



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutisya v G4S Kenya Limited (Cause E238 of 2021)  
[2025] KEELRC 2474 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2474 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E238 OF 2021  
SC RUTTO, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**DAVID MUTUNGA MUTISYA ..... CLAIMANT**

**AND**

**G4S KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. It is common cause that the Claimant was employed by the Respondent with effect from 27<sup>th</sup> June 1992 in the position of Personnel Records Clerk. The Claimant rose through the ranks to the position of Resourcing Manager. That is the position the Claimant was holding when he was terminated from employment. It is the Claimant's view that his termination from employment was unfair and unlawful. Consequently, he seeks the following reliefs against the Respondent:
  - a. A Declaration that the Claimant was entitled to the protection of his right to right to fair labour practices;
  - b. A Declaration that the termination of the Claimant's employment was unjustified, unfair and unlawful and amounts to unfair and unlawful termination;
  - c. A Declaration that the Claimant was subjected to discriminatory and unfair labour practices;
  - d. 3 months' salary in lieu of notice Kshs. 1, 064,519.64;
  - e. Kshs. 50,387,262.96 for lost earnings from the date of unfair termination to the retirement age of 60 years;
  - f. Kshs. 4,680,000.00 being Car Allowance benefits deserved but unpaid between the years 2011 and 2018;



- g. 12 months' salary as compensation for unjustified, unfair and unlawful dismissal Kshs. 4,258,078.56;
  - h. Accrued Leave days not paid Kshs. 1,324,736;
  - i. Unpaid performance-based bonuses Kshs. 7,779,739.20;
  - j. Salary review underpayments Kshs. 307,630.40;
  - k. 12 months' salary as compensation for discrimination and unfair labour practices Kshs. 4,258,078.56;
  - l. Costs of the suit and interest on the decretal sum at Court rates from the date of judgment until payment in full;
  - m. Certificate of Service;
  - n. An order for the return of his wallet with Kshs. 8,300.00 in it;
  - o. An order for delivery of his neck tie blue in colour valued at Kshs. 3,000.00.
  - p. An order for delivery of his new bottle of Tom Ford (Cologne) valued at Kshs. 25,000.00; and
  - q. Any other relief the Court may deem fit to grant.
2. Opposing the Claim, the Respondent avers that the termination of the Claimant from employment was lawful, fair and procedural. According to the Respondent, it had valid reasons to terminate the Claimant's employment and that it followed procedural fairness in accordance with the [Employment Act](#) and its disciplinary Code. On the basis of the foregoing, the Respondent has asked the Court to dismiss the claim with costs.
  3. In response to the Respondent's Statement of Response, the Claimant filed a Rely dated 19<sup>th</sup> May 2021, in which he refutes that his dismissal was procedurally fair and conducted in line with the disciplinary policy. The Claimant further contends that the panel was not properly constituted and was biased, hence breached the rules of natural justice. It is the Claimant's further assertion that the reasons for his dismissal were neither valid nor justified.
  4. During the hearing, which proceeded on diverse dates, both parties called oral evidence.

#### **Claimant's Case**

5. The Claimant testified in support of his case and called Epimach Maritim and Boniface Ngungu Ndwota as his additional witnesses. The Claimant, who testified as CW1, was the first to go. At the outset, he sought to adopt his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed alongside the Memorandum of Claim as his exhibits before Court.
6. It was the Claimant's testimony that on 1<sup>st</sup> March 2018, he visited the Human Resource Director's office, Elijah Sitimah, to follow up on his performance Appraisal for the Year 2017 which was still pending despite him having appraised all his other direct reports except one Francis Achono; and closure on his Performance Appraisal for the Year 2016 which had remained unresolved for more than a year.
7. The Claimant averred that the Human Resource Director refused to engage him, stating that he was fit for disciplinary action. Later in the day, he was issued with a letter dated 1<sup>st</sup> March 2018 requiring



- him to show cause why he should not be subjected to disciplinary action. The letter contained various allegations, mainly that he had not adhered to the timelines set for conducting performance appraisal; that the said director had requested him to set a date for driving competency tests and that the schedule for interviews for the Temporary Credit Controllers position was poorly coordinated.
8. The Claimant averred that he responded to the allegations through his letter dated 2<sup>nd</sup> March 2018, in which he detailed the circumstances surrounding the allegations made. The said letter was never responded to by the Human Resource Director.
  9. The Claimant further averred that on 12<sup>th</sup> March 2018, Mr. Elijah placed on his desk an undated handwritten note asking him to receive a charge sheet. Beneath the note were two copies of Notice of Disciplinary Enquiry/Hearing. The disciplinary hearing was planned for 15<sup>th</sup> March, 2018.
  10. When the Claimant returned the charge sheet to the Human Resource Director, he enquired about a response to his letter and he was told that it was immaterial at that stage. This prompted the Claimant to write an email on 13<sup>th</sup> March 2018 to the Human Resource Director asking him to clarify about the response to his letter and who the committee members at the hearing would be.
  11. Mr. Sitimah confirmed to him that the disciplinary hearing committee would consist of Chairman-Laurence Okello-Finance Director, Secretary -Collins Luvai-General Security and Risk Manager, Committee Member-Geoffrey Mwove-Courier Director, Committee Member-George Obel-National Manager ESS and Committee Member-Kepha Gaitho-National Manager ESS.
  12. The Claimant objected to the inclusion of Collins Luvai and Geoffrey Mwove in the Disciplinary Hearing Committee on grounds that Collins Luvai had played a key role in the flawed recruitment process, where the successful candidate Agnetta Wakio was overlooked in the subsequent appointment at the instigation of the Human Resource Director and their preferred candidate appointed.
  13. The Claimant further averred that Geoffrey Mwove had participated in the unethical recruitment of Courier in April 2017 and February 2018 which he had also raised queries about.
  14. According to the Claimant, the two could not be objective and impartial as there was already bad blood between him and them hence they could not judge him fairly.
  15. The Claimant further contended that the composition of the panel did not meet the requirements set out in the Respondent's Disciplinary Policy, as there was no impartial Human Resource Representative. Additionally, the policy required that the person sitting as the Secretary to the panel be a Human Resources person, absence of whom the minutes would be recorded by the Chairperson. According to the Claimant, Collins Luvai, was not a person in the Human Resources line.
  16. The Claimant further averred that the Respondent did not conduct an investigation into the allegations made against him before dismissing him as required by its Disciplinary Policy.
  17. The Claimant averred that in addition to the matters that had been raised in the show cause letter, the Human Resource Director spelt out various additional allegations at the hearing which were neither stated in the show cause letter nor the Notice for Disciplinary Hearing. These include the Execution of Vetting Checks and Probation Confirmation where the Human Resource director alleged that he had delayed in submitting the vetting clearance for employees to be confirmed in their appointments.
  18. That further, he was ambushed with a charge of intimidation and frightening the vetting staff working under him. The Claimant averred that the Director had, over a period of more than a year, whipped the staff working under him to frustrate him and were not taking any of his instructions as the immediate supervisor.



