



**Munyi v Ethics and Anti-Corruption Commission (Cause E146 of 2023)  
[2025] KEELRC 2487 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2487 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E146 OF 2023  
SC RUTTO, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**POLINE WAMBETE MUNYI ..... CLAIMANT**

**AND**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. It is common ground that the Claimant was employed by the Respondent with effect from 11<sup>th</sup> December 2005 as a Customer Care Assistant III and that her contract of employment was renewed from time to time and in May 2018, she was promoted to the position of Operations Assistant. She was later redesignated and deployed to serve in the Operations Department as Investigations Assistant II and subsequently rose to the position of Operations Assistant I.
2. It is the Claimant's case that she faithfully and diligently executed her duties as per her contract of employment until 22<sup>nd</sup> March 2021, when she avers, she was unfairly terminated from employment.
3. According to the Claimant, her termination from employment was irregular, unlawful, unfair and in breach of her contract of employment. On this account, the Claimant seeks against the Respondent the sum of Kshs 2,425,515/- being gratuity, maximum compensation for unlawful dismissal and three months' salary in lieu of notice. The Claimant further seeks a declaratory order that her contract of employment was unfairly and unlawfully terminated as well as costs plus interest at court rates.
4. The Respondent countered the Claimant's Claim through its Statement of Response dated 29<sup>th</sup> March 2023, in which it avers that in the course of her employment, the Claimant had other disciplinary issues which were effectively dealt with and the Claimant given a chance to improve.
5. The Respondent holds that the Claimant's assertions that her termination from employment was lawful, fair and in accordance with the provisions of the *Employment Act* and the Fair Administrative



Actions Act. Consequently, the Respondent has asked the court to dismiss the Claimant's claim with costs.

6. During the trial, which took place on diverse dates, both parties called oral evidence.

### **Claimant's Case**

7. The Claimant who testified in support of her case, started by adopting her witness statement to constitute her evidence in chief. She proceeded to produce the initial list and bundle of documents as well as the further list and bundle of documents filed on her behalf as exhibits before court.
8. It was the Claimant's evidence that on 18<sup>th</sup> March 2020, she received a show cause letter requiring her to show cause why disciplinary action should be taken against her for the allegations of gross misconduct.
9. She responded to the said show cause letter via a letter dated 19<sup>th</sup> March 2020, explaining the circumstances. She was later summoned to attend a Staff Disciplinary and Conflict Resolution Committee to deliberate further on the matter.
10. The first hearing took place virtually on 10<sup>th</sup> June 2020, and three witnesses testified.
11. It was the Claimant's testimony that she was not supplied with any evidence in support of the allegations, the written witness statements, the proceedings, or the outcome of the disciplinary hearing.
12. The Claimant further averred that on 2<sup>nd</sup> February, 2021, she received a second letter from the Respondent to attend another disciplinary meeting, which was scheduled to be held on 15<sup>th</sup> February 2021.
13. The Claimant contended that there was no clear explanation why she was to attend the meeting for the second time, as she was never served with any findings or proceedings from the previous hearing by the Respondent. Nevertheless, she attended the hearing.
14. The Claimant further averred that while at the hearing, the Respondent called seven witnesses who were different from the ones who had testified earlier on.
15. The Claimant contended that she was not supplied with any evidence in support of their allegations or written witness statements.
16. That upon her protest and request, the meeting was adjourned for 15 minutes, and she was given witness statements and asked by the chairperson of the committee to prepare within that duration and thereafter, the hearing was to proceed.
17. The Claimant further averred that the forensic report which was adduced during the hearing, was never made available to her.
18. She further testified that the hearing proceeded and was concluded as scheduled by the Respondent. On 22<sup>nd</sup> March, 2021, she was issued with a letter of summary dismissal from employment. According to the Claimant, the said letter was without a clear explanation and/or detailed reasons for the termination of her employment.
19. It was the Claimant's contention that no proceedings, or proof of findings from the Respondent's investigation were stated in the termination letter.
20. She lodged an appeal against the said decision on 23<sup>rd</sup> March, 2021 and the Respondent informed her via a letter dated 4<sup>th</sup> May 2021 that she would be informed of the date when the appeal would be heard.
21. It was the Claimant's testimony that till now, she has never been accorded an opportunity to be heard.



