



**Ochieng v Lavingtone Hotel Limited t/a The Social House (Cause E521 of 2023) [2025] KEELRC 2498 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2498 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E521 OF 2023  
SC RUTTO, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**DAVID OKUKU OCHIENG ..... CLAIMANT**

**AND**

**LAVINGTON HOTEL LIMITED T/A THE SOCIAL HOUSE .... RESPONDENT**

**JUDGMENT**

1. It is common cause that the Claimant was employed by the Respondent on 12<sup>th</sup> March 2018 as a Maintenance Supervisor and that he was terminated from employment on 15<sup>th</sup> September 2022. The Claimant has challenged his termination from employment and termed the same unlawful and unfair. To this end, his claim against the Respondent is for the sum of Kshs 3,184,000.00 constituting unpaid salaries for September and October 2022, maximum compensation for unfair termination, notice pay, service pay, accrued leave days and damages for unfair treatment and loss of employment. The Claimant further seeks a declaratory relief that he was unfairly and unlawfully terminated from employment, together with the costs of the suit, plus interest.
2. The Respondent countered the Claim through its Response dated 19<sup>th</sup> September 2023, in which it avers that it acted in absolute fairness both substantively and procedurally in accordance with the rules of natural justice, its internal disciplinary processes and the law. The Respondent has further termed the Claimant's Claim frivolous, vexatious, and unwarranted. Consequently, the Respondent has asked the Court to dismiss the claim with costs.
3. The Claimant responded to the Respondent's Statement of Response, wherein it joined issues with the Respondent and reiterated the contents of the Statement of Claim.
4. The matter proceeded for hearing on diverse dates during which both sides called oral evidence.



## Claimant's Case

5. The Claimant testified in support of his case and 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 on his behalf as exhibits before Court.
6. It was the Claimant's testimony that at all material times, he carried out his duties wholeheartedly, dutifully and diligently. That he was therefore caught by surprise when the Respondent served him with a Show Cause Letter dated 2<sup>nd</sup> September 2022, requiring him to explain why disciplinary action should not be taken against him for alleged misconduct.
7. He responded to the said letter requesting for particulars of his alleged offences, which were never furnished to him.
8. The Claimant further averred that vide a letter dated 8<sup>th</sup> September 2022, the Respondent informed him that his response to the Show Cause Letter was unsatisfactory and consequently summoned him to a disciplinary meeting to be held on 12<sup>th</sup> September 2022.
9. Vide an email sent to the Respondent on 10<sup>th</sup> September 2022, he once again requested the Respondent to furnish him with the particulars of the charges against him and the documents in support of the allegations against him to enable him to prepare his defense in anticipation of the disciplinary meeting. The Respondent never supplied him with the same.
10. The Claimant further averred that on 12<sup>th</sup> September 2022, the Respondent convened a disciplinary meeting but he was unable to attend the disciplinary meeting due to the Respondent's failure to furnish him with sufficient particulars regarding the conduct which the Respondent had found objectionable, thus denying him the capacity to prepare his defence.
11. It was the Claimant's testimony that on the date of said disciplinary meeting, the Respondent vide a letter dated 12<sup>th</sup> September 2022 for the first time informed him of the allegations against him.
12. The Claimant averred that, having acknowledged its earlier failure to furnish him with the requested particulars, the Respondent scheduled a second disciplinary meeting on 14<sup>th</sup> September 2022. He was summoned to the said disciplinary meeting vide a letter dated 12<sup>th</sup> September 2022.
13. The Claimant averred that he was unable to attend the second disciplinary meeting as the Respondent had not yet given him the requested particulars and supporting documents aside from the generalised allegations in the letter dated 12<sup>th</sup> September 2022. That further, he was only given one day to prepare his defence, which time was not sufficient.
14. That vide a letter dated 15<sup>th</sup> September 2022, the Respondent notified him that the disciplinary committee had considered the allegations against him in his absence on 14<sup>th</sup> September 2022 and unanimously decided to terminate his employment on the following grounds;
  - a. Breach of fundamental terms of his employment contract, particularly conflict of interest by setting up and/or being a part of a group carrying out a competing business to that of the Respondent in the name of Lafinu Mint Blue Limited;
  - b. Conducting private work for Lafinu Mint Blue Limited during designated working hours and at the Respondent's premises; and
  - c. Refusal to sign the staff handbook.



