



**Kenya Plantation & Agricultural Workers Union v Mahee Flowers Ltd (Cause E004 of 2023) [2024] KEELRC 13264 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13264 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E004 OF 2023  
J RIKA, J  
NOVEMBER 28, 2024**

**BETWEEN  
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT  
AND  
MAHEE FLOWERS LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant, a registered Trade Union, has a Recognition Agreement with the Respondent. The Parties have executed several Collective Bargaining Agreements. The Respondent is a horticulture company, operating at Ol Kalou, Nyandarua County.
2. Through the Statement of Claim filed on 23<sup>rd</sup> January 2023, the Claimant states that its member, Kennedy Kariuki Macharia [Grievant], was employed by the Respondent as a General Worker, in January 2006.
3. His last monthly salary, was Kshs. 19,511. He was issued a letter to show cause on 16<sup>th</sup> January 2020. He was asked to explain why, he did not bring it to the attention of the Managing Director, that he had been paid extra cash by the Respondent, through his bank account.
4. The Grievant replied on 31<sup>st</sup> January 2020, explaining that the money paid into his account, was unrelated to his salary. It was not money shown as part of his pay slip.
5. He explained that he was a member of a self-help group, with membership extending to Employees of the Respondent. He would lend members money, which they repaid with some interest, through his bank account.
6. The Grievant was nonetheless taken through what he states was a sham disciplinary process, and dismissed.



7. The dispute was reported to the Ministry of Labour. The Parties attended conciliation, but the process did not yield a settlement. The Conciliator issued a certificate of disagreement.
8. The Claimant avers that the Grievant, was not given an opportunity to be heard. His evidence was ignored. He was never responsible for the muster roll, so as to determine the amount paid by the Respondent, in his bank account.
9. The Claimant prays for the following orders: -
  - a. Reinstatement of the Grievant, with back wages, leave and leave traveling allowance.  
Alternatively,
  - b. Gratuity payment.
  - c. House allowance from the date of dismissal till Judgment is delivered.
  - d. Equivalent of 12 months' salary in compensation for unfair termination.
  - e. Annual leave pay.
  - f. Traveling allowance.
  - g. Notice.
  - h. Damages for unlawful, unfair and illegal termination.
  - i. Costs.
  - j. Interest.
  - k. Any other suitable relief.
10. The Respondent filed its Statement of Response on 6<sup>th</sup> June 2023, through its umbrella Association, the Agricultural Employers Association.
11. It is conceded that the Grievant was employed by the Respondent as a General Worker, in January 2006. He was later transferred to a pack house, where he worked as a Quality Controller, until his dismissal.
12. Together with the Spray-in-Charge Charles Juma, and Human Resource Assistant Mercy Otakwa, the Grievant conspired to defraud the Respondent. They manipulated attendance records for both permanent and seasonal Employees. Employees who left employment, were included in the payroll, fake attendance records generated, and salaries including overtime pay, processed on the strength of the fake records. The fake employment records were sent to the Head Office by the Human Resource Clerk and Manager. They were uploaded onto the payroll system, and cheques prepared. The cheques would be distributed to the farm clerks. Mercy Otakwa would manipulate the list of Employees, and credit payment to accounts of persons who were not Employees.
13. On other occasions, Employees were allocated huge salary advances, and records manipulated to show that they repaid the advances, while they had not. The Grievant received Kshs. 48,174.53 through this fraudulent scheme, from March 2019 to August 2019.
14. As a result, the Respondent lost a total sum of Kshs. 2,364.645. The money was channelled to the Grievant's and Charles Juma's accounts at Tower Sacco. It was channelled to other persons, who were not Employees of the Respondent.