22. According to the Claimant, the procedure adopted by the Respondent in handling the entire disciplinary meeting, the handling of the appeal, and the lack of communication thereof, was unprocedural, thus in contravention of section 45 of the *Employment Act*, 2007, and Section 4 of the *Fair Administrative Action Act*.
23. It was the Claimant's view that her termination from employment was unfair and unlawful as the Respondent did not follow the right procedure for termination.

### **Respondent's Case**

24. The Respondent called oral evidence through Rodgers Akaki, Alex Kinyanjui and Douglas Oliech Olang who testified as RW1, RW2 and RW3, respectively. Mr. Rodgers Akaki who was the first to go, identified himself as the Assistant Director in charge of Intelligence and Surveillance in the Respondent's Commission. Similarly, RW1 adopted his witness statement to constitute his evidence in chief. He further produced the initial list and bundle of documents, as well as the supplementary list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
25. It was RW1's testimony that he was the Claimant's supervisor and her job description entailed assisting in carrying out sting/trap operation investigations, investigating corruption as assigned by the senior officer and collecting intelligence in cover operations.
26. It was RW1's further evidence that on or about 6<sup>th</sup> August 2018, he tasked the Claimant with carrying out investigations into the irregular disbursement of Nairobi City County Bursary Fund for the financial year 2017/2018. The case arose out of a letter from the former Governor Mike Mbuvi Sonko of Nairobi City County.
27. In the course of the Investigations, the Claimant reported that she was experiencing challenges such as difficulty in getting witnesses to record statements, obtaining original documents under the custody of the Directorate of Criminal Investigations (DCI) and documents in the custody of the Nairobi City County Officials. In response, he (RW1) assigned one John Nyagara, who is an investigation officer, to assist the Claimant in the case.
28. After completing the investigations, the Claimant forwarded the file to Legal Services for review. The file was brought back with action points, which the Claimant acted upon in January 2020. The file was then forwarded to the Deputy Director, Intelligence and Operations, Mr. Humphrey Mahiva, who noted some gaps. One of the gaps noted was that the complainant had not recorded a statement.
29. In March 2020, he (RW1) held a meeting with the Claimant and Mr. Nyagara in which they agreed that there was no need for a statement from the complainant since he had submitted his complaint in the form of a letter.
30. RW1 further averred that on 15<sup>th</sup> March 2020, he received a call from the Claimant who informed him that confidential documents regarding the ongoing investigation had been leaked to K24 TV. He asked her how the documents may have been leaked to the media house or how the Governor may have gotten hold of the documents. The Claimant responded that she had forwarded the documents to the Governor's office.
31. Owing to the gravity of the matter, the Respondent's Deputy Director of Intelligence and Operations issued the Claimant with a show cause letter dated 18<sup>th</sup> March 2020, which outlined the charges leveled against her.
32. The Claimant responded to the show cause letter vide a letter dated 19<sup>th</sup> March 2020. In her response, the Claimant indicated that when she resumed from her training on 9<sup>th</sup> March 2020, she



embarked on addressing the issues that he (RW1) had raised and Mr. Mahiva, including the need to record a statement from the complainant, Governor Sonko. That the Claimant had learnt that the complainant, was expected to visit the Respondent's offices to record a statement with respect to another ongoing investigation and she had liaised with the investigation officer in that other case, Shee Bakari, to let her know once the Governor was done recording the statement as scheduled so that he could record the statement in the Claimant's case if he had time to spare.