15. The Claimant contended that he was effectively dismissed by the Respondent without ever being granted a fair disciplinary hearing to defend himself.
16. According to the Claimant, the reasons for his dismissal were all unfounded and untrue. While admitting that he is a director of a company called Lafinu Mint Blue Limited, the Claimant denied that the same occasioned a conflict of interest on his part or breached his employment contract with the Respondent, as the same did not bar him from being a director or shareholder in other companies.
17. The Claimant further denied conducting any private work at the Respondent's premises. According to him, it would have been impossible for him to balance private assignments with his demanding role as the Maintenance Supervisor of the Respondent.
18. The Claimant was also categorical that he never declined to sign a staff handbook.
19. It was the Claimant's further testimony that vide a letter dated 21<sup>st</sup> September 2022, he wrote to the Chairperson of the Board of the Respondent appealing against the Respondent's decision to terminate his employment. His letter did not elicit any response until 21<sup>st</sup> November 2022, when he received a letter inviting him to a disciplinary hearing on 29<sup>th</sup> November 2022. At the time of receipt of the letter, he had already been out of employment for two months without any communication from the Respondent.
20. Through his Advocates on record, he requested the Respondent vide a letter dated 25<sup>th</sup> November 2022 to furnish him with, inter alia, the minutes of the disciplinary hearings held on 12<sup>th</sup> September 2022 and 14<sup>th</sup> September 2022, the charge sheet for all allegations against him, and an investigation report indicating the Respondent's findings on the said allegations.
21. Vide a letter dated 7<sup>th</sup> December 2022, the Respondent declined to furnish him with the charge sheet, investigation report, among other documents as requested. Further, the letter indicated that the hearing of his appeal had been rescheduled to 31<sup>st</sup> January 2023.
22. Upon receiving and perusing the minutes for the disciplinary hearing held on 12<sup>th</sup> September 2022, he noted that the same gave a completely different and fabricated account of what actually transpired on the material date, and the false picture painted was lopsided in favour of the Respondent and against him.
23. By a letter dated 25<sup>th</sup> January 2023, his advocates on record notified the Respondent that he would not be able to attend the appeal hearing slated for 31<sup>st</sup> January 2023 due to the Respondent's refusal to furnish him with the requested particulars and documents, the Respondent's refusal to allow him to be represented by counsel at the appeal hearing, and the fact that the Appeals Committee constituted of the same people who had sat in the initial disciplinary hearings which were lopsided against him.
24. By their letter dated 6<sup>th</sup> February 2023, the Respondent doubled down on its selection for the Appeals Committee even though the *Constitution* of the said committee violated the Respondent's own human resource policy manual. The Respondent proceeded to declare that his requests created too much back-and-forth correspondence and thus the Respondent felt they had exhausted the disciplinary measures and stated they would proceed to compute his final dues without undertaking any appeal hearing.
25. Vide a Letter dated 15<sup>th</sup> February 2023, his advocates on record notified the Respondent that he was not agreeable to the terms imposed by the Respondent in order to clear him, including the demand that he concedes that he would have no further claim against the Respondent whatsoever. The Respondent informed him vide a letter dated 12<sup>th</sup> April 2023 that their computation of his final dues was final.



26. According to the Claimant, the Respondent deliberately frustrated his efforts and chances of getting a fair appeal process by depriving him of the requested documents and particulars, and by inordinately delaying the hearing of the appeal itself. That once it became clear that he was not willing to engage in an unfair appeal process, the Respondent decided to declare that it had exhausted all its internal disciplinary affairs and upheld the termination of his employment.
27. The Claimant averred that the Respondent's actions of unfairly terminating his employment and denying him an expeditious and fair appeal process have greatly disenfranchised him economically, emotionally and psychologically loss by leaving him unemployed and losing expected earnings.
28. He further averred that the Respondent deliberately frustrated his efforts and chances of getting a fair appeal process by depriving him of the requested charge sheet and investigation report among other documents, and by inordinately delaying the hearing of the appeal itself.
29. In the Claimant's view, his employment was terminated without the Respondent following fair procedure and for unsubstantiated and invalid reasons.

### **Respondent's Case**

30. The Respondents called oral evidence through Winnie Wamungu, Eunice Thirikwa, Dominic Manono and Samuel Maina who testified as RW1, RW2, RW3 and RW4, respectively. Ms. Wamungu, who was the first to go, identified herself as the Respondent's People Development Manager. Similarly, Ms. Wamungu adopted her witness statement to constitute her evidence in chief. She further produced the list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
31. It was RW1's evidence that, according to the Claimant's Job Description, he was responsible for ensuring effective functioning of the Hotel and providing an efficient and safe environment for employees and guests; arranging for routine maintenance; ensuring issues are resolved or repaired timeously minimizing guest disruption; and managing relationships with contractors and service providers.
32. RW1 further averred that according to Clause 18 of the Claimant's contract, he was bound by the terms and conditions stipulated in the Respondent's Staff Handbook.
33. RW1 further averred that at a performance appraisal meeting held on or about June 2022, the Respondent raised its concerns about the Claimant's performance. It was noted that the Claimant had neglected his duties as he had failed to achieve most of the tasks assigned to him, which had affected the overall performance of his department and the hotel's operations.
34. The Respondent explained to the Claimant the particular areas that required improvement, with an indication that failure to perform satisfactorily would lead to termination. By that time, the Claimant had already been issued with a warning letter dated 8<sup>th</sup> March 2022, regarding his poor performance which had been discussed with him on several occasions.
35. RW1 further stated that the Respondent shared with the Claimant various letters and performance review documents relating to his performance which he ignored and/or refused to acknowledge and sign in a show of defiance and contrary to the Respondent's policies.
36. She further averred that on various dates in the months of January, February, March, May, June, and August 2022, the Claimant absented himself from work without permission, leave, or other lawful cause.



