

2026 NOVEMBER | Employment

DO COURTS HAVE THE POWER TO SUBSTITUTE AN EMPLOYER'S DISCIPLINARY SANCTION?

Rift Valley Bottles Ltd v Thuo (Civil Appeal E235 of 2021) [2026] KECA 1495 (KLR)

1. Background

1.1. On 24th July 2026, the Court of Appeal at Eldoret (Gachoka, Korir and Ndolo, JJA) delivered its judgment in *Rift Valley Bottles Ltd v Thuo (Civil Appeal E235 of 2021) [2026] KECA 1495 (KLR)*. The appeal concerned whether a court, when determining a claim for unfair termination, can substitute an employer's disciplinary sanction with its own assessment of the appropriate disciplinary action.

1.2. The Respondent, Martin Thuo, was employed by the Appellant on 3rd January 1995 as an operative in the production department. On 8th June 2015, he was appointed to the position of Line Attendant in the same department.

1.3. On 24th February 2017, while the Respondent was assisting with stocktaking in the operations department, 60 excess crates of Sprite soda were loaded onto a delivery truck under his watch. The excess crates were not included in the invoice or picking list, and the truck was intercepted before leaving the Appellant's premises.

1.4. Following the incident, the Respondent was issued with a show cause letter dated 25th February 2017, requiring him to explain why disciplinary action should not be taken against him for loading excess products contrary to company policy. In his response, the Respondent admitted that the excess crates had been loaded but explained that the loading was a mistake. He reiterated this admission during a disciplinary hearing held on 27th February 2017.

1.5. On 2nd March 2017, the Appellant summarily dismissed the Respondent. Aggrieved by the decision, the Respondent instituted proceedings before the Employment and Labour Relations Court (ELRC), challenging the dismissal as wrongful. He argued that there was no evidence of fraud or theft and that the Appellant had not suffered any loss because the excess crates had been intercepted before leaving its premises.

1.6. In its judgment dated 4th August 2020, the ELRC (Abuodha, J.) found that although the Respondent had committed an administrative offence, summary dismissal was disproportionate to the offence committed. The trial Judge held that a warning letter would have been sufficient and consequently found the termination unfair. Consequently, the Court awarded the Respondent compensation equivalent to 10 months' salary, one month's salary in lieu of notice and costs of the suit.

1.7. Aggrieved by the decision, the Appellant appealed, arguing that it had a valid reason for summarily dismissing the Respondent and that the ELRC had erred in finding the dismissal wrongful and substituting its disciplinary decision with a warning. The Appellant also challenged the compensation awarded, contending that it was excessive.

1.8. The Respondent filed a cross-appeal challenging the ELRC's failure to award damages for unfair labour practices. However, the cross-appeal was subsequently withdrawn during the hearing before the Court of Appeal.

2. Court of Appeal's Determination

2.1. The Court of Appeal considered whether the ELRC could lawfully substitute the employer's disciplinary sanction with its own assessment of the appropriate disciplinary action, having found that the Respondent had committed an administrative offence.

2.2. Upon reviewing the evidence, the Court observed that it was undisputed that 60 excess crates of Sprite soda had been loaded onto the delivery truck without the required documentation. The Respondent had admitted the mistake in his response to the show cause letter and during the disciplinary hearing.

2.3. The Court further observed that the Respondent had been issued with a show cause letter, to which he responded, and had attended a disciplinary hearing before the decision to summarily dismiss him was made. The Respondent's principal contention was that the dismissal was harsh and excessive because there was no evidence of fraud or loss to the Appellant.

2.4. The Court noted that the ELRC had accepted the Respondent's argument and found that summary dismissal was disproportionate to the offence committed. The trial Judge had consequently held that a warning letter would have been an appropriate disciplinary sanction.

2.5. Relying on ***Chege v Timsales Limited [2025] KECA 1660 (KLR)***, the Court reiterated that disciplinary control at the workplace is the employer's prerogative and that courts will only interfere where the employer's disciplinary action results from an unlawful process.

2.6. The Court further held that when determining claims for unlawful or unfair termination, courts must not take over the employer's disciplinary mandate. Rather than determining what action they would have taken in the employer's position, courts must consider whether the disciplinary action taken was one that a reasonable employer would have taken.

2.7. In this regard, the Court relied on the decision in ***British Leyland v Swift (1981) IRLR 91***, which established the reasonable responses test. Under this test, a dismissal is unfair where no reasonable employer would have dismissed the employee under similar circumstances. However, where a reasonable employer might have dismissed the employee in the circumstances, the dismissal may be upheld as fair, even though another employer might reasonably have imposed a different sanction.

2.8. The Court further emphasised that an employer's prerogative to exercise disciplinary control is essential for industrial harmony. It observed that judges may hold different views on the appropriate disciplinary sanction, and that allowing courts to substitute their own views for those of employers would undermine the employer's disciplinary authority.

2.9. The Court stated that in a claim for unlawful or unfair termination, a judge has two options: either uphold the employer's disciplinary action or find it unlawful. There is no room for the court to substitute the employer's disciplinary sanction with one it considers more appropriate.

2.10. Applying these principles, the Court found that the ELRC had erred by concluding that the Respondent had committed an administrative offence but nevertheless finding the dismissal unfair on the basis that a warning would have sufficed. The Court held that the trial Judge had improperly substituted the employer's disciplinary sanction with his own assessment of the appropriate action.

2.11. The Court further found that the award of compensation in favour of the Respondent could not be supported under section 49 of the Employment Act, which provides remedies for wrongful dismissal and unfair termination.

Accordingly, the Court allowed the appeal, set aside the ELRC's judgment and decree together with all consequential orders, and awarded costs to the Appellant.

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Website: www.mutie-advocate.com
Phone: +254 768 042 180
E-mail: info@mutieadvocates.com
Address: Assi Centre, School Lane, Westlands
P O Box 211-00621, Nairobi

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