19. The Claimant further averred that it was alleged that an employee allegedly wrote a complaint email about six months earlier but the said email was never disclosed or discussed with him prior to the disciplinary hearing. That the Claimant was also accused of inability to guide his team.
20. He was also accused of reporting to work late and failing to log in/clock in when reporting to work. The Claimant further averred that Collins Luvai gave evidence on the accusation of reporting to work late.
21. The Claimant averred that in as much as he tried to counter these allegations that had not been disclosed to him prior to the hearing, he was greatly prejudiced as he was never given particulars to allow him to prepare his defence.
22. It was the Claimant's view that the termination of his employment contract was unjustified as the reasons for his termination were never sufficiently demonstrated, while he gave information sufficient to counter the allegations made against him.
23. That further, the Disciplinary Panel was comprised of persons who had always been hateful of him and could not make a fair and just verdict, as was evident from how the secretary recorded the minutes.
24. According to the Claimant, the minutes of the panel sitting were not a true representation of the proceedings at the meeting. That he had sought time to go through the minutes before signing. However, on 21<sup>st</sup> March 2021, he was issued with a back-dated letter of termination dated 20<sup>th</sup> March 2018 based on a flawed process and invalid findings.
25. The Claimant further averred that after picking the letter of summary dismissal, the Finance Director, Laurence Okello, walked him to the office of Elijah Sitimah, where Jane Munge, the Compensation and Benefits Manager, was called in. She was tasked to inform the Respondent's staff that he (Claimant) had been summarily dismissed from employment. He requested to be told the person to hand over to, as had been indicated on the summary dismissal letter but was informed by Elijah Sitimah that there was no need for a handover.
26. That he also made a request to be allowed to pick up his personal belongings from his desk but his request was declined by Elijah Sitimah. As a result, he was unable to pick a wallet with Kshs 8,300, a blue neck tie and a new bottle of Tom Ford (Cologne) from the drawers of the Desk that had been allocated to him.
27. According to the Claimant, the Respondent treated him inhumanely and in an undignified manner in violation of its own Minimum Standards Policy: Dignity at Work.
28. That after he was given the letter of termination, he had a right of appeal, which he drafted and handed to the Finance Director, who was the Chairman of the disciplinary hearing committee. This did not materialize because he was barred at the gate. The Security Guards at the gate informed him that they had strict instructions from Laurence Okello, Elijah Sitimah and Jane Munge not to allow him into the precincts of the Respondent company.
29. The Claimant further averred that he was entitled to final dues but the same were never paid. That further, there were no efforts whatsoever to contact him to discuss and sign off his final entitlements from the Company.
30. That further, he was also entitled to a Certificate of Service, but the same was never issued to him, and he has no way of following up on it because he was barred from accessing the Respondent company.



31. The Claimant further averred that on 10<sup>th</sup> July 2013, communication was made to him by the Respondent company to the effect that his position of Resourcing Manager had been graded as D1 in the job grading structure.
32. The said grade was to be the basis of determining employment benefits due to him. However, he was constantly discriminated against by the Respondent as the salaries of all employees in his grade were reviewed upwards and a salary increment of 5% effected on the Gross Salary effective 1<sup>st</sup> January 2017; he was the only employee of the Respondent company whose salary was not reviewed for the said period. This was notwithstanding his good performance in the preceding year and meeting all the targets that had been set in the performance contract.
33. The Claimant further contended that he was not given a salary increment in the year 2017 in line with the Respondent's policy and practice on salary review.
34. In the Claimant's view, he was discriminated against and subjected to unfair labour practices during his employment as the Respondent failed to give him equal treatment with other employees in his job grade. That he is therefore entitled to the salary underpayments resulting from the discrimination in salary review at the rate of 5% of his Gross Salary as at December 2016, from January 2017 until his unfair and illegal termination.
35. The Claimant added that while other employees in his grade were refunded the 2009 bonus and continued earning performance-based bonuses in subsequent years, he was unfairly and unjustly treated by not being paid the performance-based bonus.
36. That further, the Respondent withdrew his car allowance despite the same being available for other employees in his job grade.
37. The Respondent had in place a Bonus Policy whereby the employees were entitled to Performance-Based Bonuses at various rates of their Basic Annual Salary. That under the said Bonus Policies, he was entitled to bonus payments of up to 30% of his annual basic salary in line with the yearly bonus objectives.
38. That his bonuses from the year 2010 until his unfair and unlawful termination remain unpaid despite his good performance and the company making financial profits in the years. Further that despite the Respondent recalling the bonus paid based on the 2009 financial performance, all employees received a repayment of the same, except him.
39. The Claimant further averred that despite being entitled to 28 working days with full pay as annual leave, he earned but did not take leave from the year 2014 until his unjustified, unfair and unlawful termination.
40. Mr. Boniface Ngungu Ndwota who testified as CW2, equally adopted his witness statement to constitute his evidence in chief.
41. It was CW2's evidence that he worked with the Claimant for nearly 20 years and during that time, he never knew him to be disrespectful and disobedient.
42. CW2 averred that in 2016, he was appointed Acting Human Resources Director for the Respondent after Epimach Maritim, who was then the Human Resources and Change Director, left employment.
43. That as the Acting Human Resources Director, the Claimant reported directly to him hence he was his supervisor.