37. RW1 further averred that on or about 31<sup>st</sup> August 2022, it came to the Respondent's attention that the Claimant, working in conjunction with other employees of the Respondent, had registered a company by the name Lafinu Mint Blue Limited ('the Company') to conduct a competing business to that of the Respondent.
38. She averred that through the said Company, the Claimant planned to establish a restaurant under the brand name "The Code" to be located in the Lavington area of Nairobi, the same area where the Respondent carries on business.
39. RW1 stated that according to the Business Plan, the Company's mission was to Offer hospitality that entrenches human relations through business, whereas its vision was to be the go-to place for food, beverage, and entertainment. In RW1's view, the Company's mission and vision replicated the Respondent's mission and core values.
40. RW1 further averred that according to records obtained from the Companies Registry, the Company was registered on 7<sup>th</sup> November 2021 and the Claimant, together with three other individuals, including two now former employees of the Respondent, were listed as the Company's directors/ shareholders. RW1 added that this fact, together with the minutes of the Company's meetings, showed that the Claimant had been conducting private work for the Company during designated working hours and, in some cases, at the Respondent's premises for a period spanning several months.
41. RW1 further testified that to meet the Company's staffing and operational needs, the Claimant recruited the Respondent's employees and engaged its suppliers.
42. Consequently, vide a letter dated 2<sup>nd</sup> September 2022, the Respondent issued the Claimant with a Notice to Show Cause why disciplinary action should not be taken against him.
43. According to RW1, the Claimant failed to show cause and instead requested to be furnished with the particulars of the allegations, which had already been provided, and supporting documents.
44. Vide a letter dated 8<sup>th</sup> September, 2022, the Claimant was invited for a disciplinary hearing on 12<sup>th</sup> September, 2022, and informed of his right to be accompanied to the hearing by a fellow employee.
45. The Claimant wrote to the Respondent on 10<sup>th</sup> September 2022, indicating that he was out of town and requesting that the hearing be rescheduled to 13<sup>th</sup> September 2022. It was RW1's contention that, having been placed on suspension, the Claimant was expected to be available for any requested meetings.
46. The Claimant's request for the hearing to be rescheduled was not acceptable since 13<sup>th</sup> September 2022 was a public holiday and he was informed as much.
47. RW1 averred that despite the Claimant's absence, the hearing proceeded as scheduled on 12<sup>th</sup> September 2022 as the disciplinary committee was satisfied that the Claimant had been duly notified. The committee deliberated on the Claimant's case and ultimately decided to adjourn the hearing as a show of good faith.
48. That vide a letter dated 12<sup>th</sup> September 2022, the Claimant was informed that the hearing had been adjourned to 14<sup>th</sup> September 2022, and he was furnished with evidence in support of the allegations against him and provided with clarity regarding the employee who could accompany him to the hearing.
49. According to RW1, the Claimant did not attend the hearing on 14<sup>th</sup> September 2022. The disciplinary committee, having confirmed that the Claimant was duly invited and that he had been furnished with



- the evidence in support of the allegations against him, and noting the sensitivity of the Claimant's role within the Respondent and the seriousness of the allegations against him, proceeded with the hearing.
50. Upon considering the case in totality, including the evidence, and the fact that the Claimant had received a third and final warning letter on 21<sup>st</sup> November 2021, the committee was satisfied that there was ample evidence in support of the allegations, and proceeded to summarily dismiss the Claimant effective 15<sup>th</sup> September 2022.
  51. Vide a letter dated 21<sup>st</sup> September 2022, the Claimant appealed against the dismissal. Vide an email dated 13<sup>th</sup> October, 2022, the Respondent acknowledged receipt of the appeal and indicated that the Claimant would be notified of the date of the appeal hearing.
  52. Vide a letter dated 7<sup>th</sup> November 2022, the Claimant's advocates demanded inter alia damages for alleged unfair termination. The Respondent responded on 17<sup>th</sup> November 2022, indicating that the demand was premature since the appeal process was still ongoing.
  53. RW1 further averred that vide a letter dated 21<sup>st</sup> November 2022, the Claimant was invited for an appeal hearing on 29<sup>th</sup> November 2022. Vide a letter dated 25<sup>th</sup> November 2022, the Claimant's advocates requested for the appeal hearing to be rescheduled to 7<sup>th</sup> December 2022 and to be furnished with inter alia details of; the composition of the appeal panel, confirmation that the Claimant may be represented by his advocate at the hearing, signed and certified copies of the minutes of the disciplinary hearing where the decision to terminate the Claimant was arrived at; a copy of the charge sheet and supporting documents, a copy of the investigation report, minutes of performance discussions and appraisal reports for 2019,2020,2021 and 2022 and copies of letters or documents relating to previous disciplinary cases pertaining to the Claimant.
  54. Vide a letter dated 7<sup>th</sup> December 2022, the Respondent responded to the Claimant's advocates' inquiries and communicated that the appeal hearing would be rescheduled to 31<sup>st</sup> January to give the Claimant more time to prepare.
  55. Despite the extra time granted and the responses given to the Claimant's advocates' inquiries, neither the Claimant nor his advocate attended the hearing. Consequently, the appeals panel, being satisfied that due process was followed in the handling of the appeal, proceeded to consider the appeal and affirm the decision to summarily dismiss the Claimant.
  56. Upon satisfactory clearance and handover, the Claimant was paid his terminal dues and issued with a Certificate of Service pursuant to Section 51 of the [Employment Act](#), 2007.
  57. According to RW1, the Claimant's summary dismissal was substantively and procedurally fair. In her view, the Respondent's actions were reasonable and in accordance with the expected actions of any employer in similar circumstances.
  58. RW1 contended that the Claimant's disloyalty and failure to uphold the Respondent's interests placed it in a perilous position and amounted to gross misconduct within the meaning of Section 44 of the [Employment Act](#), 2007, and the Respondent's Code of Conduct, giving the Respondent the right and power to summarily dismiss the Claimant. That further, the Claimant's summary dismissal was in accordance with Clause 8.4 of the Respondent's Staff Handbook.
  59. RW1 added that the Claimant has since launched the restaurant business under the name 'The Code Nairobi'.
  60. According to RW1, the Claimant's poor performance was wholly or partly attributable to his conflict of interest and commitment.



