



**Cheboror v Libya Oil Kenya Limited (Cause 81 of 2016)
[2022] KEELRC 1391 (KLR) (5 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1391 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 81 OF 2016**

JK GAKERI, J

JULY 5, 2022

BETWEEN

NICKSON KIPKOSGEY CHEBOROR CLAIMANT

AND

LIBYA OIL KENYA LIMITED RESPONDENT

JUDGMENT

1. The claimant commenced this suit by a memorandum of claim dated January 22, 2016 filed on January 26, 2016 alleging unfair termination of employment/dismissal, non-payment of terminal dues and compensatory damages.
2. The claimant prays for;
 - (a) A declaration that the respondent's refusal and/or inordinate delay in recalling him back to work amounts to constructive dismissal of the claimant which dismissal is unfair and inhumane.
 - (b) A declaration that the claimant is entitled to payment of terminal dues and damages as prayed.
 - (c) An order for the respondent to pay the claimant his due terminal benefits and compensatory damages totalling Kshs.7,243,081.01 comprising:
 - i. One month's salary in lieu of notice of Kshs. 141,552.24 and allowance of Kshs. 47,143.62 = Kshs. 188,695.86
 - ii. Service pay at the rate of 20 days per year Kshs. 1,016,054.63.
 - iii. Loss of earning for 20 years prior to retirement Kshs. 3,773,917.20
 - iv. Damages for illegal and unfair dismissal from employment for 12 months = 2,264,242.68



- (d) Costs of this suit plus interest therein.
3. The respondent filed a response to the memorandum of claim on April 11, 2016 praying dismissal of the suit with costs.

Claimant's case

4. The claimant avers that he was an employee of the respondent as a dispatch supervisor from April 1, 2007 until January 8, 2015 when he received a letter of summary dismissal. He avers that he served the respondent diligently. He alleges that the decision to dismiss him was both unfair and unlawful in that he had a reputation for hard work, was not given a certificate of service, the investigations carried out by the Respondent were not transparent, the dismissal was predetermined, no warning letter was issued and he had no access to a computer to manipulate any order and is thus entitled to terminal dues and damages.

Respondent's case

5. The respondent avers that it employed the claimant on 1st April, 2007 as a deployment assistant and subsequently as a dispatch supervisor in April 2011. His basic duty was to facilitate standards and relevant procedures.
6. That between January 2012 and December 2014 the respondent lost an average of 3 million litres of product through fraudulent shipment of product from the Nairobi terminal along Nanyuki Road and the claimant was the Dispatch Supervisor there at and his Principal duties were;
- i. Verification of bulk product orders from 3rd parties marketers for loading.
 - ii. Confirmation of order's validity as per delivery schedule provided by customer service.
 - iii. Issue loading instructions to Bantry team for truck loading.
7. The respondent denies that the claimant was diligent and was summarily dismissed on January 9, 2015 for neglect, careless and improperly performance of duty, suspicion of commission of criminal offence, refusal to follow policies and procedures and breach of policies on conflict of interest and ethic.
8. That the claimant was terminated on the grounds set out in the letter dated January 18, 2015.
9. The respondent avers that it issued a certificate of service on February 20, 2015 and another copy through the claimant's counsel on October 23, 2015.
10. That the respondent carried out an investigation on October 15, 2014 through an investigative team comprising employees from different departments.
11. The claimant was invited by letter dated November 17, 2014 to appear before the team on November 18, 2014.
12. That the investigative team was not a disciplinary committee and the letter was clear on this issue.
13. The claimant attended the hearing on November 18, 2014 and was informed that it was not a disciplinary hearing.
14. That the team found out that the loss of product was attributed to fraudulent transactions of shipping out products from the terminal through collusion between putter's representatives and respondent's staff and falsified KRA documentation and stamp.