44. According to CW2, their working relationship was cordial at the time, and they related well with other employees in the department and across the company.
45. CW2 stated that he is aware that sometime in March 2018, the Claimant was taken through a disciplinary hearing and later dismissed.
46. The Claimant called him as a witness at the hearing and his testimony was that he was aware that the Human Resource Director, Elijah Sitimah had initially asked that all his direct reports present to him performance appraisal documents through email but he later changed this requirement verbally and asked that they print and present to him hard copies. This is what he did. That all the other Managers, including the Claimant, presented hard copies.
47. He is also aware that at the time, Elijah Sitimah had indicated in a meeting he had attended and his other direct reports, including the Claimant, that the appraisal for the Claimant and the Payroll Manager, one Francis Achono, were still outstanding and he would find time to appraise them.
48. According to CW2, the allegation at the hearing by the Human Resource Director that the Claimant had declined to present his appraisal documents and to be appraised was therefore not true.
49. He is also aware of an allegation that was presented at the hearing that the Claimant had delayed in recruiting a Human Resource Business Partner (HRBP). According to CW2, the allegation was false because he had been involved with the recruitment as part of the interview panel and the Human Resource Director had frustrated the process by rejecting all the successful candidates presented to him.
50. CW2 added that the Human Resource Director frustrated the process by declining to approve an external advert for the position to widen the pool of candidates, preferring that they only advertise the position internally, even though he had rejected all the candidates who had come through this channel.
51. He is also aware that at the hearing, the Claimant was accused of delaying the recruitment of Easy Roaster Administrators for the manned security business division. CW2 stated that he was dismayed as to why the Human Resource Director would blame this on the Claimant, yet it was the user department for Easy Roaster Administrators that had requested that the recruitment be put on hold because the department had excess staff. As a result, the department had re-arranged its operators so as to use some of the excess staff to fill in this role in an acting capacity.
52. That after the Claimant was dismissed from employment, there was no recruitment undertaken for these positions for more than a year and three employees continued to act, a further confirmation that there was no business need to recruit Easy Roaster Administrators at the time the Claimant was being accused of delaying the recruitment.
53. CW2 further stated that the working relationship between the Human Resource Director and the Claimant was strained and for more than a year, there was a concerted effort by the Human Resource Director to find fault in the Claimant and terminate his services.
54. That for more than a year, the Human Resource Director had tried very hard to find mistakes that he could use as a basis for exiting the Claimant from the business, including clear cases of witch hunt. In his view, the work environment was toxic for the Claimant.
55. He is aware that as part of the strategy by the then Managing Director, Christopher Manning, to terminate the contract of the Claimant out of the business because he was close to the previous Human Resource Director, Epimach Maritim.



56. He is also aware of a disagreement between the Claimant and the Human Resource Director over recruitment for some positions in which the successful candidates were switched for unsuccessful candidates or candidates who did not pass through the defined interview process. Specifically, there was the case for Senior HR Business Partner and where the successful candidate, Agnetta Wakio was dropped and instead Daniel Barmao was appointed. According to CW2, the outcome of the interview was manipulated by the Human Resource Director and Collins Luvai, who was also on the panel.
57. He is also aware of a flawed recruitment of Couriers in 2017 and 2018 whereby candidates who had not gone through the defined process were hired at the instructions of Elijah Sitimah, the Human Resource Director and Geoffrey Mwove, the Courier Director. This caused a big disagreement between the Claimant and the Human Resource Director, which was later escalated to the MMD, with the Claimant protesting that such acts were bringing the entire recruitment process into disrepute. This deeply perturbed him as the one in charge of the recruitment policy, which required the upholding of the highest level of integrity.
58. CW2 averred that he has reasons to believe that by the Claimant having protested the breach of company policy in hiring of Couriers in February 2018, this is where his troubles began.
59. He is aware that as a senior manager, the Claimant had annual objectives and targets that he was required to attain. There was a requirement that mid-year, all managers were to undergo a Mid-Year Performance Appraisal to check that they were on course to attain the annual targets set at the beginning of the year.
60. As acting Human Resource Director in 2016, he had a mid-year review with the Claimant in July 2016, and he was performing very well. He was on course to attain his annual objectives for 2016. Had the Claimant been underperforming, he would have issued him a cautionary letter to this effect because this was the standard procedure. CW2 was dismayed when, in early 2017, Elijah Sitimah, who was the new Human Resource Director, appraised the Claimant and awarded him negative scores.
61. According to CW2, it was against company policy for Elijah to have appraised the Claimant because they had worked together for barely two months. The policy required that he had to have worked with him for at least six months for him to be able to appraise him.
62. He (CW2) knows the Claimant appealed this appraisal to the Managing Director, but nothing was done and it remained unresolved until the time he left employment.
63. CW2 averred that ordinarily, he would have been the one to execute the disciplinary hearing process for the Claimant, but this was kept away from him and it was planned by Elijah Sitimah, Collins Luvai, a person not conversant with HR matters and Jane Munge, the Compensation and Benefits Manager.
64. According to CW2, the disciplinary hearing was flawed and was not properly constituted as stipulated in the company's Disciplinary Policy.
65. That there was a requirement by the Disciplinary Policy that before taking an employee through a disciplinary hearing, a thorough investigation ought to have been done first. That there was no investigation done in the case of the Claimant.
66. CW2 added that Elijah Sitimah was both the company representative prosecuting the case against the Claimant and sat in the panel to adjudicate as well. This was not right.
67. That Collins Luvai, a person not employed in the Human Resource Department, was the secretary to the panel. This was a breach of the Disciplinary Policy.