61. RW1 was categorical that the Claimant was furnished with the particulars and nature of the allegations against him and, considering the nature of the allegations, he was granted sufficient time to prepare for the hearing.
62. Ms. Eunice Thirikwa, who testified as RW2, identified herself as the CEO of Talinda East Africa Limited, a supplier of ICT and Technology services to the Respondent. Similarly, she adopted her witness statement to constitute her evidence in chief.
63. RW2 averred that she has worked with the Respondent for over 10 years and that she knows the Claimant and is conversant with the facts pertaining to this case.
64. She added that she worked closely with the Claimant due to the nature of the services her company provides.
65. RW2 further stated that sometime in 2021, the Claimant, together with three other employees of the Respondent, approached her in person while she was at the Respondent's hotel and asked whether she would be interested in investing in a business they wanted to set up. They informed her that they intended to establish a restaurant business to be located in the Lavington area, which is the same area where the Respondent operates. That they had so far secured a lease and were in the process of fitting out the business and were looking for a capital injection of approximately six million at the time.
66. RW2 averred that she made further inquiries about the intended business, particularly how they intended to run it while working for the Respondent. She quickly understood that the Claimant, together with the other employees involved, intended to run this business in direct competition with the Respondent while still working for the Respondent.
67. According to RW2, it was clear that by establishing this business, the Claimant had an apparent conflict of interest and commitment to his obligations and responsibilities at the Respondent's hotel.
68. She then approached Ms. Juliet Njogu, the Respondent's Managing Director, and informed her of the Claimant's plans. She requested that she investigate further and relay any more information she obtains regarding the Claimant's actions.
69. RW2 stated that she requested the Claimant, together with the other employees, for a site visit. However, he had already been issued a Notice to Show Cause by the Respondent, who had received further information relating to the competing business. She did not pursue the said request afterward.
70. Mr. Dominic Manono, who testified as RW3, identified himself as the Respondent's Duty Manager/ Night Auditor. Equally, he adopted his witness statement to constitute his evidence in chief.
71. RW3 averred that sometime in May 2021, the Claimant, in conjunction with himself and three other employees of the Respondent, namely John Gacheru, Wallace Nyasetiah, and Samuel Maina, initiated the plans to register a business entity.
72. RW3 averred that the Claimant was part of the planning of the business and corresponded with him and the other three employees, whereby various duties were allocated to each of them. He was tasked with setting up the operations and controls of the business.
73. By September 2021, they had made significant progress in setting up the business, including, setting up a staff body of about 25 to 30 people and a budget of Kshs. 1 million monthly, securing a lease agreement and negotiating the rent terms, setting up a food strategy for the restaurant and drafting the 10-year revenue and cash flow projections for the restaurant.



74. RW3 averred that the planning process went on for several months, during which the Claimant, himself, and the other three employees would have strategy meetings at the Respondent's premises for purposes of planning the business. There were several meetings that would take place during the day. However, he would not attend as he was working during the night shift.
75. RW3 further testified that before they could register the company, one of the employees, Samuel Maina, withdrew his interest in the business.
76. They registered the Company by the name 'Lafinu Mint Blue Limited' on 7<sup>th</sup> November 2021, and he (RW3) was listed as one of the Company's directors/shareholders.
77. According to RW3, he began to pull back in August 2022, due to the significant conflict of interest that arose from it against his obligations to the Respondent. He communicated his intention to withdraw his interest in the business to the Claimant and the other two directors/shareholders of the Company.
78. That on or about 31<sup>st</sup> August 2022, the management of the Respondent became aware of the undertakings by the Claimant and the other two employees and the competing business they were setting up. He was issued with a Notice to Show Cause letter dated 15<sup>th</sup> September 2022, to explain why disciplinary action should not be taken against him for his involvement in the competing business.
79. He responded via email on 19<sup>th</sup> September 2022, where he admitted his involvement in the competing business. However, he explained that he was in the process of withdrawing his interest in the business, having noted the conflict of interest it raised with the Respondent's business.
80. On 30<sup>th</sup> September 2022, he was summoned to a meeting by the Respondent and given an opportunity to explain himself further. He disclosed the full details of the nature of the business that the Company was running and the extent of his involvement in it. He later shared the email correspondence relating to his withdrawal from the business with the Respondent.
81. RW3 averred that his responses were duly considered by the Respondent, and he was issued with a Final Warning letter on 24<sup>th</sup> October 2022.
82. Mr. Samuel Maina, who testified as RW4, identified himself as the Restaurant, Bars and Events Manager at the Respondent's hotel. Similarly, he adopted his witness statement to constitute his evidence in chief.
83. It was RW4's evidence that sometimes, in May 2021, the Claimant, in conjunction with three other employees of the Respondent, namely John Gacheru, Wallace Nyasetiah, and Dominic Manono (RW3), approached him and requested that he partner with them in a new business venture for purposes of undertaking investments.
84. The Claimant then took part in the plans to register the said business entity.
85. According to RW4, the Claimant was part of the planning of the business and corresponded with him and the other three employees, whereby various duties were allocated to each of them. He was tasked with planning the food strategy.
86. He (RW4) recalls that sometime in June 2021, about one month after the planning of the business began, the Claimant, together with the other employees involved, invited him to visit the site where the business would be set up. He went and saw the premises, which are in the same area as the Respondent's hotel, and it is where the business is currently set up and running to date.
87. By September 2021, the Claimant, together with the other employees involved, had made significant progress in setting up the business.