33. The Claimant indicated that the Governor left soon after recording the statement in the other case, as he needed to travel to Mombasa urgently to attend a funeral. The Claimant further indicated that the Governor later called her and explained that he could not guarantee how soon he could avail himself to record the statement. The Claimant further stated that the complainant had indicated that he did not have material facts that would enable him record the statement himself and forward the same to the Claimant in order to fast-track the matter.
34. The Claimant therefore offered to assist him with the materials to refresh his memory and therefore sent him the covering report, the draft charge, the list of exhibits and the witness statements recorded by other witnesses/suspects.
35. RW1 further averred that contrary to the Claimant's statement in her response, she was aware that they had resolved that it was no longer necessary to obtain a statement from the complainant.
36. According to RW1, the Claimant confirmed that the documents leaked to the media were the same documents that she had sent to the complainant. On 16<sup>th</sup> March 2020, the Claimant owned up to her mistake on a phone call with the Acting Deputy Chief Executive Officer on 16<sup>th</sup> March 2020 that the documents, which by then had landed in the custody of NTV, were the same documents she had shared with the Complainant.
37. The Claimant acknowledged and took full responsibility for having shared the confidential documents with the witness. She termed this as a gross loss of guard on her part, unacceptable casual act that bordered on carelessness and breach of protocol on her part, without following due process or consulting with her supervisor on the issue with her supervisor.
38. Upon receipt of the Claimant's written response, the Deputy Director, Intelligence & Operations, considered it and found it to be unsatisfactory. He forwarded it to the Acting Assistant Director of HR with a recommendation that the matter should be referred to the Staff Disciplinary and Conflict Resolution Committee for adjudication.
39. The Acting Assistant Director of HR upheld the recommendation and noted that the Claimant's Acts amounted to gross misconduct if found culpable. The Acting Assistant Director of HR forwarded a report dated 5<sup>th</sup> May 2020 to the Acting CEO who approved the recommendations to proceed with the disciplinary process.
40. By a letter dated 27<sup>th</sup> May 2020, the Claimant was invited to a disciplinary hearing on 10<sup>th</sup> June 2020. She was informed that she had the right to produce evidence and to be accompanied by another staff member of her choice during the hearing.
41. RW1 averred that he attended the disciplinary hearing and testified as a witness. He explained that under no circumstances would a covering report, draft criminal charges, list of exhibits and statements of suspects in the case be revealed or shared with a complainant during the course of the investigations. That the Claimant did not consult him or any other supervisor before sending the documents to the complainant.



42. RW1 further averred that the Claimant's conduct amounted to an offence under Section 33 of the ACECA, a violation of Chapter 6 of *the Constitution* and the Public Officers Ethics Act. Further, her actions amounted to gross misconduct, which is a ground for summary dismissal.
43. After considering the evidence tendered, the Claimant's responses, observations and findings, the Committee concluded that the documents should not have been shared with the complainant at all. The Committee recommended that the Claimant be summarily dismissed from the Respondent's service for unauthorized disclosure of confidential information.
44. Mr. Alex Kinyanjui who testified as RW2, identified himself as a Senior Investigation Officer-Digital Forensics in the Respondent Commission. Similarly, RW2 adopted his witness statement to constitute his evidence in chief. He further produced the initial list and bundle of documents, as well as the supplementary list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
45. It was RW2's evidence that at the Forensic Lab, he undertakes mobile forensic extraction and examination, computer forensic extraction and examination, preparation of digital examination reports on lab cases and provision of expert testimony on digital forensic matters.
46. RW2 further averred that he has 8 years' experience in the Digital Forensics field and 18 years' experience in the Information Technology field.
47. He further testified that he was assigned to examine and extract all data from the following mobile submitted to the Forensic Lab by EACC Nairobi office Investigator Ditim W J Musi: XIAOMI REDMI 5PLUS MOBILE IMEI 868209030370645 seized from Poline Munyi Wambeti.
48. RW2 further stated that the criteria was to locate communication and WhatsApp messages to or from the following numbers: 0722819303, 0739555555, 0781222222, numbers starting with +971 and any other foreign numbers. He was also to locate any documents relating to an investigation case file such as covering report, witness statements, summary of statements, charge sheet and any other relevant document.
49. RW2 added that he undertook mobile data extraction and the full details of the examination are contained in his report EACC/FI/DFE/189/2020, which he prepared and forwarded to the Investigator.
50. Mr. Douglas Oliech Olang who testified as RW3, identified himself as a Senior Human Resource Officer in the Respondent Commission. Equally, RW3 adopted his witness statement to constitute his evidence in chief. He further produced the initial list and bundle of documents, as well as the supplementary list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
51. It was RW3's testimony that in the course of her employment, the Claimant was faced with several disciplinary issues.
52. Recounting the Claimant's disciplinary history, RW3 averred that on 12<sup>th</sup> July 2012, the Claimant attended a disciplinary hearing in which she was charged with negligence, which caused the loss of a Sony Video Camera Model No. DCR-SR 68E, SN5723184 being the Respondent's property. The disciplinary committee found the Claimant culpable and recommended that she should be surcharged the cost of the lost camera and be cautioned in writing.