68. CW2 averred that on 20<sup>th</sup> March 2018, the Claimant showed him the minutes of the hearing and (CW2) testimony at the hearing had been deliberately omitted.
69. The Claimant informed him that he had agreed with Laurence Okello, the Chairman of the hearing, that he would read the minutes and they would sign them off the following day, 21<sup>st</sup> March 2024. The following day, the minutes were not signed because the Claimant raised issues with how the same had deliberately omitted his testimony and that of his witnesses. He was issued a dismissal letter on 21<sup>st</sup> March, 2018, the day they would have signed off the minutes.
70. The letter was dated 20<sup>th</sup> March, 2018, and this confirmed his suspicions that he had been taken through a process whose outcome had been predetermined.
71. According to CW2, the Disciplinary Policy provided for alternative sanctions for the offence that he had been charged with. The considerations to be made are also indicated in the policy, including length of service and a previous clean record. It appeared to him that these considerations were not made in arriving at the decision to summarily dismiss the Claimant.
72. CW2 further stated that the Claimant had gone through very difficult and stressful times during the one and a half years he had worked under Elijah Sitimah. That the Claimant was also overworked because he was the only recruiter for a 14,000-plus people business.
73. CW2 added that in 2017, the Claimant was discriminated against when the Management, represented by the Human Resource Director, increased the salaries for all staff except him. That he (CW2) received a pay increase with effect from 1<sup>st</sup> January 2017 but the Claimant's pay remained unchanged.
74. Mr. Epimach Maritim, who testified as CW3, similarly adopted his witness statement to constitute his evidence in chief. He described himself as a Human Resource Management professional with over 30 years of experience, during which he served in many organisations, including multinational companies and specifically, the Respondent.
75. It was CW3's evidence that he joined the Respondent company in 2010 as Human Resources and Change Director. The Claimant is well known to him and he was in the Respondent's employment when he joined.
76. That as a Resourcing Manager, the Claimant reported directly to him and in terms of the organization structure in place at the time, he was the Claimant's direct Supervisor.
77. CW3 stated that for the entire period that the Claimant worked under him, between 2010 and 2016, he never got to know him as being disobedient and disrespectful. Their work relationship was cordial.
78. CW3 added that the Claimant was a very loyal and dedicated worker and that partly explained the many years he had put into the service of the company, getting numerous promotions along the way.
79. That as both Human Resource Director and the Claimant's immediate supervisor, he had access to his personal records held by the Respondent. The Claimant had a clean record and for the over 20 years that he had worked before he (CW3) joined, there was no record of disciplinary issues.
80. That after he (CW3) left employment in 2016, he learned from the Claimant that he was stressed because he was working in a very toxic environment. That there were attempts by the Managing Director and the Human Resource Director to ensure that he was terminated from employment because, allegedly, he had been very close to him (CW3) and because he had left employment, they wanted him to leave the Respondent company as well, by any means.



81. CW3 further stated that in early 2017, in a private meeting, the Claimant showed him his performance appraisal for 2016 and it showed that he had been given some negative scores.
82. This, to him, appeared like a clear case of witch hunt and malice. It was CW3's testimony that in the many years that he has been in Human Resource Management practice, an employee cannot score negatively. Even if an employee showed up and did nothing the whole year, they could only score zero, not a minus.
83. Later in 2018, he learned that the Claimant had been dismissed from employment.
84. In CW3's view, he considered this unfair, especially given his length of service with the Respondent. Even if it was not desirable for the Respondent to continue the Claimant's employment, there were other available options of separation, including agreeing on mutual separation, which he had all along known the Claimant was open to. According to CW3, he is aware that as a result of this decision, the Claimant has never been able to find alternative employment.