88. RW4 added that the planning process went on for several months, during which the Claimant and the other three employees would have strategy meetings at the Respondent's premises for purposes of planning the business.
89. RW4 averred that as the Events Manager, he was in charge of the meeting rooms at the Respondent's hotel. That the Claimant and the other employees involved, two of whom are now former employees, would have regular meetings in the private meeting rooms during working hours without prior authorization or approval to utilize the rooms. They also met often after official hours, during which time ideas were generated for the business.
90. RW4 stated that due to the nature of his duties, which require him to engage with guests and staff recurrently, several meetings would take place where he was not in attendance.
91. It was RW4's further testimony that the Claimant and the other three employees proceeded to register the Company by the name 'Lafinu Mint Blue Limited' on 7<sup>th</sup> November 2021, and they were all listed as directors of the Company.
92. RW4 averred that in January 2022, while he was on leave, the Claimant, together with the other directors of the Company, called him to a meeting at Art Caffe Restaurant in Lavington, and he was asked whether he was interested in proceeding with the partnership. He communicated that he was no longer interested in pursuing the business owing to the conflict of interest that arose from it against his obligations to the Respondent.
93. On or about 31<sup>st</sup> August 2022, the management of the Respondent became aware of the undertakings by the Claimant and the other three employees involved and the competing business they were setting up.
94. On 2<sup>nd</sup> September 2022, the Claimant, together with the other employees, was issued with a Notice to Show Cause letter relating to his involvement in the said business and on the same day, the Respondent's management convened a staff meeting to inquire about the Company and the competing business.
95. It was after this meeting that he stayed back and spoke with the Respondent's Managing Director, Ms. Juliet Njogu, where he disclosed the Claimant's actions in respect of the competing business. He later shared the relevant email relating to the said business with her.
96. According to RW4, the Claimant's involvement in a competing business led to a conflict of interest and commitment against his obligations to the Respondent.

### **Submissions**

97. On the Claimant's part, it was submitted that he was never given an opportunity to respond to the allegations regarding refusal to sign the staff handbook addendum, yet this was cited in the termination letter. In the Claimant's view, the Respondent was in breach of the terms of the contract by introducing disciplinary or termination reasons that were not disclosed or covered in the contractual or disciplinary process.
98. Placing reliance on the case of SAMA Obo Craven vs. Department of Health (2005, 12 BALR1259), the Claimant further argued that the confidentiality and non-compete clauses in the staff handbook did not bar him from being a director or shareholder in other companies.
99. Referencing the case of Belvin Wanjiru Namu v National Police Service Commission & National Police Service [2019] KEHC 11114 (KLR), the Claimant submitted that the Respondent's actions



were merely a perception without any empirical evidence. It was the Claimant's position that there is no evidence as to his involvement in an operating competing business. He maintained that the allegations were not substantiated by the Respondent. The Claimant was also categorical that his contract of employment and the Respondent's HR Manual never had a clause on confidentiality and non-compete.

100. It was the Claimant's further submission that his termination from employment was not based on cogent and substantiated reasons. According to him, the termination was malicious based on unknown fears and panic hence lacked credibility.
101. The Claimant further submitted that he was not granted a fair hearing as the opportunity to be heard given by the Respondent was not reasonable. On this score, he submitted that he was given one day to prepare his Defence.
102. He further posited that the HR policy manual was not fully complied with and the third and final warning before dismissal was not followed by the Respondent.
103. The Claimant further submitted that the denial to supply him particulars of the allegations and supporting documentation by the Respondent is itself a contravention of the principles of fair hearing. It was his position that he would not have had an opportunity to rebut adverse evidence and cross-examine to establish and elicit truth.
104. To buttress his submissions, the Claimant placed reliance on the cases of *Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others* SC Petition No 18 of 2014 as consolidated with Petition No 20 of 2014 [2014] eKLR, *Loice Otieno v Commercial Bank Limited* [2013] KEELRC 271 (KLR) and *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* [2014] eKLR.
105. Further referencing the case of *Kenny Kinako vs. Ringier Kenya Limited* (2016) eKLR, the Claimant argued that the disciplinary process was lopsided against him and was not carried out in good faith.
106. The Respondent, on the other hand, submitted that the Claimant's actions amounted to gross misconduct and cannot be justified by an alleged failure to sign a non-compete clause. The Respondent maintained that it had fair and valid reasons for terminating the Claimant's employment.
107. In support of the Respondent's case, the Court was invited to consider the cases of *Richard Wainaina Gichohi v Samuja Quality Wines & Spirit t/a Sheraton Archade Club & another* [2013] KEELRC 672 (KLR) and *Waite v Lets Go Travel Limited* [2022] KEELRC 1163 (KLR).
108. The Respondent further submitted that due process was followed and that the Claimant was afforded an opportunity to respond to the allegations in writing, and he did so. According to the Respondent, the response was found unsatisfactory and the Claimant was invited to a disciplinary hearing twice and was also informed of his right to be accompanied by a fellow employee to the meeting. In both occasions, he failed to attend the hearing. That the Claimant further failed to attend the appeal hearing.
109. To augment the Respondent's arguments on procedural fairness, reliance was placed on the case of *Omondi v Kenya Power & Lighting Company Limited* [2025] KEELRC 1823 (KLR).