15. That a forensic audit of stock movement corroborated the findings and conclusion of the team and the resignation of accountant did not prejudice the investigations as posited by the claimant.
16. That the Claimant was invited to a disciplinary meeting by letter dated December 9, 2014 to explain his part and respond to allegations of gross misconduct as set out in the letter and relevant documents were enclosed.
17. The claimant was informed that he had the right to be furnished with documents he required at the hearing as well as the consequences of being found culpable.
18. He was informed of his right to call witnesses and be accompanied by an employee of at the hearing.
19. That on December 16, 2014, the claimant was accorded a fair hearing to make representations which the Respondent considered, coupled with the documentation relied on and made a decision to dismiss the claimant summarily by letter dated January 8, 2015.
20. It is further averred that the claimant was informed of the right of appeal in accordance with the respondents disciplinary procedure manual and he appeared on 16th January, 2015 and the claimant made representations based on his letter of January 15, 2015.
21. That the appeal panel considered the representations and upheld the decision of the disciplinary (panel) committee.
22. That although the claimant was notified of the right to a second appeal to the general manager, he did not appeal but opted to file a suit in court.
23. The respondent avers that the termination of the claimant's employment was not predetermined and the claimant was accorded an opportunity to make representations.
24. It is the respondent's case that it was under no obligation to issue warning letters and that the termination was fair and based on valid grounds. It avers that the claimant was a member of the NSSF and there was no guarantee that he would remain in employment till retirement.

Claimant's Evidence

25. In his written statement the claimant states that his monthly gross salary was Kshs.141,522.24 and had worked for 8 years before dismissal on January 8, 2015.
26. He states that his duty as dispatch supervisor entailed receiving a signed LPO, inspect the truck to determine the carrying capacity of truck, prepare a meter card indicating the quantities loaded which recordings were confirmed by the stock accountant and that he acted diligently.
27. It is the claimant's testimony that he had no access to the customers to confirm orders or computer to counter check.
28. That he followed the respondent's policies and procedures and worked alone for over 12 hours in the dispatch office.
29. That the stock accountant who was the key suspect left employment without being held accountable.
30. In his oral evidence, the claimant stated that he issued seals after loading and booked orders and issued the meter card for loading.
31. It is his testimony that the disciplinary proceedings were unfair because there was an element of intimidation.



32. On cross-examination CW1 confirmed that he was unaware of any loss of product from 2012 – 2014. The witness also confirmed that he was invited for the investigation meeting in writing and had been informed it was not a disciplinary hearing and he attended.
33. That he had concerns about the meeting but did not raise them.
34. He confirmed having received the letter to attend the disciplinary hearing and attended the hearing and was provided with the documents he required.
35. That he did not raise any issue with the Human Resource Manager.
36. On the disciplinary hearing, the witness stated that the meeting commenced at 11.21 am and had been informed that he would sign the transcript and the minutes.
37. That not all the concerns he raised were recorded but he signed the minutes.
38. He testified that the allegations were explained to him. He responded to the questions asked and the meeting ended at 1.54 pm.
39. The witness further confirmed that he received the dismissal letter on January 8, 2015, which set out the reasons for dismissal and signed the same and appealed the dismissal, attended the hearing and received the outcome of the appeal, but did not file a second appeal though aware of the right to do so.
40. The witness confirmed that he was a member of NSSF and made contributions to a retirement fund.
41. The claimant read out in court an answer he had given to the disciplinary committee to the effect that “We all make mistakes, we are human”.
42. The witness confirmed that he received and signed the stock movement record dated August 6, 2014 which he also confirmed had a wrong date.
43. The claimant confirmed that he did not thoroughly check the accuracy of the KRA stamp and admitted making errors of omission at the appeal hearing and signed the minutes.
44. It is the claimant’s testimony that although he was aware that Mr. Wanjau, the Stock Accountant was using Mr. Mwisu’s Password, he did not raise the issue with his superiors.
45. He further confirmed that he could have asked for a verification email which was part of his job description.
46. Finally, the witness stated that the respondent did not lose any fuel when he was the dispatch supervisor.
47. On re-examination, the witness testified that his tools of trade were two booklets to record meter readings, seals, a check list of vehicles and a phone.

Respondent’s Evidence

48. Irene Nyangate Nyabuto, the Respondent’s Human Resource Operations and Programs Manager, testified on behalf of the Respondent. The witness testified that she joined the respondent in 2001 in the Accounts and Finance Department.
49. In her written statement which generally rehashes the response to the memorandum of claim, the witness states that the Claimant was trained on various policies of the Respondent. The witness catalogues the specific duties of the Claimant including verification of bulk product orders from 3rd



party marketers e.g., Gapco, Hashi and Engen, confirmation of orders validity as per delivery schedule provided by the customer.