### **Respondent's Case**

85. The Respondent called oral evidence through Laurence Okelo, who testified as RW1. Mr. Okelo identified himself as the Managing Director of the Respondent company. Similarly, Mr. Okelo adopted his witness statement to constitute his evidence in chief. He further produced the documents filed on behalf of the Respondent as exhibits before Court.
86. It was RW1's evidence that the Claimant was reporting directly to Elijah Sitimah, the then Human Resources Director of the Respondent. According to RW1, Mr. Sitimah has since left the Respondent's employment and is not available to attend court and give evidence.
87. RW1 averred that the Claimant's employment was governed by the employment contract and the Respondent's disciplinary policy.
88. He further stated that the Claimant's duties as set out in his job description included: conducting human resource function across the Respondent's business in the country; developing and aligning job competency framework with recruitment and selection processes, performance management and development strategies; participating in the formulation and development of talent management and succession; overseeing vetting processes in order to ensure minimum or no derogations; and reporting on the activities of the resourcing function.
89. It was RW1's testimony that on 28<sup>th</sup> February 2018, the Human Resources Director submitted a report of the various instances when the Claimant failed to follow lawful instructions and recommended that the Claimant be subjected to disciplinary action.
90. RW1 further testified that on 1<sup>st</sup> March 2018, the Human Resources Director issued the Claimant with a show cause letter detailing the charges against him and requested him to show cause why disciplinary action should not be taken against him. The Claimant responded to the show cause letter on 2<sup>nd</sup> March 2018. The Human Resources Director considered the response and found it unsatisfactory.
91. Consequently, on 12<sup>th</sup> March 2018, the Human Resources Director issued the Claimant with a notice inviting him to a disciplinary hearing to be held on 15<sup>th</sup> March 2018.
92. The notice for disciplinary hearing, among others, informed the Claimant that the disciplinary hearing would take place on 15<sup>th</sup> March 2018; he had the right to be accompanied by one (1) representative during the hearing; he would be permitted to call and question witnesses; and he had the right to appeal his dismissal within 14 days from the date of dismissal.



93. According to RW1, the Claimant was given adequate time to prepare for the hearing and was at liberty to make a request for more time to enable him to prepare for the disciplinary hearing.
94. RW1 further averred that the disciplinary hearing was held on 15<sup>th</sup> March 2018 as scheduled and he (RW1) chaired the disciplinary panel, and the Human Resources Director presented the case against the Claimant. The Claimant attended the disciplinary hearing and chose not to be accompanied by a representative.
95. It was RW1's evidence that the Claimant was allowed an opportunity to defend himself and he called witnesses in support of his case.
96. Upon hearing the Claimant and considering the gravity of his misconduct, the disciplinary panel in line with clauses 7.1 and 7.4 of the disciplinary code, found him guilty of failing to follow lawful instructions from his supervisor and recommended that his employment be terminated.
97. The Respondent considered the findings and recommendations of the disciplinary panel and made the decision to summarily dismiss the Claimant from employment.
98. RW1 further testified that on 20<sup>th</sup> March 2018, in his capacity as the Respondent's Finance Director at the time, he wrote to the Claimant informing him of his dismissal from work. The dismissal was to take effect from 20<sup>th</sup> March 2018.
99. The Respondent calculated the Claimant's terminal dues and remitted the same to him.
100. According to RW1, the Respondent did not receive any letter or communication from the Claimant appealing his dismissal. He denied the Claimant's assertions that he (Claimant) visited the Respondent's offices to drop off his appeal letter and was barred at the gate by the security guards.
101. RW1 was categorical that the Claimant never visited the Respondent's offices after his dismissal. He added that clause 12.6 of the disciplinary policy does not limit the manner of lodging appeals and nothing prevented the Claimant from sending his appeal letter by e-mail.
102. In RW1's view, the Claimant was summarily dismissed for a lawful cause and is not due any pay in lieu of notice.
103. That the Claimant was entitled to 28 leave days per year for every year of service and that he took leave from 2015 to 2017.
104. RW1 further denied that other employees in job grade D1 received an annual 5% increment of their salaries effective January 2017 after salary reviews. According to RW1, salary reviews are based on the performance of both the individual and the organization. Based on the business performance at the material time, the Respondent did not offer its management employees salary increments in 2017. For this reason, the Claimant is not entitled to Kshs. 307,630.40 being money due for underpayments allegedly due to him.
105. RW1 further disputed that other employees in job grade D1 were paid the 2009 performance-based bonus or that they continued earning performance-based bonuses for the subsequent years. According to RW1, the Respondent has been performing below expectations, as a result of which its employees graded D and above have not received performance-based bonuses since 2008.
106. RW1 further denied that the Respondent withdrew the Claimant's car allowance. According to him, the Claimant was paid his car allowance up until his dismissal from employment. Whereas in the previous years the computation of the basic salary and car allowance were separate, from July 2011, the car allowance was computed together with the basic salary, resulting in a consolidated pay.



107. RW1 further denied that the Claimant had applied for a car loan in 2017.
108. That further, the Claimant did not face any form of workplace discrimination.
109. According to RW1, the Claimant did not complete the clearance process with the Respondent and for that reason, has not been able to collect his certificate of service.
110. RW1 denied the Claimant's assertions that he was not allowed to pick up his personal belongings from the office. He averred that upon the Claimant being issued with his dismissal letter, he spent the whole day sorting and clearing his desk and picking up all his personal belongings.

