



**Wambua v UAP Holdings PLC (Cause E762 of 2022)
[2025] KEELRC 2476 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2476 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E762 OF 2022
SC RUTTO, J
SEPTEMBER 19, 2025**

BETWEEN

JACQUELINE MUMBUA WAMBUA CLAIMANT

AND

UAP HOLDINGS PLC RESPONDENT

JUDGMENT

1. It is common cause that the Claimant was employed by UAP Insurance in the position of Registry Assistant vide a contract of employment dated 11th February 2004. From the record, it is apparent that the Claimant was issued with another contract of employment dated 28th August 2019, following the transfer of her employment from UAP Insurance to UAP Holdings Limited.
2. According to the Claimant, she worked for the Respondent diligently for 18 years and rose through the ranks and her salary was reviewed upwards. The Claimant further avers that at no point during her employment with the Respondent was she ever called to any disciplinary hearing for any workplace-related misconduct.
3. The Claimant avers that on or about October 2021, it came to her attention that a former colleague whom she had on several occasions through her “chama” given loans, had been involved in fraudulent activity at his place of work at CIC Insurance.
4. The Claimant further avers that the said former colleague had, without her knowledge, used the monies obtained through fraud to pay the loans that she had given him.
5. The Claimant further states that she was arrested and presented before the Milimani Chief Magistrate’s Court and charged under MCCCCR E143 of 2022, wherein she pleaded not guilty.
6. According to the Claimant, the matter is yet to commence hearing.



7. The Claimant further avers that she was served with a Notice to Show Cause in relation to the aforementioned criminal case.
8. It is apparent from the record that the ensuing disciplinary process culminated in the Claimant's termination from employment.
9. The Claimant has contended that the Respondent acted maliciously and without regard to her rights under the Constitution and under the Employment Act, being mindful that the criminal case is yet to be determined.
10. On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondent:
 1. A declaration that the Claimant's termination of employment was malicious, unfair, and/or unlawful.
 2. Payment of Service Pay from 16th February 2004 to 2022 being 18 years in total.
 3. Issuance of a certificate of service to the Claimant.
 4. General Damages for malicious, unfair, and/or unlawful termination of employment.
 5. Punitive Damages
 6. Costs of the claim.
 7. Interest on 2, 3, and 5 above.
11. The Respondent countered the Claim through its Memorandum of Defence dated 11th November 2024. The Respondent avers that it offers a broad spectrum of financial services, including financial investment and insurance services. It is the Respondent's assertion that, given the fact that it is in the financial services sector, the Claimant was required to exhibit and or adhere to a strict code of professional ethics. That further, the Claimant was required every year during her engagement to commit herself to adhering to, at the time, the UAP Insurance Code of Business Ethics.
12. The Respondent further avers that pursuant to its Code of Conduct and Ethics, the Claimant not only acknowledged the pre-eminence and or the premium the Respondent placed on its reputation but also acknowledged that she was required to maintain the trust and confidence of the Respondent as a condition for her continued employment.
13. That further, as per the Industrial Relations Handbook, the Claimant agreed not to engage in misconduct that would impugn her integrity, whether while within or outside her workplace.
14. The Respondent avers that on or about 1st February 2022, the Directorate of Criminal Investigations (DCI) and specifically, the Insurance Fraud Investigation Unit wrote a letter to its Chief Executive Officer informing him of the fact that the Claimant was under investigation over a suspected case of conspiracy to defraud the CIC Insurance Company contrary to Section 317 of the Penal Code. In the same letter, the DCI asked the Respondent to give details of the Claimant.
15. According to the Respondent, the alleged offence of conspiracy was committed by the Claimant together with an ex-employee of the Respondent, a Mr. Michael Kamau Mwangi.
16. The Respondent avers that the offences the Claimant had been charged with were allegedly committed against another insurance company, CIC Insurance Company Limited.