50. That the Respondent lost an average of 3 million litres of product when the Claimant was the Dispatch Supervisor.
51. The witness testified that the Respondent initiated disciplinary proceedings against all employees who were suspected to have been involved in the fraudulent transactions including the Claimant.
52. It was RW1's testimony that the Respondent adhered to the provisions of the *Employment Act* and its disciplinary procedure manual and had a reason to dismiss the claimant and applied a fair procedure.
53. That the claimant was paid all his dues as at the date of termination and was a member of nssf as well as the respondent's pension fund having joined on 1st April, 2007.
54. On cross-examination, the witness confirmed that the letter of invitation for the investigatory meeting was sent by email but when the Claimant attended the hearing, he received and signed a hard copy.
55. That the minutes of the disciplinary hearing were signed by all attendees and was not hearsay.

Claimant's Submission

56. The Claimant identifies two issues for determination;
 - i) Whether the Claimant was unfairly terminated;
 - ii) Whether the Claimant is entitled to the prayers sought.
57. As to whether the termination of employment was unfair, reliance is made of the decision in *Gilbert Mariera Makori v Equity Bank Limited* [2016] eKLR to urge that the provisions of section 41 of the *Employment Act*, 2007 must be complied before an employee is terminated from employment.
58. Further reliance is made on the decision in *Mary Chemweno Kiptoi v Kenya Pipeline Co. Ltd* [2014] eKLR to buttress the submission.
59. It is further submitted that the claimant dealt with orders that had been validated by the Stock Accountant and he had no access to customers to confirm orders or a computer to check any information.
60. That he was merely collateral damage in a syndicate he was not part of.
61. It is contended that the Stock Accountant was better placed to explain the variance in the stock as he had access and information but left employment before the claimant's termination.
62. That the claimant was not given a warning letter and was dismissed outrightly.
63. It is submitted that termination of the claimant's employment was wrongful and unfair.
64. As to whether the claimant is entitled to the reliefs sought, it is submitted that since the claimant had demonstrated that termination of employment was unfair, he is entitled to all the prayers sought namely, one on the notice in lieu notice, service pay from 2007 to 2015 at 20 days for every completed year and loss of earnings for 20 years to retirement and damages for abrupt loss of income trauma and inability to meet obligations.

Respondent's Submissions

65. The respondent identifies four issues for determination



- i) Whether there was a valid and fair reason for summarily dismissing the claimant;
 - ii) Whether the procedure adopted was fair;
 - iii) Whether the claimant is entitled to the relief sought;
 - iv) Who should bear the costs.
66. On the first issue, reliance is made on section 43 of the *Employment Act*, 2007. It is urged that since the allegations made against the claimant related to failing in his duties as admitted on cross-examination, as well as other confirmations such as the stock movement dated 6th August, 2014 and corresponding KRA gate pass which he handled, as well as the statement that “we all make mistakes, we are human” and blaming the Stock Accountant yet he was the Dispatch Supervisor, the Respondent genuinely believed that he neglected to perform work which it was his duty to perform, committed a criminal offence breached policies and procedures and failed or refused to follow them and thus had a reason(s) to dismiss the Claimant.
 67. Reliance is made on the sentiments of the court in *Lawrence Nyamichaba Ondari v National Hospital Insurance Fund* [2018] eKLR to urge that the test for termination of employment is what the employer at the time genuinely believed to exist.
 68. It is submitted that as a dispatch supervisor, the claimant’s role required providence and diligence in verification and confirmation of orders. Reliance is also made on the respondents Business Ethics Policy as well as the decision in *Cooperative Bank of Kenya Limited v Banking Insurance & Finance Union (K)* [2017] eKLR where the Court of Appeal relied on the decision in *Nampak Corrugated Wadeville v Khoza* (JA 14/98) [1998] ZALAC 24, to urge that the test is whether the sanction imposed by the employer in a particular situation was reasonable.
 69. It is submitted based on the evidence on record, the Claimant’s representations and admissions of negligence, the summary dismissal was reasonable and the Respondent had valid reasons to dismiss the Claimant as ordained by Section 43(2) of the *Employment Act*.
 70. As regards the procedure employed the decision in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] eKLR is relied upon to underscore the import of section 41 of the *Employment Act*, 2007 as regards the procedural propriety of a termination of employment. Reference is also made to the decision in *Josephat Mukhwana Waswa v Moi Teaching & Referral Hospital* [2015] eKLR on the process or hearing envisaged by section 41. It is submitted that the respondent followed the prescribed procedure and the claimant confirmed having been invited and participated in the hearing. It is further submitted that the respondent met the threshold prescribed by the Anthony Mkala Chitavi Case.
 71. On reliefs, it is submitted that the claimant is not entitled to any in that the respondent had a genuine and valid reason for the dismissal. (See *Peter Masila Ngengya v Meya Agri Traders Limited* [2018] eKLR) that in summary dismissal, notice is not due.
 72. As regards service pay, it is urged that section 35(6) of the *Employment Act* excluded members of the NSSF from service pay. The decision in *Patrick Abuya v Institute of Certified Public Accountants of Kenya (ICPAK) & another* [2015] eKLR is relied upon to reinforce the submission as is the holding in *Hassanath Wanjiku v Vanela House of Coffees* [2018] eKLR. It is urged that the claim has no foundation.
 73. As regards loss of earnings for 20 years to retirement, reliance is made on the sentiments of the Court of Appeal in *Elizabeth Wakanyi Kibe v Telkom Kenya Ltd* [2014] eKLR as well as the decision in *Onesmus*