### **Analysis and Determination**

110. Flowing from the pleadings by both parties, the evidentiary material on record, together with the rival submissions, the Court has isolated the following issues for determination: -
  - i. Whether the Respondent has proved that there was a fair and valid reason to terminate the employment of the Claimant;



- ii. Was the Claimant accorded procedural fairness prior to being terminated from employment?
- iii. Is the Claimant entitled to the reliefs sought?

**Fair and valid reason?**

111. As can be discerned from the letter of termination dated 15<sup>th</sup> September 2022, the Claimant was dismissed from employment on the following grounds;
  - a. Breach of fundamental terms of his employment contract, particularly conflict of interest by setting up and/or being a part of a group carrying out a competing business to that of the Respondent in the name of Lafinu Mint Blue Limited;
  - b. Conducting private work for Lafinu Mint Blue Limited during designated working hours and at the Respondent's premises; and
  - c. Refusal to sign the addendum to the staff handbook.
112. In his testimony before Court, the Claimant termed the reasons for his termination from employment unfounded and untrue. Specifically, the Claimant opined that his directorship of the company by the name Lafinu Mint Blue Limited did not occasion a conflict of interest on his part or breach of his employment contract with the Respondent, as the same did not bar him from being a director or shareholder in other companies.
113. According to the Respondent, the said company, Lafinu Mint Blue Limited t/a the Code established by the Claimant, is a restaurant business which was to be located in the Lavington area, the same area, it conducts its business.
114. Testifying in support of the Respondent's case, Eunice Thirikwa (RW2) told the Court that the Claimant, together with three other employees of the Respondent, approached her sometime in 2021 and asked her whether she would be interested in investing in a business they wanted to set up. They informed her that they intended to establish a restaurant business to be located in the Lavington area, which is the same area where the Respondent operates and that they had at the time secured a lease and were in the process of fitting out the business and were looking for a capital injection of approximately six million at the time.
115. The testimony of RW2 was corroborated by Dominic Manono (RW3) and Samuel Maina (RW4), who stated that sometime in May 2021, together with the Claimant and other employees of the Respondent namely, John Gacheru and Wallace Nyasetiah, they initiated the plans to register a business entity. From the record, this entity came to be known as Lafinu Mint Blue Limited.
116. In light of the Claimant's contention that there was no conflict of interest on his part, it becomes imperative to consider the definition of the term "conflict of interest" and analyse it in the context of an employment relationship.
117. The Black's Law Dictionary (10<sup>th</sup> Edition p. 363) defines the term "conflict of interest" to mean: "A real or seeming incompatibility between one's private interests and one's public or fiduciary duties."
118. The Respondent's staff handbook, which was exhibited in Court, addresses the issue of "conflict of interest" as follows:

"We must always act in the best interests of the Social House and avoid any personal preference or advantage. This includes situations where personal, family or financial interests conflict with those of the Social House or where an employee holds an interest



in an organisation seeking to do business with the Social House...in addition, you should avoid apparent conflict of interest which occurs where a reasonable observer might assume there is a conflict of interest and therefore loss of objectivity in your dealings on behalf of the Social House.”

119. It is worth mentioning that the Claimant signed the said Staff handbook on 7<sup>th</sup> November 2019. Therefore, the terms of the said staff handbook were incorporated into his contract of employment.
120. Notably, the Claimant did not deny the Respondent’s claim that Lafinu Mint Blue Limited was established to operate a restaurant business under the brand name “The Code”.
121. It is also not in dispute that the Respondent is carrying on a hotel business in the Lavington area. Going by Form CR12, exhibited by the Respondent, it is apparent that Lafinu Mint Blue Limited is located in the Lavington area.
122. In his submissions, the Claimant argued that Lafinu Mint Blue Limited was merely a paper company that was not operational. That it only had ideas of setting up in the future and was not in business. In the Claimant’s view, it was not capable of competing with the Respondent’s business.
123. The Claimant’s position was controverted by the testimony of RW3 and RW4 who told the Court that by September 2021, they had made significant progress in setting up the business, including, setting up a staff body of about 25 to 30 people and a budget of KES. 1 million monthly; securing a lease agreement and negotiating the rent terms; setting up a food strategy for the restaurant; and drafting the 10-year revenue and cash flow projections for the restaurant.
124. This was further confirmed by emails sent by John Gacheru to the Claimant, RW3 and RW4, as well as a letter dated 25<sup>th</sup> September 2021, referenced “Proposed Lease Terms-Kanjata Road Property” from John Gacheru addressed to a Mr. Zahid.
125. In the letter dated 25<sup>th</sup> October 2021, John Gacheru informed Mr. Zahid as follows: “Our plan is to operate and run an urban upmarket restaurant and bar on the property ...We are guided by a tight schedule and we are ready to begin renovations and put in place improvements in the month of October 2021.”
126. The foregoing discounts the Claimant’s assertions that Lafinu Mint Blue Limited was a paper company that only had ideas of setting up in the future and was not capable of competing with the Respondent. From all indications, the business sought to be established by the Claimant and some of his colleagues was a potential competitor to the Respondent’s business.
127. Coupled with the foregoing, it is apparent that the business later took off and is now operational.
128. In light of the foregoing, it is evident that the Claimant’s action of setting up a restaurant business, within the Lavington area, amounted to a significant conflict of interest on his part and consequently, breach of the Respondent’s staff handbook which was part and parcel of his contract of employment. Ultimately, the Claimant’s private interests in the business he had established and his duties as an employee of the Respondent were bound to clash.
129. If I may add, the Claimant’s assertion that his contract of employment and the Respondent’s HR Manual did not have a clause on confidentiality and non-compete does not hold.
130. Regardless of whether the Claimant’s contract of employment had a non-compete clause, there was an implied obligation on his part to be loyal, honest, and act in the best interests of his employer. Certainly, establishing a competing business within the same locality was not acting with loyalty, honesty, and



in the best interests of the Respondent. How would he have divided his attention and interests in his business and the Respondent's business at the same time?