53. RW3 further averred that on 4<sup>th</sup> September 2014, the Claimant was cited for failing to surrender imprest amounting to Kshs. 122,390/- granted between 12<sup>th</sup> February 2016 and 26<sup>th</sup> May 2017, contrary to the *Public Finance Management Act*.
54. RW1 further stated that on 14<sup>th</sup> March 2020, the Respondent was alerted that confidential information, including documentation and identity of suspects being investigated subject to the inquiry EACC/OPS/INQ/94/2018, which was under the care of the Claimant, had been leaked to the media, including K24TV and NTV.
55. On 18<sup>th</sup> March 2020, the Deputy Director of Intelligence, Mr. Humphrey Mahiva, issued the Claimant with a Notice to Show Cause why disciplinary action should not be taken against her for the charge of leaking confidential information without authorization which was contrary to the Respondent's Corporate Services, Policies and Procedures Manual as well as the *Anti-Corruption and Economic Crimes Act*. The letter was copied to the Acting Assistant Director, Human Resource Management.
56. By a letter dated 19<sup>th</sup> March 2020, the Claimant responded to the Show Cause. In her letter she stated inter alia that she shared the documents without authorization and that she took full responsibility for the leakage. She further admitted that she was responsible for the unlawful and unprocedural disclosure of confidential information. She referred to it as a gross, unimaginable and unacceptable mistake which she owned up to. She prayed for leniency and forgiveness and a second chance to repair the damage she caused from her misconduct.
57. RW3 further stated that the Deputy Director of Intelligence, being dissatisfied with the Claimant's response, forwarded it to the Acting Assistant Director of Human Resources with the recommendation that the matter should be referred to the Staff Disciplinary and Conflict Resolution Committee for adjudication.
58. Upon receiving the recommendation from the Deputy Director, Intelligence, the Acting Assistant Director HRM drafted a charge sheet to initiate the disciplinary hearing and forwarded it to the Chief Executive Officer for approval.
59. Vide a letter dated 27<sup>th</sup> May 2020, the Respondent invited the Claimant to a disciplinary hearing which was scheduled for 10<sup>th</sup> June 2020. The Claimant was informed of her right to be accompanied by any colleague of her choice and to provide and produce any evidence in support of her case.
60. The Respondent informed the Claimant via email dated 4<sup>th</sup> June 2020, that the meeting scheduled for 10<sup>th</sup> June 2020 had been rescheduled to 22<sup>nd</sup> June 2020.
61. On 22<sup>nd</sup> June 2020, the Claimant was informed of the charges against her, and she confirmed that she understood the charges. She was given an opportunity to cross examine the Respondent's witnesses and make points of clarification where necessary. She was equally supplied with the documents which the Respondent sought to rely on in the prosecution of the case.
62. According to RW3, the Staff Disciplinary and Conflict Resolutions Committee made the following recommendations:
  - i. The Claimant be reprimanded/warned for delivering the document to the witness without guidance from the supervisor.
  - ii. The Claimant be trained on handling forensic investigations.
  - iii. A documented procedure be put in place to facilitate investigating officers on information sharing as the case may be.



