



**Kenya Union of Domestic, Hotels, Educational Institutions and Hospital  
Workers (KUDHEIHA) v Technical University of Mombasa (Cause  
E131 of 2023) [2024] KEELRC 13477 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13477 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E131 OF 2023  
M MBARŪ, J  
DECEMBER 18, 2024**

**BETWEEN**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS  
AND HOSPITAL WORKERS (KUDHEIHA) ..... CLAIMANT**

**AND**

**TECHNICAL UNIVERSITY OF MOMBASA ..... RESPONDENT**

**JUDGMENT**

1. The claimant has filed the claim for and on behalf of Severinus Tinga, the grievant. The issue in dispute is that there was unfair dismissal from employment.
2. The respondent recognizes the claimant, and there are applicable Collective Agreements (CBA) regulating employment.
3. The claim is that the grievant was employed by the respondent as a plumber in job grade 3, Kwale Campus, on 12 May 2008. His wage was Ksh.28, 208, and he received a monthly house allowance of Ksh.10, 784.
4. On 10 November 2022, the grievant reported to work. Still, Mr Kadir of Catch Security, who was attached to the Kwale Campus, summoned him and informed him that an internal security officer wanted to see him. The grievant met Mr. Kenga, an internal security officer, with three police officers. There was also Henry Mwasi, the claimant's colleague, who was handcuffed. The police arrested the grievant and took him to Diani police station using the university vehicle. The police showed the grievant pieces of cables and said that he, together with Mwasi, had stolen them.
5. On 11 November 2022, the police officer made the grievant record a statement concerning the cables. He was then released and directed to report back the next day. The police said they had not received any further information from the respondent. He reported back to work, but on 13 November 2022 and



- 3 February 2022, he was issued a notice to show cause letter because the respondent had conducted investigations that revealed he had vandalized and stolen 4M cable.
6. The grievant responded to the show cause notice on 3 February 2022, and on 16 February 2022, he was summoned to the disciplinary committee, which was held on 25 February 2023. On 3 March 2022, the grievant was summarily dismissed from service, and despite filing an appeal on 8 March 2022 and attending an appeal hearing on 12 April 2022, the appeal was dismissed through a letter dated 25 April 2022.
  7. The claim is that there was unfair termination of employment and seeking the following terminal dues;
    1. Compensation Ksh.467,904;
    2. Two months' notice pay Ksh.77,984;
    3. Annual leave for 2022 Ksh.38,992;
    4. Leave travelling allowance Ksh.5,600;
    5. Local pension for 14 years;
    6. Costs of the suit.
  8. The grievant testified that on 10 November 2021, he was arrested by the police while at work and taken to Diani Police Station. They had a cable that they alleged he had cut. He wrote his statement, realized, and resumed his duties. After a week, he was called to record a statement and denied that he had cut cables, the respondent's property.
  9. The grievant testified that in February 2022, he was issued a notice to show cause, to which he replied and was then invited to attend the disciplinary hearing. The respondent issued a notice of summary dismissal. The respondent failed to consider his responses and that a tindle, hacksaw, and piping equipment were part of his work tools. There was no evidence to link him with any theft or cutting of cables outside his employment. The disciplinary hearing was against the grievant and Henry Mwasi, who was also dismissed.
  10. Upon cross-examination, the grievant admitted that he was called by the respondent to assist in investigations of the matter but declined because he was not involved. He only learnt of the alleged cut cables when the police arrested him. He found the wires at the police station and was never charged with criminal offences. The disciplinary hearing was conducted, and he was allowed his representative to attend.
  11. The grievant admitted that he had a previous record of being absent from work in 2016. He was taken through a disciplinary hearing and reinstated. He made an appeal, which was also allowed, and he was reinstated on duty.
  12. The claimant also admitted that he had a case of bulb theft. He admitted to this theft. During the disciplinary hearing, upon his admission, he was surcharged and reinstated.
  13. On his claims, the grievant admitted that the leave travelling allowance is not in the CBA but that he was paid a monthly commuter allowance. His pension for 14 years was paid in full. This was paid in December 2023 after filing the suit herein.
  14. In response, the respondent argues that it had justified grounds for termination of employment. Due process was followed, and the claim does not disclose any cause of action and should be dismissed with costs.



15. The respondent conducted investigations through the security department, which revealed that the grievant was involved in theft. He was issued a notice to show cause on 3 February 2022 and allowed to attend a disciplinary hearing on 25 February 2022. A verdict was issued, and the grievant was permitted to file an appeal, but this was dismissed through a notice dated 25 April 2022.
16. The claims made are without merit and should be dismissed.
17. In evidence, the respondent called David Mwakidemi, the human resources office, who testified that the respondent conducted investigations through its security office and established that the grievant was involved in the theft of cables. He was taken through due process and found culpable, and his employment was terminated through summary dismissal. Notice pay and compensation are not justified. He has since been paid the internal pension in full.
18. At the close of the hearing, parties filed written submissions. These are analyzed in the findings.

### **Determination**

19. The claimant was not keen on the dates outlined under the Memorandum of Claim. Despite filing an Amended Memorandum of Claim, the gaps in dates are not addressed. The dates oscillate between 2022 and 2023. The supporting documents are more precise.
20. In the notice dated 3 March 2022, the respondent dismissed the grievant from his employment following a disciplinary hearing on 25 February 2022. He was found stealing and vandalizing an armoured cable behind the administrative block at Kwale Campus, rendering it unusable. The cable is worth Ksh.132, 000.
21. The respondent had investigated the matter and issued the grievant with a notice to show cause dated 3 February 2022, based on evidence that he was involved in vandalizing and stealing 4M cable 95.00mm at the value of Ksh.8, 000. The grievant had left it for Henry Thomas Mwasi to collect. Earlier, 2 meters had been cut, and the remaining cable of 29 meters could not serve the intended purpose.
22. The grievant was invited to the disciplinary hearing, and his shop floor representative was present. He could not exonerate himself.
23. An employer can terminate employment by summary dismissal where the employee is of gross misconduct. The due process under Section 41(2) of the *Employment Act* was adhered to, and the grievant was allowed to respond to the show cause notice and attend a disciplinary hearing. The fact that the police did not charge him with any criminal offence did not stop the respondent as the employer from conducting an internal disciplinary hearing was held in Rebecca Ann Maina, Monica Nyambura Wainaina & Joshua Patrick Macharia v Jomo Kenyatta University of Agriculture and Technology [2015] KEELRC 478 (KLR) and the case of Judicial Service Commission v Shollei & another [2014] KECA 334 (KLR) that whether the government agencies undertake external disciplinary measures or not, the employer is allowed to undertake internal disciplinary proceedings against an employee found to have engaged in misconduct of gross misconduct.
24. In this case, the grievant was taken through the due process and found culpable.
26. His work record is full of misconduct and gross misconduct. His standing before the court was analyzed because Section 45(5) of the *Employment Act* does not give him good standing. He admitted to various gross misconduct acts and was reinstated to work.
27. In this regard, the remedies of notice pay and compensation are removed.



- 28. On the other claims, the grievant admitted that his internal pension for 14 years has since been settled in full.
- 29. The claim for annual leave for 2022 needs to be more particularized vis-a-vis his anniversary date for taking annual leave. This shall be addressed on the shop floor.
- 30. The claim for leave travelling allowance is not a benefit under the CBA.
- 31. Accordingly, the claim is without merit, save that the grievant shall attend the shop floor for clearance. Where he is entitled to any untaken leave days for 2022, these shall be assessed and paid. Each party is to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 18TH DAY OF DECEMBER 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