### **Submissions**

111. On his part, the Claimant submitted that he was subjected to blatant workplace discrimination and marginalisation by the Respondent and that he suffered significantly as a result of the unfair labour practices perpetrated against him. To buttress his argument, the Claimant referenced a number of precedents, including *Oi Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR, *South African Revenue Service v Commission for Conciliation, Mediation and Arbitration & Others* (2017) ZACC 29 and *British Columbia (Public Service Employee Relations Commission) v BCGSEU* [1999] 3 SCR 3.
112. The Claimant further posited that he has demonstrated through credible evidence and judicial authority that he was subjected to a sustained pattern of unfair labour practices and workplace discrimination by the Respondent, in violation of his constitutional and statutory rights.
113. In further submission, the Claimant stated that the events leading to the hearing, the disciplinary hearing, and the post-hearing were all marred by procedural and substantive irregularities, rendering the entire process unfair and unlawful.
114. It was the Claimant's further contention that the disciplinary panel failed to meet the requirements as set out in the Respondent's Disciplinary Policy in that there was a lack of an impartial Human Resource Representative in line with Clause 12.3.1 of the Policy and that the Human Resource Director surprised him with a separate list of allegations which had not been presented to him before.
115. Referencing the case of *Polkey v AE Dayton Services Ltd* [1988] AC 344, the Claimant submitted that the Respondent was in utter violation of its disciplinary policy and conducted the hearing under unmeritorious circumstances to his detriment.
116. In the Claimant's view, the termination process was conducted in bad faith and amounted to a pre-determined outcome, in clear disregard of his right to a fair hearing under Article 50 of the *Constitution* of Kenya (2010) and Section 41 of the *Employment Act*.
117. The Claimant further submitted that the Respondent treated him inhumanely and in an undignified manner in violation of his right under Article 28 of the *Constitution* of Kenya (2010) and the Minimum Standards Policy: Dignity at Work.
118. According to the Claimant, the allegations against him were unsubstantiated and he effectively responded to the same in his response to the show cause letter. In the same vein, the Claimant contended that his response was ignored, and the termination was unfairly handed down to him. It was the Claimant's position that the termination was without substantive grounds. To this end, the Claimant cited the case of *Josephine M. Ndungu & others v Plan International Inc* [2019] eKLR.
119. The Claimant further argued that the Respondent recklessly brought allegations against him without any prior investigations or any fact-finding mission. On this score, he posited that the Respondent has



failed to discharge its burden of proof as it cannot claim to have any justifiable reasons for termination if no investigations were carried out.

120. On the other hand, the Respondent submitted that the reasons for the Claimant's termination were legal and justifiable. In the Respondent's view, any reasonable employer faced with similar circumstances would have arrived at the decision to dismiss the Claimant.
121. In the same breath, the Respondent submitted that pursuant to Section 44(4)(e) of the *Employment Act* as well as clauses 7.1 and 7.4 of its disciplinary code, the Claimant's employment was terminated for a valid reason, as established by the evidence gathered during the investigation, the responses provided by the Claimant and his written and oral representation during the disciplinary hearing. In support of the Respondent's submissions, the Court was invited to consider a number of precedents, including *Robert Kenga & another v Ocean Sports Resort* [2015] eKLR, *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR and *CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona* [2015] eKLR.
122. The Respondent further submitted that the Claimant's termination was procedurally fair in accordance with the provisions of section 41 of the *Employment Act*.
123. In further submission, the Respondent stated that the Claimant was not subjected to unfair labour practices as alleged or at all.

### **Analysis and Determination**

124. Flowing from the pleadings by both parties, the evidentiary material on record as well as the rival submissions, it is clear that the Court is being called to resolve the following questions: -
  - 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 afforded procedural fairness prior to being terminated from employment;
  - iii. Whether the Claimant was subjected to discrimination and unfair labour practices; and
  - iv. Is the Claimant entitled to the reliefs sought?

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

125. As can be discerned from the Claimant's letter of summary dismissal dated 20<sup>th</sup> March 2018, the reasons leading to the separation revolved around the Claimant's alleged failure to obey lawful instructions from his line manager. Specifically, it was alleged that the Claimant;
  - i. Disrespected his manager's instructions to avail his performance appraisal documents as per the email addressed to him dated 12<sup>th</sup> February 2018 and failed to turn up for the appraisal meeting scheduled for 19<sup>th</sup> February 2018. That he continued to disobey the instructions until 1<sup>st</sup> March 2018, when he was issued with a show cause letter on the issue.
  - ii. In a meeting held on 22<sup>nd</sup> February 2018, in HRD's office, clear instructions were issued to him to work with the HRBP in ensuring that the interviews of the credit controllers were concluded. That the Claimant disrespectfully questioned the authority of the HRD on the recruitment and thereafter totally abandoned the recruitment.
  - iii. He intentionally disobeyed instructions to create a driver and rider candidates' pipeline so as to fast-track recruitment.



- iv. On several occasions, the Claimant failed to avail a short list of candidates ready for interviews as instructed by the HRD, thus resulting in a poorly coordinated recruitment process with numerous complaints. That the Claimant was instructed under the Job Request Form dated 6<sup>th</sup> September 2017 to recruit 2 Easy Roster Administrators.
  - v. On various dates, the Claimant intimidated and threatened the resourcing officers working under him, while instructing them not to write any email and/or visit the HRD's office.
126. With respect to the allegation on the recruitment of the credit controllers, the Claimant averred that they had met and agreed on the dates of the interviews with Ernest Opiyo. That in a meeting in the Human Resource Director's office, the Human Resource Director asked him to hand over the entire process to the HRBP Ann Gitonga. This stopped his participation. That at the time, he had deployed one Zelipha to contact the candidates for the interview.
127. It is notable that this position was not controverted by the Respondent. Indeed, the Respondent did not lead evidence to prove that the Claimant abandoned the recruitment process on his own motion.
128. In the circumstances, this did not constitute a fair and valid reason for the termination of the Claimant's employment.
129. Further, on the allegation regarding the recruitment of couriers, it is evident from the record that the Claimant had escalated the issue vide an email dated 10<sup>th</sup> May 2017, to one Chris Manning, in which he had complained of interference in the recruitment process from Elijah and George. In the said email, the Claimant had accused Elijah and George of bringing some candidates who had not been interviewed, some of whom were their relatives.
130. It is not clear from the record whether the allegations raised by the Claimant were investigated, and if so, the manner in which they were resolved.
131. In light of the foregoing, the Court finds that the Respondent has failed to prove on a balance of probabilities that this was a valid and fair ground for termination of the Claimant's employment.
132. On the allegation that the Claimant intimidated and threatened the resourcing officers working under him, and instructed them not to write any email and/or visit the Human Resource Director's office, it is notable that the Respondent did not adduce evidence in this regard. For instance, there was no evidence from any of the Respondent's resourcing officers confirming the allegations levelled against the Claimant. As such, this accusation against the Claimant was unsubstantiated.
133. Turning to the issue of the Claimant's failure to submit his appraisal documents, the Respondent exhibited a copy of an email dated 12<sup>th</sup> February 2018 in which Mr. Elijah Sitimah addressed the Claimant, amongst others and requested them to print certain documents for purposes of appraisal. As per the said email, they were to hand over the documents by close of business on that day as the performance appraisal was to be concluded within the subsequent three days.
134. On his part, the Claimant stated that they had agreed with Mr. Sitimah to reschedule his appraisal from 19<sup>th</sup> February 2018 to a future date. That he made a follow-up on 1<sup>st</sup> March 2018 but Mr. Sitimah verbally informed him that he had refused to be appraised and thereafter served him with a Notice to Show Cause.
135. It is worth pointing out that the Claimant admitted to receiving the email from Mr. Sitimah. Besides his assertion that they had agreed with Mr. Sitimah to reschedule the performance appraisal, the Claimant did not state, let alone suggest that he printed and took the appraisal documents to Mr. Sitimah as directed in the email of 12<sup>th</sup> February 2018.