63. The Chairperson forwarded the Disciplinary Committee Report to the Secretary/CEO for approval and vide a memo dated 4<sup>th</sup> August 2020, the CEO made his observation. On 17<sup>th</sup> August 2020, the Disciplinary Committee members met to deliberate on the observations made by the CEO.
64. The Disciplinary Committee recommended that further inquiry be conducted based on the new evidence highlighted in a memo dated 4<sup>th</sup> August 2020. An investigating team was formed and made its recommendation.
65. Vide a letter dated 2<sup>nd</sup> February 2021, the Respondent invited the Claimant to a further disciplinary hearing, which was scheduled for 15<sup>th</sup> February 2021. The Claimant was informed of her right to be accompanied by any colleague of her choice and to produce any evidence in support of her case.
66. The Claimant was invited for a hearing on 15<sup>th</sup> and 16<sup>th</sup> February 2021 and was supplied with the statements of six witnesses who were to be heard on both days. The six witnesses testified and were cross-examined by the Claimant.
67. The Staff Disciplinary and Conflict Resolution Committee concluded that the Claimant had disclosed confidential details of an investigation including those being investigated. The disclosure was without the authorization of the Respondent.
68. The unauthorized disclosure was an act of gross misconduct by the Claimant which was not only a fundamental breach of her obligations under her contract but also a contravention of Clause 14.8.1 of the Respondent's Corporate Services, Policies and Procedures Manual 2017 as read with section 33 (1) of the *Anti-Corruption and Economic Crimes Act*.
69. The report was forwarded to the Secretary/CEO for approval vide Memo dated 8<sup>th</sup> March 2021.
70. On 22<sup>nd</sup> March 2021, the Respondent issued the Claimant with a letter of summary dismissal based on the findings of the Staff Disciplinary and Conflict Resolution Committee.
71. By a letter dated 23<sup>rd</sup> March 2021, the Claimant appealed against the summary dismissal. The Claimant, through her advocates, was informed that she would be notified when to appear before the Respondent for the hearing of her appeal, which appeal has since been overtaken by the Claimant's decision to file the present suit.
72. In RW3's view, due procedure was followed and the Claimant's summary dismissal was proper, fair and lawful.
73. RW3 added that the Claimant's actions greatly jeopardized the investigation and brought disrepute upon the Respondent. It greatly undermined the principles of Chapter 6 of *the Constitution*, the Public Officers Ethics Act and the Principles of Public Service which she swore to protect and uphold.

### **Submissions**

74. It was the Claimant's position that the documents and or evidentiary material that an employer intends to rely on in a staff disciplinary hearing ought to be shared with the concerned employee in the case of a disciplinary hearing. In support of this position, the Claimant placed reliance on the case of *Misheck v Kenya Airways Limited* [2024] KEELRC 1291 (KLR).
75. It was the Claimant's further submission that there are no provisions under the Respondent's Corporate Services Policies and Procedures Manual that empower the Secretary/CEO to override the recommendations of the disciplinary committee in the event the Committee stuck to its guns.