15. The Grievant was issued a letter to show cause. He responded. He was suspended for 4 days and disciplinary hearing scheduled for 5<sup>th</sup> February 2023. He was accompanied by a colleague of his choice, Jacob Waweru. He was heard. He and his colleague signed the minutes. His suspension was extended by 3 days, to enable the Respondent deliberate.
16. A decision was made to summarily dismiss the Grievant. The letter of summary dismissal issued. The Grievant declined to acknowledge receipt. The Respondent forwarded the letter to the Grievant, through his personal e-mail address.
17. The Respondent urges the Court to dismiss the Claim with costs.
18. The Grievant, and the Respondent's Group Human Resource Manager, Vitalis Osodo, gave evidence for the respective Parties, on 16<sup>th</sup> July 2024. Hearing took place before Hon. Justice H.Wasilwa, who was transferred before she could prepare the Judgment. The Claim was last mentioned on 15<sup>th</sup> October 2024, when the Parties confirmed filing and exchange of their final submissions. It was agreed that the undersigned Judge [incoming], proceeds to prepare and deliver the Judgment.
19. The Grievant adopted his witness statement and documents on record, in his evidence-in-chief. He restated the contents of the Statement of Claim, adding that he had gone for the disciplinary hearing in the company of the Shop Steward. The Respondent refused to hear the Shop Steward, turning him into a mere observer.
20. Cross-examined, the Grievant told the Court that, Charles used to pay him through his account. The Grievant did not exhibit his bank statement. He stated that he was involved in a merry-go-round, in his evidence at the disciplinary hearing. He mentioned that he received a loan, through the Human Resource Officer. The loan was a private arrangement. He stated that there was no excess money received by him as shown in the pay slip, but he however received excess money in his account.
21. He stated in his witness statement that he was an official of the self-help group. The group lent money to members. He would issue loans to members and non-members. He did not have any loan application form. He agreed that he was invited for disciplinary hearing, and was accompanied at the hearing by a colleague, Jacob Waweru. Waweru was Chief Shop Steward. The Grievant was a member of the Claimant. He did not supervise packers.
22. Redirected, the Grievant told the Court that Charles paid the loan through the bank or m-pesa. The Grievant was the chairperson of the merry-go-round. His witness was refused audience at the hearing.
23. Vitalis Osodo adopted his witness statement and documents filed by the Respondent, in his evidence in-chief. He told the Court that the Grievant was a Quality Controller, which was a supervisory role.
24. Cross-examined, he told the Court that Quality Controllers are all in management. This cadre was not unionized. They were not deducted union dues. The Grievant was not involved in preparation of the payroll. Supervisors were involved in computation of annual leave days and overtime worked. The Grievant was not in Human Resources. He did not prepare the payroll. There was no evidence that money was transferred to the Grievant. The Respondent lost over Kshs. 2 million. Loss was reported to the Police. Osodo did not have the OB extract. The Grievant worked for long, and did not have previous disciplinary cases. Redirected, Osodo told the Court that the Respondent reported the matter to the Police, but did not have control over the action taken by the Police.
25. The issues are whether the Grievant's contract was terminated through a fair procedure, in accordance with Sections 41 and 45 of the [Employment Act](#); whether termination was justified under Sections



43 and 45 of the *Employment Act*; and whether, the Grievant merits the remedies sought through his Union.

**The Court Finds: -**

26. It is common evidence that, the Claimant Union and the Respondent have a Recognition Agreement, and have executed several CBAs; the Grievant was employed by the Respondent in January 2006, as a General Worker; he was later transferred to a pack house, and worked there as a Quality Controller, until his dismissal; he was issued a letter to show cause by the Respondent dated 16<sup>th</sup> January 2020, requiring him to explain his receipt of Kshs. 48,174 from the Respondent, in excess of his regular salary; he replied on the same date, that the money was his income from a merry-go round group comprising his workmates; he was suspended on 5<sup>th</sup> February 2020; he was taken through a disciplinary hearing on the same date, and was accompanied by a colleague of his choice at the hearing, one Jacob Waweru, a General Worker Maintenance; and, the Grievant was summarily dismissed through a letter dated 12<sup>th</sup> February 2020.
27. It is likewise not disputed, that the dispute, was reported to the County Labour Office at Nyahururu. The Grievant was represented on conciliation, the Claimant Union. The Conciliator heard the Parties, and made findings and recommendations. The Conciliator found that the Grievant worked for the Respondent for 14 years; he did not have a valid warning; the Union was denied audience at the disciplinary hearing; and the excess money received by the Grievant, was debt paid to the Grievant, by the Human Resource Assistant.
28. The Conciliator made the following recommendations, which the Respondent did not agree with, hence escalating the dispute for litigation before the Court: -
  - a. Payment of withheld salary to the Grievant
  - b. Severance payment, based on 14 years of service.
  - c. Any pending leave.
  - d. Equivalent of 6 months' salary in compensation for unfair termination.
29. Procedural fairness: There was hardly any departure by the Respondent, from the minimum statutory standards of fairness, in termination of employment, prescribed under Sections 41 and 45 of the *Employment Act*.
30. The Grievant was issued a letter to show cause, with specific accusations. He was required to reply within 24 hours. He did so on the same date, 16<sup>th</sup> January 2020. He was suspended and invited for disciplinary hearing. The minutes of the disciplinary hearing indicate hearing was on 5<sup>th</sup> February 2020, but the letter of suspension states that hearing was rescheduled to 8th February 2020.
31. Whatever the date of the hearing, it is not in dispute that the hearing took place, in the presence of the Grievant and his representative Jacob Waweru. The Grievant described Waweru as the Chief Shop Steward on cross-examination. The minutes of the disciplinary hearing show that both the Grievant and Jacob Waweru, made their representations.
32. There is no record of the Grievant being denied the right to call any witness. Both he and his colleague were granted audience. They both signed the minutes.
33. Following the hearing, a letter of summary dismissal dated 12<sup>th</sup> February 2020 issued to the Grievant. The letter was e-mailed to the Grievant on 15<sup>th</sup> February 2020, after he declined physical service on 12<sup>th</sup> February 2020.