136. Indeed, regardless of whether the Claimant's performance appraisal had been rescheduled, the fact remained that he had been directed, together with his colleagues, to forward the appraisal documents ahead of the performance appraisal. As it is, there is no evidence that he complied with this directive from his line manager.
137. During cross-examination, CW2 stated that they were required to submit the appraisal documents in both soft and hard copies and that, on his part, he complied.
138. It is not discernible from the Claimant's testimony why he failed to submit his appraisal documents to Mr. Sitimah as directed in the email of 12<sup>th</sup> February 2018.
139. Section 44(4)(e) of the *Employment Act* permits an employer to summarily dismiss an employee where such employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer. The conduct described under this statutory provision is also referred to as insubordination.
140. In light of the Claimant's failure to comply with the express directive issued by his line manager, vide email on 12<sup>th</sup> February 2018 to avail his appraisal documents ahead of the performance appraisal, it becomes apparent to this Court that by his own actions and omissions, the Claimant gave his employer a valid and fair reason to terminate his employment on the basis of insubordination pursuant to Section 44(4)(e) of the *Employment Act*.

#### **Procedural fairness?**

141. Section 45 (2) (c) of the *Employment Act* requires an employer to prove that the termination of an employee from employment was in accordance with fair procedure. The specific requirements of a fair hearing are spelled out under Section 41 of the *Employment Act*.
142. In the case herein, the Claimant has cited a number of procedural issues concerning the disciplinary process he was subjected to. The first one relates to the impartiality of some of the members of the discipline committee. On this issue, the record bears that upon the Claimant being invited for the disciplinary hearing, he raised an objection vide his email of 13<sup>th</sup> March 2018 to Mr. Sitimah, pertaining to the impartiality of Mr. Geoffrey Mwove and Mr. Collins Luvai, who were identified as members of the disciplinary committee. In his email, the Claimant contended that the two committee members had been involved in malpractices touching previous recruitments and to this end, the Claimant was of the view that they would not be neutral in adjudicating his case.
143. In response to the Claimant's email, Mr. Sitimah declined the Claimant's objection on the basis that the committee had five members, and since the Claimant was objecting to two members, the remaining three members would not be biased. Mr. Sitimah further informed the Claimant that the charges against him were failure to obey lawful instructions and had nothing to do with interview decisions made in the past.
144. Contrary to Mr. Sitimah's assertion, the accusations levelled against the Claimant, despite relating to failure to obey lawful instructions, had a bearing on various recruitment processes which fell under the Claimant's docket. Therefore, it was not entirely factual for Mr. Sitimah to indicate that the charges facing the Claimant at the disciplinary hearing had nothing to do with interview decisions made in the past.
145. What's more, it is evident from the record that the Claimant had levelled accusations against Mr. Mwove and Mr. Sitimah regarding their interference in the recruitment of the couriers. Therefore, the



- Claimant's assertion that there was bad blood between him and Mr. Mwove was not remote. As such, the likelihood of bias on the part of Mr. Mwove was real.
146. In addition to the foregoing, the record bears that on the day of the disciplinary hearing, one committee member, Mr. Kepha Gaitho excused himself from the proceedings on medical grounds. As such, Mr. Kepha's exclusion from further proceedings discounted Mr. Sitimah's assertion that there were three members of the panel who were not biased against the Claimant.
  147. It is also apparent that at the disciplinary hearing, the Claimant renewed his objection to Mr. Mwove's and Mr. Luvai's participation in the disciplinary proceedings, but he was overruled by the Chairperson of the Committee (RW1).
  148. Procedural fairness goes beyond issuing a Notice to Show Cause and inviting an employee to a disciplinary hearing. One of the fundamental principles of natural justice is that the decision makers ought to be impartial and free from bias. The bias can be actual, imputed, or apparent.
  149. As stated herein, the Claimant's fear of the likelihood of bias from Mr. Mwove was not remote, bearing in mind that he (Claimant) had raised a complaint against him (Mwove) previously.
  150. Indeed, the bias did not have to be actual. Even apparent bias was sufficient to disqualify Mr. Mwove as a member of the discipline committee.
  151. The Claimant has further impugned the disciplinary process on the basis that he was confronted with new allegations by Mr. Sitimah during the hearing. The minutes of the disciplinary hearing reveal that further accusations not contained in the Notice to Show Cause were levelled against the Claimant during the hearing. This was an ambush and the Court does not doubt that the Claimant did not have sufficient time and resources to adequately respond to these fresh accusations.
  152. Further to the foregoing, it is apparent that the Respondent breached Clause 12.3.6 of its disciplinary policy, which expressly provides that "the Secretary to the panel shall always be a HR person." In this case, the Secretary of the disciplinary panel was Mr. Luvai, who was identified as the Security & Risk Manager (General). Indeed, there was no indication or suggestion that Mr. Luvai was experienced and competent in Human Resource matters to serve as the Secretary of the discipline committee.
  153. In view of the foregoing procedural lapses, the Court finds that in terminating the Claimant from employment, the Respondent did not act in accordance with justice and equity. Needless to say, the termination was procedurally flawed and unlawful.