17. That given the nature of the offence with which the Claimant had been charged with and noting the imputation they portend to the integrity and trustworthiness of the Claimant, the Respondent suspended her. She was also issued with a Notice to Show Cause why disciplinary action should not be taken against her. The Claimant responded to the Notice to Show Cause and was subsequently invited for a disciplinary hearing. She was subsequently issued with a letter of termination dated 9th May 2022.
18. According to the Respondent, the form and content of the termination letter was in conformity with the law and the internal rules and regulations regulating the disciplinary process within the Respondent's company.
19. It is the Respondent's assertion that it could not ignore the serious allegations which had been brought to its attention by the DCI.
20. The Respondent has termed the suit herein as an afterthought and lacking in merit.
21. Against this background, the Respondent has asked the Court to dismiss the Claim with costs.
22. During the hearing of the matter on 2nd April 2025, both sides called oral evidence.

Claimant's Case

23. The Claimant testified in support of her case and at the outset, sought to adopt her witness statement as well as the list and bundle of documents filed on her behalf to constitute her evidence in chief.
24. In her evidence, the Claimant was categorical that she has never knowingly been a part of any sort of fraud against anyone or any entity.
25. The Claimant averred that on or about 7th February 2022, she was served with a Notice to Show Cause in relation to Criminal Case No. MCCCCR E143 of 2022.
26. She responded to the Notice to Show Cause through her letter dated 9th February 2022, explaining her side of the story. The Claimant contended that the said charges had not interfered with her work output within the Respondent company.
27. The Claimant further averred that none of her job description required her to interact with customers and as such, there was no risk to the company.
28. The Claimant further stated that the Respondent subsequently suspended her and she was invited for a disciplinary hearing scheduled for 8th March 2022.
29. That on the day the scheduled disciplinary hearing took place, she presented herself to the Respondent's offices in the company of her lawyer and a witness who was conversant with the facts of the criminal case.
30. However, she was denied the opportunity to produce her witnesses who were conversant with the facts of the criminal case and instead, she was only allowed to bring witnesses from within the Respondent company, none of whom had any idea of what was happening.
31. According to the Claimant, it was her constitutional right on the grounds that one is innocent until declared guilty and her right to legal representation was trampled on by the Respondent with no consideration of the effects of such actions.
32. It was the Claimant's view that the Respondent acted maliciously and without regard to her rights under *the Constitution* and under the *Employment Act*, being mindful that the criminal case is yet to



be determined and that the same did not affect her work output nor was the alleged crime committed against the Respondent.

Respondent's Case

33. The Respondent called oral evidence through Sam Sambu who testified as RW1. Mr. Sambu identified himself as the Senior Human Capital Consultant at the Respondent company. Similarly, RW1 adopted his witness statement as well as the list and documents filed on behalf of the Respondent to constitute his evidence in chief.
34. It was RW1's testimony that the Claimant was employed as a Registry Assistant in the Claims Department and not the Registry Department.
35. RW1 stated that the Claimant's suspension was for a period of 14 days from 7th February 2022 to 20th February 2022.
36. According to RW1, the Claimant's suspension was in conformity with the applicable and internal rules and regulations regulating disciplinary process within the Respondent Company, to wit the Industrial Relations Handbook.
37. RW1 further averred that contemporaneous with the suspension, Respondent issued Claimant a Notice to Show Cause letter dated 7th February 2022. The Notice to Show Cause conformed with the Respondent's Industrial Relations Handbook and set out the allegations facing the Claimant clearly.
38. The Claimant responded to the Notice to Show Cause vide a letter dated 9th February 2022. RW1 added that in the response to the Notice to Show Cause, the Claimant expressly acknowledged that owing to the assault against her integrity as made through the criminal charges, the trust levels between her and the Respondent had been eroded.
39. RW1 averred that the Claimant's response to the Notice to Show Cause was not satisfactory, mandating the Respondent to invite her to a disciplinary hearing.
40. Through the invitation letter, the Claimant was requested to avail herself for the disciplinary hearing on 8th March 2022 at 1:00 pm at the Respondent's offices.
41. RW1 further added that the invitation to the Disciplinary Hearing was in conformity with the Respondent's Industrial Relations Handbook.
42. As scheduled, the disciplinary hearing took place on 8th March 2022.
43. According to RW1, *the constitution* of the disciplinary panel and the manner in which the disciplinary hearing was undertaken was in conformity with the Respondent's Industrial Relations Handbook.
44. RW1 further averred that as per Clause 4.5 of the Respondent's Industrial Relations Handbook, two people accompanying the Claimant to the disciplinary hearing were ruled by the disciplinary panel to be unsuitable for the reason that neither of them was an employee of the Respondent, and in fact, one of them was a lawyer. They were asked to leave the disciplinary hearing and they duly complied.
45. RW1 averred that the Claimant was asked by the disciplinary panel whether she was comfortable proceeding with the hearing despite the absence of the representative/colleague, to which she responded in the affirmative, and as such, the hearing proceeded.
46. RW1 added that during the hearing, the Claimant was given the opportunity to give her views on the twin allegations against her vis-à-vis her reputation, integrity and trustworthiness. Following the



