st January 2024, a customer was stopped by security guard while carrying away stock without a valid receipt and he reported the matter to the claimant. The claimant recovered the stocks and reported the matter to the respondent's management and the police.
6. On 22nd January 2024, the respondent served the claimant with a show cause letter suspending her for the incidence of attempted theft of stock by the customer on 21st January 2024. The letter invited her to a disciplinary hearing on 25th January 2024 in the company of a fellow employee of her choice.
7. She responded to the letter on 23rd January 2024 explaining how she learnt from the security guard of the attempted theft and recovered the goods and enquired from the cashier about the payment. When the cashier confirmed that she never issued any receipt, the claimant reported the matter to the area Manager to handle the matter. Therefore, she did not admit liability.
8. On 25th January 2024, she attended the disciplinary hearing and by a letter dated 29th January 2024, she was summarily dismissed for violation of trust, failure to obey lawful command, falsifying stock records to cover up lost stocks.
9. During the hearing, the claimant testified as CW1 and basically adopted her written statement as evidence in chief. She further produced 6 documents as exhibits. On cross-examination, she confirmed that her duties as shop manager included taking care of the shop and ensure that it operated within the rules. She stated that the reason for the dismissal was neglect, careless or improper performance of duty.
10. She further stated that she was issued with show cause letter and attended hearing with respect to reporting to the management not on the theft case. She maintained that the dismissal letter dated 29th January 2024 mentioned theft. She further stated that the earlier warning letter was not on theft.
11. She admitted that the contract letter stated that her salary was inclusive of house allowance. She further admitted that after the dismissal she never went to do clearance and that is why she was not paid her terminal dues.
12. In re-examination, she contended that she is the one who reported the theft to the Management and the police. She contended that the show cause letter asked him to explain the theft incidence but during the disciplinary hearing, the case changed to reporting. She maintained that she was not given a chance to explain the theft incidence.
13. The respondent called its HR Manager as its witness and she adopted her written statement as evidence in chief. She then produced 13 documents as exhibits. In brief, her evidence was that in October 2023, it was noted that stock was missing in the respondent's Nyeri shop, there was incomplete record keeping and the shop's chipboards were not up to date. When the issue was raised, the claimant quickly admitted the offence and apologized. As a result, she was issued with a warning letter. The letter



admonished her for carelessness and negligent performance of her duties and placed her on one-month evaluation.

14. Rw1 further stated that, despite the said warning, there was theft incidence in the Nyeri shop on 21st January 2024 where customers colluded with other staff to steal items from the shop. After investigations, it was noted that the claimant was aiding the theft by failing to report to the Management and instead concealing the variance in stock through falsifying weekly inventory reports in order to cover for the stolen pieces.
15. She stated that the claimant wilfully neglected, refused and/or declined to carry out her responsibilities and duties leading to losses of the respondent's stock. She contended that the foregoing conduct amounted to breach of trust which constitutes a valid ground for termination of employment contract.
16. She stated that a fair procedure was followed before the dismissal because the claimant was served with a show cause letter citing the reason for the intended termination and she gave her explanation. Thereafter, she was invited to a hearing with a representative of her choice but she attended alone in person, and made her representations which were recorded. Thereafter, the disciplinary committee considered her explanation during the hearing and her response to the show cause letter and found them unsatisfactory and recommended for her summary dismissal.
17. On cross examination, she contended that the show cause letter charged the claimant with theft and the offence was tried during the disciplinary hearing. She contended that the information in the show cause letter was the same as paragraph 2 of dismissal letter. She contended that the audit was done in the presence of the claimant and therefore she was not ambushed during the hearing with information she did not have.
18. However, she confirmed that the inspection report was done before the show cause letter and warning letter was given because there were many variations. She contended that the reason for the summary dismissal included improper performance of work and falsifying. She confirmed that the stolen items were recovered. She contended that the claimant signed the minutes of the disciplinary hearing.
19. After the hearing, both parties filed written submissions. Having considered the pleading, evidence and submissions, the following issues fell for determination.
 - a. Whether the dismissal was unfair and unlawful.
 - b. Whether the claimant is entitled to the reliefs sought.

Unfair/unlawful dismissal

20. 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.”