Kinyua Magoiya v Prudential Life Assurance Kenya [2022] eKLR. It is submitted that based on these decisions, the prayer for loss of earnings had no justification.

74. On damages for illegal and unfair dismissal from employment, the decision in *Duncan Ndegwa Muriuki v Lasit Limited* [2018] eKLR is relied upon to urge that since the dismissal was justified and no compensation is due to the claimant.
75. In conclusion, it is submitted that the respondent had substantive reasons to terminate the claimant's employment and followed due process.
76. The court is urged to dismiss the claim with costs.

Analysis and determination

77. After careful consideration of the pleadings, evidence on record and submissions by counsel, the issues for determination are;
 - i) Whether termination of the claimant's employment contract was unfair;
 - ii) Whether the claimant is entitled to the reliefs sought.
78. As to whether the claimant's dismissal from employment was unfair, the claimant submits that it was while the respondent asserts that it had a valid and fair reason and employed a fair procedure rendering the dismissal fair.
79. Section 45(2) of the *Employment Act*, 2007 provides that;
 - (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 or compatibility; or
 - (ii) Based on the operational requirements of the employer; and
 - c) That the employment was terminated in accordance with fair procedure.
80. Section 43(1) of the Act sets out the burden of proof on the part of the employer to establish the reason(s) for the termination of employment failing which the termination is deemed unfair.
81. Section 43(2) prescribes test to be met by the employer in justifying the termination of employment. Other critical provisions are sections 41, 44 and 47(5) of the Act.
82. These provisions have been elaborated upon and applied in legions of decisions by this court and the Court of Appeal, such as *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR and *Naima Khamis v Oxford University Press (EA) Limited* [2017] eKLR among others.
83. These provisions and propositions of law are unqualified that for a termination of employment to be deemed fair the employer must demonstrate that it had a valid and fair reason to terminate the contract of employment and did so in accordance with a fair procedure.
84. In essence the termination of employment must be substantively justifiable and procedurally fair.
85. I will now proceed to apply the law to the facts of the instant case.