34. The reason justifying termination was stated in the letter of summary dismissal.
35. The Grievant was advised of his right to appeal the decision, within 7 days. He does not appear to have exercised his right of appeal.
36. Procedure was fair. It satisfied the requirements of Sections 41 and 45 of the *Employment Act*.
37. Justification: The letter of summary dismissal issued to the Grievant, states that the Grievant received fraudulent payments from the Respondent, amounting to Kshs. 48,174. The amount was said to be in excess of the Grievant's monthly salary.
38. The Respondent alleged that there was payroll manipulation, involving the Grievant, the Spray-in-Charge Charles Juma, and Human Resource Assistant Mercy Otakwa. Reference was also made to the Human Resource Officer, as one of the conspirators.
39. It was explained that the Human Resource Assistant would include non-existent Employees in the payroll. The Human Resource Assistant would prepare payment schedules, different from what she sent to the Head Office, Nairobi.
40. The letter of summary dismissal states " we have reason to believe, that you colluded with the previous Human Resource Officer and his Assistant, in perpetrating this fraud, where the company lost approximately Kshs. 2,364,645..."
41. The Court is not able to discern the reasons why, the Respondent believed that the Grievant was in collusion with Officers in the human resource department, to defraud the Respondent.
42. He was a Quality Controller in a pack house, and not involved in preparation of the payroll. His alleged illicit association with the Human Resource Assistant Mercy Otakwa, and the undisclosed "previous Human Resource Officer," leading to loss of Kshs. 2, 364,645, was not established. It was not explained what role the Grievant played, in the intricate web of payroll manipulation.
43. He did not prepare the payroll and include ghost workers. He was not shown to have advanced any Employee salaries, and manipulated accounts records, to show repayment, while there was no repayment. Osodo was not able to say that there was money, transferred by the Respondent, to the Grievant's bank account.
44. The Respondent may have experienced payroll manipulation, and even lost money, but failed in showing that the Grievant was at the centre of the fraud, or even in the periphery, as a beneficiary of the fraudulent scheme. If there was a fraud, in which the Respondent sustained losses, the evidence on record, suggests blame could be placed at the doorstep of the Respondent's own human resource honchos, not that of the Grievant, a Quality Controller.
45. The Respondent does not appear to have called for auditing of its payroll system, and the human resource department. There is no audit report placed before the Court, establishing loss of finances through payroll manipulation, and assigning any liability to the Grievant.
46. The Claimant exhibited a certificate of registration of Packers Self-Help Group. Registration was granted on 15<sup>th</sup> September 2016. The Grievant and other Employees of the Respondent subscribed to this group. The Claimant exhibited a list of 29 members of the Group, which also shows that the members would take loans, and repay with some interest.
47. There was a plausible explanation by the Grievant, about the deposits made in his bank account, outside his normal salary payment. He also exhibited m-pesa statements before the Court, showing that some of the Employees paid their debts, through his m-pesa line.