- hearing and extensive deliberations on the representations made by the Claimant (both in the hearing and in response to the Notice to Show Cause), it was found that her responses were not satisfactory.
47. Given the serious criminal charges levelled against the Claimant and which charges touched on fraud and given the violation of the provisions touching on the attributes demanded of the Respondent's employees as expressly set out under the Respondent's job description, the Industrial Relations Handbook and the Code of Conduct and Ethics, it was found that the trust between the Claimant and the Respondent Company had irretrievably broken down.
 48. According to RW1, there was a very close nexus between the fraud allegations levelled against the Claimant by the DCI and her role and responsibilities as a Registry Supervisor in the Respondent Company, noting that the Respondent placed a very heavy premium on the trustworthiness of its employees. In the circumstances, the Respondent was left with no alternative but to issue the Claimant with a termination letter dated 9th May 2022.
 49. RW1 added that the termination came a whole two months after the hearing, thereby speaking to the level and extent of deliberations that were undertaken by the disciplinary panel before coming to a decision to terminate. That the termination letter set out the Claimant's terminal dues and entitlements, which were duly paid.
 50. RW1 further stated that the Claimant was not summarily dismissed, as alleged, but rather was substantively and procedurally terminated in full compliance with the Employment Act, 2007, as read together with the employment contract and Respondent's Staff Handbook with its appendices annexed thereto.
 51. That although the Claimant had never, prior to February 2022, been taken through a disciplinary process by the Respondent Company, that fact does not detract from the further fact that she was charged, in the year 2022, by a 3rd Party, being a lawful authority of the Government.
 52. That further, the fact that the Claimant did not have prior incidences of misconduct does not mean that she was incapable of misconduct. Nevertheless, the aforesaid absence of prior misconduct and the Claimant's length of service were taken into account in determining the sanction to be levelled against her.
 53. RW1 further averred that although the Claimant alleges that her constitutional right of being presumed innocent until declared guilty has been violated, the Respondent holds that such a right did not arise in the circumstances, as the two processes are separate and distinct, having different legal measures and standards of proof.
 54. In RW1's view, given the fair, lawful and procedural termination of the Claimant's contract of service and payment of all her terminal dues and benefits, the Claimant's claim is unmeritorious and should not be granted any of the reliefs sought herein.

Submissions

55. The Claimant submitted that the termination of her employment was irregular as the criminal charges brought against her are yet to be determined. She further contended that the alleged offences occurred against CIC insurance and not the Respondent. In support of her submissions, the Claimant placed reliance on the case of Patrick Njuguna Kariuki V Del Monte (K) Limited [2012] eKLR.
56. It was the Claimant's position that the Respondent did not follow due procedure during the disciplinary hearing that led to the termination of her employment in that; the allegations levelled against her by CIC insurance had nothing to do with her job performance; she was not allowed to bring



anyone who had relevant information concerning the allegations levelled against her; the Claimant (sic) alleges to have relied on an investigation report which was never tabled nor was the same supplied to this Honourable Court; at the conclusion of the disciplinary hearing, she was not furnished with a copy of the minutes nor was she given an opportunity to sign the same; the criminal case against her is yet to be determined and as such, the allegations against her are yet to be proven; and the Respondent did not identify any substantiated breach of contract on her part.