Reason(s) for termination

86. The termination letter dated January 8, 2015 identifies four reasons for the claimant's dismissal from employment, namely-
- (i) Wilful neglect to perform work which was his duty to perform and carelessly and improperly performed the work.
 - (ii) Suspected of having committed a criminal offence against or to the substantial detriment to the employer or its property
 - (iii) Failure or refused to follow written policies and procedures in the conduct of his duties
 - (iv) Breach of the respondent's policy on conflict on interest and ethics.
87. The same grounds were cited in the letter dated December 9, 2014 inviting the claimant to a disciplinary hearing scheduled for December 16, 2014 at 10.30 a.m which the claimant attended, participated and signed the minutes. Previously, by letter dated 17th November, 2014, the claimant had been invited to an investigatory meeting scheduled for 18th November, 2014 at 9.45 am. The committee was investigating alleged fraudulent transactions relating to transfer of petroleum product from the respondent's storage facility in Nairobi. The claimant confirmed that he attended the meeting and responded to the questions asked. The outcome of the investigations precipitated the disciplinary hearing.
88. The claimant submits that he used to receive orders verified by the Stock Accountant and had no access to customers to confirm the orders or computer to check any information. The respondent on the other hand submits that the respondent failed to perform his duties as required by his job description.
89. It is not in dispute that the claimant's duties included;
- (i) Verifying bulk products from 3rd party marketers for loading
 - (ii) Confirming the validity of orders as per the delivery schedule provided by customer service
 - (iii) Issuing load instructions to gantry team for truck loading and
 - (iv) Supervising the dispatch of trucks loaded at the terminal for delivery to local retail and commercial customers among others.
90. Undoubtedly, effective discharge of these duties demanded a high degree of precision and diligence. The allegations made against the claimant implicated the manners in which he performed his duties. The witness confirmed on cross-examination that his role as the supervisor was to ensure that all products leaving the terminal were verified and that checking of dates on the gate pass was essential.
91. Intriguingly, the claimant also confirmed on cross-examination that;
- (i) Nothing stopped him from requesting for a verification email from the Stock Accountant, which was part of his duties.
 - (ii) He would regard persons who did not do so negligent.
 - (iii) He had noticed Mr. Wanjau was using Mr. Mwisu's password but did not raise the issue with his supervisor.
 - (iv) The blame lay on the Stock Accountant who left employment before he was held to account, an allegation the Respondent denied.



- (v) He handed a Stock movement record (SMR) dated August 6, 2014 but which was not reflected in the Respondent's monthly loadings at the terminal for the month of August 2014 and was thus fake, since the KRA gate pass and the (SMR) did not match.
 - (vi) During the disciplinary hearing, the Claimant was candid that "we all make mistakes, we are human". Relatedly, during the hearing of his appeal on 29th January, 2015 the claimant admitted that he made an error of omission by not thoroughly checking the invoices for the accuracy of the KRA stamp due to extreme work pressure as he was the only one at the dispatch office which was busy.
92. Be that as it may, the claimant did not raise this issue with his supervisor or at the disciplinary or investigation hearing.
93. In addition, in his appeal letter dated January 25, 2015 the claimant states as follows;
- "As indicated in my appeal, all the blame rests on the Stock Accountant who used the opportunities in his position to introduce fake orders oblivious of the harm it could do to others, it is also evident that he collided with Engen representatives and the custom officer whose names are indicated on the gate pass...."
94. As submitted by the respondent, and as the claimant confirmed in evidence it was his duty as the supervisor to ensure that everything leaving the terminal had been verified. In response to his question at the hearing the claimant responded as follows: "We do check each and every truck..... I also do spot check 3 to five trucks on a day depending on the work load."
95. Finally, in relation to validity of orders, which was part of the claimant's duties, the Claimant stated as follows:
- "Even my predecessor never used to do that. He used to ask the Stock Accountant to confirm validity. When you start asking someone to print for you the confirmation emails all the time, it shows that there is no trust."
96. The claimant further confirmed that there was a management of change between him and the predecessor.
97. In the totality of the evidence on record, the court is satisfied that respondent has on a balance of probabilities established that it had a valid reason to terminate the claimant's employment for the reasons set out in section 44(4)(c) of the Employment Act, 2007. That "an employee wilfully neglects to perform any work which it was his duty to perform or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly".
98. The court guided by the provisions of section 43(2) of the Employment Act which are explicit that
- (2) The reason and reasons for termination of a contract are 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.



99. In *Lawrence Nyamichaba Ondari v National Hospital Insurance Fund* [Supra] the court stated as follows.

“All the Court needs to ensure is that the reason put forward for dismissal or termination are reasons which the employer reasonably believed to exist and are reasons for which a reasonable employer would terminate the services and employee.”

100. The court is guided by these sentiments.

101. In sum, it is the finding of the court that the respondent had a justifiable ground to terminate the claimant’s contract of employment. it genuinely believed that the claimant was guilty of gross misconduct as itemised in its dismissal letter.