131. Based on the first ground alone, the Respondent had a fair and valid reason to terminate the Claimant's contract of employment based on his conduct.
132. The 2<sup>nd</sup> ground for the Claimant's termination from employment was conducting private work for Lafinu Mint Blue Limited during designated working hours and at the Respondent's premises. Disputing this allegation, the Claimant has averred that it would have been impossible for him to balance private assignments with his demanding role as the Maintenance Supervisor of the Respondent.
133. In support of its case, the Respondent exhibited copies of minutes of meetings held on 21<sup>st</sup> October 2021 and 28<sup>th</sup> October 2021 with respect to XYZ Limited. It is worth pointing out that during cross-examination, the Claimant admitted that XYZ Limited later transitioned to Lafinu Mint Blue Limited.
134. As can be discerned from the minutes exhibited, the meeting was held between 2100 hrs -2225 hrs and 20:40 pm -22:00 pm with the attendees being David. O (Claimant), John G, Dominic (RW3) and Nyasetia W. The location of the meeting was indicated as TSH-Library. Cross-examined, the Claimant admitted that the venue of the meeting is located at the Respondent's premises.
135. It is clear from the minutes that the agenda items of the meetings centered on the formation of XYZ Limited, business funding resources, lease, company officials and the company registration progress.
136. It is therefore clear that the meetings convened by the Claimant, together with some of his colleagues at the Respondent's premises, were not in the interests of the Respondent company. Quite the contrary, the meetings were incompatible with the interests of the Respondent.
137. Needless to say, the Claimant, by his own conduct, gave the Respondent a valid and fair reason to terminate his employment.
138. In so finding, I am mindful of the standard of proof applicable in employment cases. On this issue, I gather support from the case of Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR, where the learned Judges of Appeal held as follows:

“ The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist,” causing it to terminate the employee's services.”
139. Applying the standard of proof to the case herein, I am satisfied that the Respondent has proved that it had a fair and valid reason to terminate the Claimant's employment contract on grounds of conflict of interest and conducting his private work for Lafinu Mint Blue Limited at the Respondent's premises.

#### **Procedural fairness?**

140. Pursuant to Section 45 (2) (c) of the *Employment Act*, an employer bears the burden of proving that the employment was terminated in accordance with fair procedure. The specific requirements encompassing a fair procedure are provided for under Section 41(1) of the *Employment Act*. With respect to this, an employer is required to notify an employee of the intended termination in a language he or she understands. The employee should also be given an opportunity to present his or her defence in response to the allegations levelled against him or her in the presence of a fellow employee of her own choice or a union representative, as the case may be.



141. In the present case, it is imperative to revisit the events which transpired from the issuance of the Notice to Show Cause to the Claimant up to the end of the process in order to establish whether the Respondent complied with the minimum requirements of a fair hearing as envisaged under Section 41 aforesaid.
142. From the record, the Claimant was issued with a Notice to Show Cause dated 2<sup>nd</sup> September 2022, through which he was asked to show cause why he should not be disciplined. His response was required within 24 hours.
143. Through his email dated 6<sup>th</sup> September 2022, the Claimant requested for particulars of the alleged offences and supporting documents. There is no indication whether the Respondent acceded to the Claimant's request.
144. The record bears that the Claimant was later invited to a disciplinary meeting scheduled for 12<sup>th</sup> September 2022 through a letter dated 8<sup>th</sup> September 2022. In response, the Claimant requested for the rescheduling of the disciplinary hearing on grounds that he was out of town.
145. Through a letter dated 12<sup>th</sup> September 2022, the Claimant was notified that the disciplinary hearing had been rescheduled to 14<sup>th</sup> September 2022.
146. It is apparent from the record that the Claimant did not appear for the disciplinary hearing on 14<sup>th</sup> September 2022, hence the Respondent proceeded to terminate his employment on 15<sup>th</sup> September 2022. He was notified as much through a letter dated 15<sup>th</sup> September 2022.
147. It is worth pointing out at this juncture that there is no evidence that the Claimant had communicated to the Respondent his inability to appear for the disciplinary hearing on 14<sup>th</sup> September 2022.
148. The Claimant appealed his termination from employment through his letter dated 21<sup>st</sup> September 2022. Following an exchange of emails between the Claimant's Advocate on record and the Respondent, the Claimant was invited to an appeal hearing which was scheduled for 29<sup>th</sup> November 2022.
149. Through a letter dated 25<sup>th</sup> November 2022, the Claimant's Advocate notified the Respondent that he required specific information/documents to enable him proceed with the appeal hearing. The Respondent responded to the letter by the Claimant's Advocates on 7<sup>th</sup> December 2022, supplying the information requested and copies of the minutes of the disciplinary hearing of 12<sup>th</sup> September 2022 and 14<sup>th</sup> September 2022. Consequently, the appeal hearing was rescheduled to a further date being 31<sup>st</sup> January 2023.
150. Through a letter dated 25<sup>th</sup> January 2023, the Claimant, through his Advocate on record, informed the Respondent that he would not be attending the appeal hearing on 31<sup>st</sup> January 2023 based on the composition of the appeal hearing, failure to be allowed representation during the appeal hearings, failure to be supplied with the charge sheet, the investigation report and inaccurate minutes of the disciplinary hearing and inordinate delay in setting down the appeal for hearing.
151. In response to the Claimant's Advocates' letter, the Respondent, through its letter dated 6<sup>th</sup> February 2023, stated as follows inter alia: "Having presented your client with opportunity after opportunity to be heard, it is clear to us that your client is not keen on taking such opportunities. We have therefore exhausted our internal processes in accordance with the staff handbook and by extension the due process provided under the employment laws. In the circumstances, we are proceeding to compute your client's final dues. We shall be reaching out to your client to come and clear with us, collect a cheque with his final dues, together with his certificate of service."