48. It would have assisted the Respondent in establishing reasonable ground for dismissal of the Grievant, if there was an audit exercise, showing that the extra money received by the Grievant, was illegitimate, and fraudulently received from the Respondent, and not a legitimate income, received from the legitimate activities of the Self-Help Group, to which the Grievant and other Employees including Managers, subscribed. The Grievant chaired the Group.
49. While Section 43 of the *Employment Act*, only requires an Employer to genuinely believe in the existence of the reasons, justifying termination, the basis for that genuineness of belief, must be established before the Court, through evidence. It is not enough for an Employer to come to Court, and state, “ I genuinely believed.” The belief must be founded on credible evidence. The test, as expounded in the E&LRC decision, *Galgalo Jarso Jillo v. Agricultural Finance Corporation* [2021] KEELRC 323 [KLR], which cited Halsbury’s Laws of England, requires the Court to determine if the response by an Employer, falls within the band of reasonable responses, which a reasonable Employer might have adopted.
50. A Reasonable Employer, encountered with widespread payroll manipulation involving its farm in Nyandarua and its Head Office in Nairobi, would have engaged auditors. It would have eliminated the Grievant’s explanation of legitimate income through the activities of the Employees’ Self-Help Group. It is difficult to see how the Respondent’s response fell within the band of reasonable responses. The Grievant was not in the Human Resource Office. His link to that Office, and to the payroll manipulation, was not established. The pleadings filed by the Respondent narrate what the Human Resource Officer and the Human Resource Assistant did. There is hardly any evidence, linking the Grievant to what these Officers did. The Respondent pleads that he colluded with them, without giving evidence of collusion. He called on the Respondent to involve the Police, in his response to the letter to show cause. Although an administrative process is different from a criminal process, as submitted by the Respondent, it is noteworthy that no criminal action appears to have been taken by the Police against the Grievant. The sum involved in the alleged fraud, was substantial, at over Kshs. 2 million. The administrative process taken by the Respondent was itself half-hearted, and did not establish an employment offence, against the Grievant. It is noteworthy also, that no counterclaim for the sum of Kshs. 48,174, or any portion out of over Kshs. 2 million allegedly lost by the Respondent, was made by the Respondent against the Grievant in this Claim.
51. The Respondent did not establish valid reason, to justify termination, under Sections 43 and 45 of the *Employment Act*.
52. Remedies: The prayer for reinstatement with back wages, is not allowable under Section 12 [3] [vii] of the *Employment and Labour Relations Court Act*, Cap 234 B, the Laws of Kenya. The Grievant was dismissed in 2020, and over 3 years have passed, since he was dismissed.
53. The Claimant repeats the prayer for back wages, in prayer 1 [b] [[c] and [d]. These prayers have no foundation and are declined.
54. Prayer 2 of the Claim, which includes items [a] to [j] is expressed to be in alternative to prayers under prayer 1. But there are prayers which are repeated, and these cannot be alternative to the prayers in 1.
55. The prayer for annual leave is repeated in 2[d]; and leave traveling allowance repeated, under 2[e]. The prayers are declined.
56. The Grievant was represented by the Claimant Union on conciliation and before the Court. The Respondent does not appear to have disputed his membership of the Union at conciliation or before the Court. It is fair to conclude that the Grievant, was a member of the the Claimant Union, and a beneficiary under the CBA in place at the time of termination.



57. Clause 23 of the applicable CBA, conferred gratuity to Employees of the Respondent, who had completed over 3 years of service, at the rate of 25 days' basic pay, for each complete year of service. No gratuity would be paid to an Employee summarily dismissed for gross misconduct. The Court has concluded that summary dismissal of the Grievant, was not based on valid reason, and there is no reason to deny him gratuity, having toiled in the Respondent's flower fields, for 14 years.
58. His basic salary as shown in his pay slips on record, was Kshs. 15,384. His daily rate, on a 26-day working month, would be Kshs. 591.69, translating to Kshs. 207,092 in gratuity, over a period of 14 years. The Grievant is awarded gratuity at Kshs. 207,092.
59. His pay slips show he was paid monthly house allowance. There is no basis for his claim for house allowance from the date of dismissal to the date of Judgment. He was not an Employee of the Respondent over this period, to justify the prayer. The prayer is declined.
60. There is similarly no justification for the prayer for general damages, in addition to the prayer for compensation for unfair termination.
61. Termination followed a fair procedure, but was fundamentally flawed, on justification. The Grievant had worked for a considerable period of 14 years. The Court has granted him the prayer for gratuity, in recognition and reward, of his long years of service, as contemplated by the prevailing CBA. He is not shown to have caused, or contributed to the circumstances, leading to termination. He did not disclose to the Court whether he secured alternative work, to mitigate loss of employment. The Respondent does not seem to have paid him anything, after 14 years of toiling at the Respondent's farms. The Court would agree with the Conciliator, that equivalent of 6 months' salary in compensation for unfair termination, is appropriate.
62. His basic monthly salary was Kshs. 15,384, and house allowance of Kshs. 2,769, amounting to an invariable monthly pay of Kshs. 18,153. The Claimant appears to have included variable items such as overtime pay, in calculating the Grievant's gross monthly pay, which is incorrect. The Respondent shall pay to the Grievant through the Claimant, equivalent of 6 months' gross salary in compensation for unfair termination at Kshs. 108,918.
63. Notice pay is granted at Kshs. 18,153.
64. No order on the costs.
65. The prayer for interest is granted at 14% per annum, from the date of Judgment, till payment is made in full.

In Sum, It Is Ordered: -

- a. It is declared that termination was unfair.
- b. The Respondent shall pay the Grievant through the Claimant, gratuity at Kshs. 207,092; equivalent of 6 months' gross salary in compensation for unfair termination at Kshs. 108,918; and notice at Kshs. 18,153 – total Kshs. 334,163.
- c. No order on the costs.
- d. Interest granted at 14% per annum, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU, UNDER PRACTICE DIRECTION 6 [2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024.**



**JAMES RIKA**  
**JUDGE**