Procedure

102. As observed by the Court of Appeal in *Pius Machafu Isindu v Lavington Security Guards Limited* (supra), section 41 of the *Employment Act* provides a mandatory procedure to be complied by the employer in termination of employment and in cases of summary dismissal. This provision sets out the procedural steps to be complied with.

103. In *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR, the Court of Appeal stated as follows;

“It is our view that section 41 provides the minimum standards of a fair procedure that an employer ought to comply with ...

Four elements must thus be discernible for the procedure to pass muster:

- (i) An explanation of the grounds of termination, in a language understood by the employee.
- (ii) The reason for which the employer is considering termination.
- (iii) Entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made.
- (iv) Hearing and considering any representations made by the employee and the person chosen by the employee.”

104. Similar sentiments were made in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* (supra).

105. Applying, the above principles to the facts of the instant case, it is evident that the Respondent substantially complied with the provisions of section 41 of the *Employment Act*.

106. The submission that the claimant was not given a warning letter is of no moment as the law provides for summary dismissal without notice. But more significantly, the respondent gave the claimant ample opportunity to explain himself on the allegations made against him.

107. It is important to note that the claimant appeared before the investigatory committee and confirmed as much on cross-examination. He was aware of the issues being investigated and did not demand that they be in writing.



108. By a letter dated December 9, 2014, the Respondent invited the claimant for a disciplinary hearing slated for December 16, 2014 at 10.30 am. The notice gave the claimant at least six (6) days to prepare to respond to the allegations set forth in the notice.
109. Extracts of the documents that committee/panel would rely upon were enclosed. The letter was emphatic that;
- (i) The claimant was entitled to call witness
 - (ii) The claimant could tender documentary evidence at the hearing
 - (iii) The claimant could request for documents in the Respondent's possession or elsewhere.
 - (iv) The claimant was entitled to be accompanied by a colleague.
110. The claimant confirmed as much on cross-examination. The claimant attended the meeting and participated in the deliberations and signed the minutes. He confirmed that the allegations were read out to him at the beginning of the meeting. Although the claimant stated that he raised some issues that were not captured by the transcript, he signed the minutes without any protest.
111. The letter of summary dismissal dated January 8, 2015 rehashes the allegations in the notice of invitation to the disciplinary hearing as the grounds for dismissal.
112. The letter intimated to the claimant that he had the right to appeal against the dismissal and he appealed by letter dated 15th January, 2015 and attended the appeal hearing on January 22, 2015.
113. The two persons' Appeal Panel heard the claimant's appeal. The outcome of the appeal was communicated by letter dated February 9, 2015. The appeal panel upheld the decision of the Disciplinary Panel. The letter notified the claimant that he could appeal to the General Manager by February 18, 2015 and was entitled to be accompanied by a fellow employee of his choice. The claimant did not file an appeal to the General Manager.
114. It is unclear why the claimant did not wish to be accompanied by a fellow employee during the disciplinary hearing and why he was unenthusiastic about a 2nd appeal which gave him an opportunity to loop in a fellow employee to make representations at the meeting.
115. Thus, although the claimant was not given a notice before the disciplinary hearing notice, the notice of the disciplinary hearing gave him sufficient time to prepare for the hearing. Significantly, the letter provided the evidence the panel would rely on and outlined the essential rights of the claimant.
116. Noteworthy, the claimant did not indicate that he would have wished to make written representation at any point. He confirmed on cross-examination that he neither took a document to the hearing or requested for any.
117. For the foregoing reasons, it is the finding of the court that the claimant was accorded a fair hearing within the meaning of section 45 of the *Employment Act*.
118. In the further finding of the court that termination of the claimant's employment was procedurally fair.
119. In sum, the court is satisfied that the claimant has on a balance of probability failed to demonstrate that his summary dismissal by the respondent on January 9, 2015 was unfair.



Reliefs

120. As regards the relief sought, having found that the claimant has failed to prove that his summary dismissal on January 9, 2015 was unfair, the claimant is not entitled to any of the remedies sought.
121. The upshot of the foregoing is that the suit herein is dismissed.
122. Parties to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 5TH DAY OF JULY 2022.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