21. Courts have interpreted the above provision to mean that termination is unfair if the reason for the termination is not valid and or where the procedure followed is not fair. Valid reason must relate to the employees conduct, capacity and compatibility or based on the employers’ operational requirement. Procedure is fair if the employee is afforded an opportunity to make his/her representations which must be considered before the dismissal is decided. I gather support from *Walter Ogal Anuro v Teachers Service Commission (2013) KEELR 386 (KLR)* where the court held that: -

“However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification but also procedural fairness.”

Reason herein

22. The dismissal letter dated 29th January 2024 stated as follows: -

“Name: Mary Ngatia

Duty Station: Nyeri Shop

Designation: Shop Manager

Dear Mary,

Re: Summary Dismissal From Employment

The above refers.

It has come to the management’s attention that you cover for stock loss in your shop, by falsifying the weekly inventory reports you sent to management. Some of the staff at your shop have been reported to be stealing by collusion by staff and customers. The matter was reported at the Nyeri police station on 22/01/2024, after one of them was caught by the security in charge of the shop.

After further investigations by management it has emerged that, on many occasions in the shop meetings you warned your team about stock loss in the shops, as it had become very rampant. However, instead of reporting the matter to the management, you hid the information and altered the inventory reports by using the clothes that would normally not be put into shop as stock, and you would count them as put to shop in order to cover for the pieces lost, hence falsifying the weekly stock inventory reports, and giving the management two wrong reports. Therefore, encouraging the theft to continue.

After the hearing held on 25th January, it was concluded that;

There is violation of trust and confidence between you and the company. You have knowingly failed, or refused, to obey a lawful and proper command which it was within



your scope of duty to obey, as issued by your employer. To declare all reports as they were and report to the management, without falsifying.

As per the rules of the company, it is clear that if such happens it would be considered as gross misconduct. You have therefore been dismissed from employment and the company will pay you up until the last day of work and any Accrued leave days.

Please sign on the space provided below to acknowledge receipt of this letter and return a copy to the undersigned immediately, after which you will be sent a clearance letter. Thank you for your time with us and we wish you good luck in future endeavors.

Yours Sincerely,

HR Manager

Evelyne Njoroge

Employee Sign.....Date.....”

23. A careful reading of the above letter reveals that the dismissal was due to loss of trust in the claimant and her improper performance of duty which led to rampant loss of stock from the Nyeri shop. The said matter had been dealt with finality vide Inspection/Audit process which culminated vide a warning letter dated 1st November 2023. The letter also placed the claimant on a performance evaluation period of one month. The period of performance evaluation lapsed without any complaint or action against the claimant and therefore it is presumed that the claimant was found fit to continue serving.

24. It follows that reviving the same matter after the attempted shop lifting on 21st January 2024, was not justified as doing so would amount to subjecting the claimant to double punishment. I seek support from Cooperative Bank of Kenya Ltd v Yator (2021) KECA 95 (KLR) where the Court of Appeal held that: -

“The complaint having been resolved, it was as good as buried forever and the appellant could not revive it later and use it as a basis for summary dismissal of the respondent as it happened here amounted to double punishment over the same complaint which is unfair and unconscionable.”

25. Accordingly, the respondent was bound to stick to the offence charged under the show cause letter dated 22nd January 2024 which is copied below: -

“Name: Mary Ngatia

Duty Station: Nyeri Shop

Designation: Shop Manager

Dear Mary Ngatia,

Re: SHow Cause Letter

The above refers.

On this day of 22nd /01/2024 it was alleged that you were aware of the theft by staff that has been going on in your shop.

Case in point is that of 21st /01/2024 whereby a customer came picked his items and for staff with an intention of moving them out without paying for them.



At the initial stage of the Hearing procedure, you were hereby requested to submit an explanation of what happened in the above incident, by 10.00am on 2nd/01/2024 to the HR via Email; hr@btt.co.ke.

The management will consider your response and to determine a way forward. You shall remain on suspension from the date of issue of this letter until the matter is solved.

You will be required to attend a hearing meeting on 25/01/2024 at Donholm office, at 10am/pm. You are welcome to attend the meetings in company of a representative of your choice provided such a representative is an employee of the Company.