#### **Discrimination and unfair labour practices?**

154. The Claimant has averred that the Respondent subjected him to discrimination and unfair labour practices in the course of his employment. In this regard, the Claimant has alleged that while salaries of all employees in his grade were reviewed upwards and a salary increment of 5% effected from 1<sup>st</sup> January 2017, he was the only employee whose salary was not reviewed.
155. Testifying in support of the Claimant's case, CW2 stated that he received a salary increment of 5% with effect from 1<sup>st</sup> January 2017. Be that as it may, CW2 did not adduce evidence in whatever form or manner to support this assertion. Indeed, this was not an uphill task as CW2 would have produced the letter from the Respondent communicating his salary review.
156. In light of the foregoing, I cannot help but find that the Claimant's allegation in this respect is unsubstantiated.



157. Similarly, the Claimant's assertion that his colleagues in the same grade were refunded bonuses and continued earning performance-based bonuses in subsequent years was not substantiated. Indeed, there was no evidence from the Claimant's end that the said refunds were made and that the Respondent declared bonuses and paid the same from 2009 until 2018 when he was terminated from employment.
158. The Claimant further averred that his car allowance was withdrawn despite the same being available to other employees in his job grade. Disputing the Claimant's assertion, the Respondent averred that from July 2011, the car allowance was computed together with basic salary, resulting in a consolidated salary. Notably, the Claimant did not dispute this position. Cross-examined on this issue, CW2 stated that as of 2018, he was not receiving the car allowance.
159. The Claimant has further accused the Respondent of denying him a car loan in 2017 while similar applications for other employees were approved. Nonetheless, the Claimant did not prove that he applied for the said car loan and that the same was rejected by the Respondent with no justification. As such, the Claimant failed to substantiate this allegation.
160. In light of the foregoing, it is evident that the Claimant has failed to establish a prima facie case of discrimination for the burden to shift to the Respondent under Section 5(7) of the Employment Act.

#### **Reliefs?**

161. As the Court has found that the Respondent had a valid and fair reason to terminate the Claimant's employment but applied a flawed process, the Claimant is awarded one (1) month's salary in lieu of notice and compensatory damages equivalent to four (4) months of his gross salary. In issuing this award, the Court has considered the length of the employment relationship as well as the Claimant's contribution to the termination of the employment.
162. The Claimant has sought to be paid leave in the sum of Kshs 1,324,736/-. The leave records exhibited by the Respondent show the Claimant had accrued 19 leave days as of January 2018 and had accrued 5 leave days in 2018. However, the computations of his final dues do not reflect this component. The Claimant is therefore entitled to be compensated for the accrued leave days totaling 24.
163. The claim for payment of leave days dating back to 2014 is declined by dint of Section 28(4) of the Employment Act, which provides that remaining leave days should be taken up to 18 months from the end of the 12-month leave earning period.
164. The claim for unpaid bonus in the sum of Kshs 7,779,739.20 is declined as the Claimant failed to demonstrate by way of evidence that the Respondent declared bonuses and paid other employees to his exclusion. Indeed, the Claimant did not discount the Respondent's assertion that the company was underperforming hence the employees did not receive performance-based bonuses since 2008.
165. In the same breath, the claim for salary underpayment on the basis of the salary increment is declined, as there was no evidence from the Claimant's end that his colleagues in the same grade received a salary increment. Similarly, the claim with respect to the car allowance is refused.
166. As the Court has found that the Claimant has failed to establish a prima facie case for discrimination, the claim for damages in this regard cannot be sustained.
167. The claim for lost earnings is declined for being anticipatory in nature. In so finding, the Court concurs with the determination of the Court of Appeal in the case of D K Njagi Marete v Teachers Service Commission [2020] eKLR, that despite an employee being employed on permanent and pensionable



terms, this, of itself, is not an indication that he would have continued to be employed until the age of 60 years.

## Orders

168. In the final analysis, the Court enters Judgment in favour of the Claimant against the Respondent in the following manner: -

- a. A declaration that the termination of the Claimant from employment was procedurally unfair and unlawful.
- b. The Claimant is awarded one (1) month's salary in lieu of notice, being Kshs 354,839.88.
- c. The Claimant is awarded the sum of Kshs 1,419,359.52 being compensatory damages equivalent to four (4) months of his last gross salary.
- d. The Claimant is awarded the sum of Kshs 283,871.90 being payment for accrued leave days for a period of 24 days.
- e. The total award is Kshs 2,058,071.30.
- SUBPARA f. Interest on the amount in (e) at court rates from the date of Judgment until payment in full.
- g. The Claimant shall also have the costs of the suit.
- h. The Respondent shall issue the Claimant with a certificate of service within 14 days from the date of judgment.

**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. Limo

For the Respondent Ms. Obwangi

Court Assistant Millicent Kibet

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.

**STELLA RUTTO**



**JUDGE**