152. What manifests from the foregoing chronology of events is that the Claimant was given an opportunity to be heard within the meaning of Section 41 of the Employment Act, but he squandered the same. Why do I say so? First, as indicated herein, the Claimant did not notify the Respondent beforehand of his inability to attend the second disciplinary hearing, which had been rescheduled to 14<sup>th</sup> September 2022 at his behest. Suffice to say, he had snubbed that disciplinary hearing without offering any reasons. Indeed, it is only in his Appeal against the termination that the Claimant indicated the reasons why he failed to attend the disciplinary hearing on 14<sup>th</sup> September 2022.
153. Second, the reasons fronted by the Claimant for his failure to attend the appeal hearing scheduled for 31<sup>st</sup> January 2023 do not hold. Here is why. Whereas the Claimant indicated that the appeals committee was illegal, irregular and biased from the onset and that the representation was the very list of the same people who sat in the initial disciplinary hearing, the record bears the contrary. As per the Respondent's letter dated 7<sup>th</sup> December 2022, the Respondent was categorical that all the persons sitting on appeal would be persons who were not part of the previous disciplinary hearings.
154. Further to the foregoing, the Claimant was notified in the same letter dated 7<sup>th</sup> December 2022 that he would be permitted to be accompanied by a current staff member of his choice or a legal counsel. It is therefore unclear why the Claimant cited in his letter dated 25<sup>th</sup> January 2023, the Respondent's failure to allow him representation/to be accompanied during the proposed appeal hearing.
155. On the request for the charge sheet, the Claimant was advised in the letter of 7<sup>th</sup> December 2022 to refer to the show cause letter, which laid the grounds under which the disciplinary action was brought against him.
156. Further, despite the Claimant's assertion that the copies of the minutes of the disciplinary hearing, which were supplied to him, were concocted, it is notable that he did not attend the said disciplinary hearing on 14<sup>th</sup> September 2022. As such, one wonders the basis for the Claimant's assertion with regards to the inaccuracy of the minutes furnished to him.
157. All in all, the Court finds no plausible reason why the Claimant failed to attend the appeal hearing on 31<sup>st</sup> January 2023, upon being asked to do so by the Respondent.
158. On this score, the Court adopts the position taken in the case of Jackson Butiya v Eastern Produce Limited (Industrial Court Cause No. 335 of 2011), where it was held as follows:
- “An employee who squanders the internal grievance handling mechanisms provided by an employer cannot come to Court and say “I refused to talk with those people and therefore I was not heard, order them to pay me.” It is not the role of the Court to supervise the internal grievance handling processes between employers and employees. The role of the Court is to ensure that such processes are undertaken within the law.”
159. In the present case, it is clear that the Claimant elected not to participate in the disciplinary process commenced by the Respondent hence, he cannot be heard to say that he was terminated from employment without being given an opportunity to present his side of the story.
160. To this end, the Court finds that in the circumstances, the Respondent acted reasonably and gave the Claimant an opportunity to be heard within the meaning of Section 41 of the Employment Act. Accordingly, the Claimant's termination from employment was procedurally fair.



## Reliefs?

161. The Claimant has sought to be paid salary for the months of September and October 2022. From the record, the Claimant was paid his salary up to 15<sup>th</sup> September 2022, the date he was terminated from employment. Therefore, his claim for unpaid salary beyond the date of termination from employment is not sustainable.
162. As the Court has found that the Claimant's termination from employment was for a fair and valid reason and procedurally fair, the claim for compensation on account of unfair termination from employment and salary for two months in lieu of notice is disallowed. For the same reasons, the claim for damages for unfair treatment and loss of employment is declined.
163. The claim for service pay is disallowed as the Claimant's pay slip reveals that he was contributing to the National Social Security Fund. This therefore, places him within the ambit of Section 35(6) of the Employment Act.
164. The Claimant has further sought to be paid the sum of Kshs 24,000/= being accrued leave days. As per the tabulation of the Claimant's final dues, he was compensated for 11 accrued leave days. Despite laying his claim for six leave days, the Claimant did not lead evidence to prove that he was entitled to compensation beyond the 11 leave days already paid by the Respondent.

## Orders

165. The total sum of my consideration is that the Claim is without merit and is consequently dismissed with costs to the Respondent.

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

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**STELLA RUTTO**

**JUDGE**

In the presence of:

Mr. Kipkoech instructed by Mr. Oundo for the Claimant

Mr. Wambola instructed by Ms. Babu for the Respondent

Millicent Court Assistant

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**