Please be advised that the said meeting shall be disciplinary meeting which may lead to a disciplinary measure taken against you, should the Company not be satisfied with your response. Please acknowledge receipt of this letter and confirm that the dates mentioned above are convenient to you. If no explanation is received, then a disciplinary action will be taken without further reference to you.

Yours Faithfully,

Andy Sandy

For; Evelyne Njoroge

Human Resource Manager

Employee Sign.....Date.....”

26. The above letter required the claimant to explain in writing what happened in the incidence of attempted theft of stock on 21st January, 2024 and further attend disciplinary hearing on 25th January 2024. The letter also placed her on suspension until the matter was resolved. It follows that by abandoning the issue of theft on 21st January 2024 and reverting to the earlier resolved performance issue meant that the respondent found the said theft on 21st January, 2024 not a valid reason for dismissing the claimant. If it was, it would have pursued it in the disciplinary hearing, and cited it as the reason for the summary dismissal. In concluding this part, I must find and hold that the reason cited for the dismissal not valid within the meaning of Section 45 of the *Employment Act*. The court finds that the claimant acted properly by seizing the stolen goods and reporting the matter to her area manager and the police. The respondent has even produced statement recorded at the police by the culprit of the said shop lifting who should have been the one dismissed.

Procedure followed

27. Section 41 of the 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.”

28. In this case the claimant was served with a show cause letter inviting her to explain the theft incidence of 21st January, 2024 and she responded in writing. The show cause letter also invited her for a disciplinary hearing in the company of a fellow employee of her choice. The claimant attended the hearing alone but she alleged that she was denied time to explain herself on the attempted theft.
29. The respondent produced minutes of the hearing signed by the claimant. I have considered the minutes and found them duly signed by the claimant on 25th January, 2024. However, the minutes do not relate to the incidence cited in the show cause letter but rather, the matter of many lost items which was the complaint leading up to the warning letter of 1st November, 2023. The minutes do not mention the incidence of attempted shop lifting on 21st January, 2024 and therefore I find that no fair hearing was accorded to the claimant on the incidence that happened on 21st January, 2024 which was the matter for the disciplinary hearing.
30. Having found that the reason for the dismissal was invalid and that fair procedure was not followed, I conclude that the claimant has proved on a balance of probabilities that her dismissal was unfair and unlawful within the meaning of Section 45 of the *Employment Act*. I gather support from *George Musamali v G4S Security Services Kenya Ltd [2016] eKLR*, where 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.”

Reliefs

31. In view of the foregoing I find that the claimant is entitled to declaration that her services were unlawfully and unfairly terminated and therefore she is entitled to compensation under Section 49 of the said Act. Considering that she worked for about five years and that she had been issued with a warning letter due to improper performance of her duties, I award her four months gross salary as compensation for the unfair termination, being Kshs.24,000/= x 4 = Kshs.96,000/=. I further award her one-month salary in lieu of notice being Kshs.24,000/=.
32. As regards the claim for leave, the claimant prayed for 21 days each year for the 5 years served but the respondent submitted that the only outstanding leave was for 11 days. The respondent did not adduce any leave records to prove how it arrived at the said 11 outstanding leave days and therefore I award the claimant the leave for the 5 years being 105 leave days. Hence $105/30 \times 5 \times 24,000/= = \text{Kshs.84,000/=}$.



33. As regards the claim for house allowance, the claimant admitted in evidence that the contract provided that the salary was inclusive of house allowance. I have perused paragraph 5 of the contract of employment and confirmed that indeed the claimant's gross pay was inclusive of house allowance. Consequently, the claim for house allowance of Kshs.480,000/= is dismissed.

Conclusion

34. I have found that the dismissal of the claimant was substantively and procedurally unfair. I have found that she is entitled to some of the reliefs sought. Consequently, I enter judgment for her against the respondent as follows:

- a. The dismissal of the claimant is declared unfair and unlawful.
- b. The respondent is ordered to pay the claimant the following:
Notice.....Kshs.24,000.00
Compensation.....Kshs.96,000.00
Leave.....Kshs.84,000.00
Kshs.204,000.00
- c. The award is subject to statutory deductions.
- d. The claimant is awarded costs and interest at court rate from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NYERI THIS 28TH 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