76. Referencing the cases of *Oyatsi v Judicial Service Commission* [2022] KEELRC 3 (KLR) and *Mwangi v Kenya Revenue Authority* [2024] KEELRC 1792 (KLR), the Claimant further submitted that she had a legitimate expectation that any disciplinary process would be conducted in accordance with the terms of the Respondent's Corporate Services Policies and Procedures Manual.
77. The Claimant further argued that she was dismissed due to additional allegations arising out of the Respondent's Secretary/CEO's memo about the alleged prior bad conduct that she was ambushed with at the second hearing.
78. According to the Claimant, she has adequately discharged her burden of proving unfair termination and the Respondent has failed to discharge its burden of proof under Sections 43(1), 45(2) and 47(5) of the *Employment Act*.
79. On its part, the Respondent submitted that it had valid and fair reasons which it genuinely believed to exist which caused it to summarily dismiss the Claimant. That the Claimant committed a criminal offence to the Respondent's detriment and it had lost trust and confidence in her ability to continue working as an investigation officer.
80. The Respondent further posited that it complied with the requirements of the law in terminating the Claimant's employment, including Sections 41, 43 and 45 of the *Employment Act* and its Human Resource manual and practice.
81. Referencing the case of *Nicholus Muasya Kyula v Farmchem Ltd* [2012] eKLR, it was submitted that the Respondent conducted investigations upon being notified that confidential information had been aired on television, the Claimant was issued with a show cause letter which she responded to in writing, she was invited to a disciplinary hearing where she made oral representations and had a chance to cross examine all the witnesses. That the Claimant was given two chances to make oral representations in the two disciplinary sessions and she was aware of her right to be accompanied to the hearing but she chose to proceed unaccompanied.

### **Analysis and Determination**

82. Flowing from the pleadings by both parties, the evidentiary material on record, as well as the rival submissions, the following issues are distilled for determination:-
  - i. Whether the Respondent has proved that there was a valid and fair reason to terminate the employment of the Claimant;
  - ii. Whether the Claimant was taken through a fair process prior to termination from employment; and
  - iii. Is the Claimant entitled to the reliefs sought?

### **Valid and fair reason for termination?**

83. Section 43(1) of the *Employment Act* requires an employer to prove the reasons for termination and failure to do so, such termination is deemed to be unfair. Connected to this provision is Section 45 (2) (a) and (b) of the *Employment Act* which provides that a termination of employment is unfair if the employer fails to prove that the reason for the termination is valid, fair and related to the employee's conduct, capacity or compatibility; or based on the operational requirements of the employer.
84. In the present case, the Claimant was terminated from employment on grounds that she disclosed confidential information without authority contrary to Clause 14.8.1 (viii) of the Ethics and Anti-



Corruption Commission Corporate Services, Policies and Procedures Manual, 2020, as read with Section 33 of the *Anti-Corruption and Economic Crimes Act*.

85. The reasons leading to the Claimant's termination from employment can be traced to the allegations raised in the Notice to Show Cause dated 18<sup>th</sup> March 2020. In her response to the said Notice to Show Cause, the Claimant admitted that she had been assigned a case by RW1, her former supervisor, in which the complainant was the former Governor of Nairobi County, Hon. Mike Sonko. The Claimant further admitted that she shared with the complainant in the case certain documents being the covering report, draft charges, list of exhibits and witness statements. According to the Claimant, she shared the documents with the complainant so as to facilitate him in recording his statement.
86. While expressing her remorse, the Claimant took full responsibility for sharing the confidential documents and termed her actions unacceptable and a breach of protocol.
87. During cross-examination, the Claimant admitted that she personally delivered the documents to the complainant's office. She further admitted during cross-examination that she was aware that the documents relating to the investigation were not to be disclosed. She further admitted that she did not seek concurrence from her supervisor before sharing the documents.
88. Section 33 (1) of the *Anti-Corruption and Economic Crimes Act* (ACECA) prohibits the disclosure of the details of an investigation without leave of the Director.
89. It is not disputed that the information shared by the Claimant with the complainant contained details of the investigation she was undertaking. As such, it becomes apparent that the Claimant's actions were in contravention of Section 33(1) of ACECA.
90. Further to the foregoing, Clause 14.8.1 (viii) of the Respondent's Corporate Services, Policies and Procedures Manual, expressly provides that unauthorized use or disclosure of confidential information is an offence warranting summary dismissal.
91. As can be discerned from the disciplinary proceedings exhibited before Court, there was concurrence from the witnesses who testified that relevant information could be shared with the complainant/witness at the time of statement recording. However, the documents shared by the Claimant in this case with the complainant should not be shared.
92. Indeed, the Claimant appeared to take the same position in her response to the Notice to Show Cause as she stated as follows: "It is with this, that I sincerely accept and own up to unlawfully disclosing confidential information entrusted with me for safeguarding..."
93. The Claimant's actions when considered against Sections 43, 45(2) (a) and (b) of the *Employment Act*, lead me to conclude that the Respondent has proved on a balance of probabilities that it had a fair and valid reason to commence disciplinary action against the Claimant based on her conduct.

#### **Fair process?**

94. In terms of Section 45 (2)(c) of the *Employment Act*, an employer is required to prove that it terminated an employee's employment in accordance with a process that is fair. The specific requirements of a fair process are encapsulated under Section 41(1) of the *Employment Act*. This process entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.
95. In this case, the Claimant has raised several issues regarding the process she was subjected to, prior to the termination of her employment. In this regard, the Claimant contends that she was never supplied with



- the evidence in support of the allegations leveled against her and the witness statements of the witnesses who testified against her in the two disciplinary hearings. The Claimant has further contended that the Respondent did not share with her the proceedings and the outcome of the first disciplinary hearing.
96. It is evident from the record that the Claimant was subjected to two disciplinary hearings. Following the first disciplinary hearing, the Committee recommended that the Claimant be reprimanded or warned and trained on handling forensic investigations.
  97. Seemingly, the Respondent's Secretary/Chief Executive Officer (CEO) was dissatisfied with the decision of the disciplinary committee on grounds that the Committee did not consider all the evidence in the report before arriving at the decision and the sentence was too lenient considering the seriousness of the matter at hand. Subsequently, the Respondent's CEO returned the report to the Chairperson of the Staff Disciplinary and Conflict Resolution Committee for review and consideration of his comments.
  98. Consequently, the Claimant was once again invited for a second disciplinary hearing through a letter dated 2<sup>nd</sup> February 2021. Notably, the Claimant was not notified of the outcome of the initial disciplinary hearing and what had transpired hence the reason why she was being subjected to a second disciplinary hearing. This amounted to an unfair conduct on the part of the Respondent.
  99. In as much as Clause 14.5.14 of the Respondent's Corporate Services, Policies and Procedures Manual, gives lee way to the CEO to refer the matter back to the Staff Disciplinary and Conflict Resolution Committee if he is not in concurrence with the Committee's recommendations, the Claimant had a right to be notified of the outcome of the first disciplinary hearing and the reasons why a second disciplinary hearing was necessary.
  100. It is also notable that the Respondent has not denied the Claimant's assertions that she was not issued with the evidence relied on by the Respondent during the disciplinary hearing and the witness statements of the witnesses who testified against her during the two disciplinary hearings.
  101. RW3 told the Court that the documents were supplied to the Claimant during the second disciplinary hearing.
  102. Indeed, the Respondent did not provide any plausible reasons for its failure to furnish the Claimant with the evidence relied on during the disciplinary hearing as well as the witness statements of the witnesses who testified against her ahead of the disciplinary hearing.
  103. Why did the Respondent have to wait until the middle of the disciplinary hearing to furnish the Claimant with the documents/evidence it was relying on? What time did she have to apply her mind to the same and prepare adequately for the hearing?
  104. In the case of *Ol Pejeta Ranching Limited vs David Wanjau Muhoro* [2017] eKLR, the employer attempted to furnish the employee with the audit report on the hearing date but the employee rejected it. The Court of Appeal rightly found that the audit report would have made no impact as there was no time for the employee to amply prepare and that it was merely tendered as a technical formality. In that case, the Court reckoned that there was no reason given as to why the employee could not have been supplied with a copy of the audit report much earlier and in good time.
  105. Similarly, in this case, I find that there was no value in the Respondent providing the documents/evidence to the Claimant in the middle of the disciplinary hearing. It served no purpose at all as it was not practical that the Claimant would have reviewed the same and prepared her defence appropriately.



106. Accordingly, I do not doubt that the Claimant’s level of preparedness for the disciplinary hearing was impaired on account of the lack of evidence and the witness statements of the witnesses who testified against her.
107. To ensure a fair process, the Respondent was enjoined to furnish the Claimant with the said documentation/evidence ahead of the disciplinary hearing. She did not have to request for the same. It is important to underscore that the Respondent was not doing the Claimant a favour by providing her with the said documents/evidence. That was her right.
108. On this issue, I agree with the finding of the Court (Ndolo J) in the case of Rebecca Ann Maina & 2 others vs Jomo Kenyatta University of Agriculture and Technology [2014] eKLR, that the employee is entitled to documents in the possession of the employer which would assist them in preparing their defence.
109. The other issue raised by the Claimant is the Respondent’s failure to hear and determine her Appeal.
110. The record bears that the Claimant lodged her appeal against the termination of her employment on 23<sup>rd</sup> March 2021. The Claimant submitted a further appeal through her Advocates on record vide a letter dated 21<sup>st</sup> April 2021. Vide a letter dated 4<sup>th</sup> May 2021, the Respondent informed the Claimant’s Advocates that she would be informed of the date when she would be expected to appear for the appeal hearing. The Claimant contends that to date, her appeal is yet to be heard and determined.
111. In his testimony before Court, RW3 stated that the Claimant’s Appeal was overtaken by the present suit. It is worth pointing out that the instant suit was filed on 22<sup>nd</sup> February 2023, which is close to two years from the date the Claimant was notified that she would be informed of the date of her appeal hearing.
112. In the letter of summary dismissal, the Claimant was notified that she had 30 days to appeal the decision to dismiss her from employment. She exercised this right. One therefore wonders why the Respondent would express to the Claimant that she had a right to appeal and then advise her to await an appeal hearing, only to go silent.
113. On this issue, I find it relevant to revisit Section 45(5) (a) of the *Employment Act*, which provides as follows:
- “ (5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for this section, a labour officer, or the Industrial Court shall consider—
- (a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;” Underlined for emphasis
114. In the present case, the Court finds that the Respondent’s inaction with respect to the Claimant’s Appeal essentially denied her a chance to be heard on appeal. Needless to say, this was unjust and inequitable.
115. In as much as the Respondent issued the Claimant with a Notice to Show Cause and invited her to attend a disciplinary hearing, the fact that she did not have the benefit of crucial evidence and witness statements ahead of the disciplinary hearing marred the entire process and when viewed in a holistic manner, the process was not just and equitable towards the Claimant. Coupled with the foregoing,



the Claimant was not notified of the outcome of the first disciplinary hearing and was denied a chance to be heard on appeal.

116. In the end, and taking all factors into consideration, I cannot help but find that the Claimant's dismissal from employment was procedurally flawed, unjust, and inequitable.

### Reliefs

117. Having found that the Respondent had a fair and valid reason to terminate the employment of the Claimant based on her conduct but did not act procedurally, justly and equitably in so doing, the Court awards her compensatory damages equivalent to three (3) months of her gross salary. In arriving at this award, the Court has considered the length of the employment relationship and most of all, the contribution of the Claimant to the termination of her employment.

118. The claim for gratuity is declined as the Claimant admitted during cross-examination that she was paid gratuity at the end of her respective contracts. She further admitted that at the time she was terminated from employment, she was serving on permanent and pensionable terms and was not eligible for gratuity.

### Orders

119. In the final analysis, Judgment is entered against the Respondent, and the Claimant is awarded:
- a. Compensatory damages in the sum of Kshs 311,007.00 being equivalent to three (3) months of her last gross salary.
  - b. Interest on the amount in (a) at court rates from the date of Judgment until payment in full.
  - c. The Respondent shall also bear the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Waudu

For the Respondent Ms. Wangongu

Court Assistant Millicent

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 had 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.