57. The Claimant further submitted that the Respondent could not have been able to prove whether the allegations levelled against her were true, as the case against her was yet to commence at the time of her termination.
58. On its part, the Respondent submitted that by their very nature, the charges against the Claimant impugned her integrity, and if established on a balance of probabilities to be justified, would erode the very fabric that held together the employer-employee relationship between the Claimant and the Respondent. That, further, the charges, if established to be true on a balance of probabilities, would be in complete breach of the employment contract between the Claimant and the Respondent.
59. The Respondent further submitted that, given the overwhelming evidence against the Claimant, her response to the Notice to Show Cause and her oral representations made during the disciplinary hearing, and the strict covenants in her employment contract on matters of trust and integrity, it had good reason and was substantively justified to terminate the Claimant's contract of employment. In support of the Respondent's submissions, the case of *Evans Kamadi Misango v Barclays Bank of Kenya Limited* [2015] eKLR was cited.
60. Referencing the cases of *Khamasi v Paramount Bank Limited* [2023], *Samwel Wambisah Eastern Produce Kenya Ltd* [2021] and *Wycliffe Elijah Nyakundi & 6 Others v Safaricom Limited* [2019], the Respondent posited that Section 41 of the *Employment Act* does not provide that legal representation is a requirement in a disciplinary hearing or that lack of legal representation may amount to an unprocedural hearing. In this regard, the Respondent opined that the decision by the disciplinary panel was procedural and did not, therefore, give rise to an unfair and/or unprocedural hearing/termination.
61. The Respondent further submitted that an employer is at liberty to institute internal disciplinary proceedings against an employee, where such need arises, without having to wait for the full hearing and determination of a criminal case, as was the case herein.
62. In the same vein, the Respondent submitted that it was not a requirement for it to delay the internal disciplinary hearing to await the determination of the criminal hearing and that so long as it genuinely believed the existence of the fact of fraud, then the same was a valid reason for termination of the Claimant's employment. To augment this position, the Respondent placed reliance on the cases of *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* and *Judicial Service Commission v Gladys Boss Shollei & Another* (2014) eKLR.

Analysis and determination

63. From the record, it is clear that the Court is being called to determine the following issues: -
 - i. Whether the Respondent has proved that there was a justifiable reason to terminate the employment of the Claimant;
 - ii. Was the Claimant afforded procedural fairness prior to termination from employment?
 - iii. Is the Claimant entitled to the reliefs sought?



Justifiable reason for termination?

64. It is discernible from the record that the Claimant was terminated from employment on the basis of the criminal charges preferred against her. In the termination letter, it was alleged that the charges against the Claimant had in turn resulted in adverse reputation impact to the Respondent company as a financial services provider, and the employment relationship had irretrievably broken down and resulted in breach of the common law duties under the Staff Industrial Relations Handbook.
65. The reasons leading to the Claimant's termination from employment can be traced to the charges set out in a charge sheet in which she was cited together with one Michael Kamau Mwangi for conspiracy to defraud the CIC Insurance Company Limited, the sum of Kshs 9,192,027.00 contrary to Section 317 of the Penal Code.
66. The Claimant has admitted that she was arrested and presented before the Milimani Chief Magistrates Court and charged under MCCCCR E143 of 2022. Her contention is that the criminal case is still ongoing, hence is yet to be determined. The Claimant has further contended that the criminal case did not affect her work output and, further, that the alleged crime was not committed against the Respondent.
67. Countering the Claimant's position, the Respondent has averred that there was a close nexus between the fraud allegations levelled against the Claimant and her role and responsibility as a Registry Supervisor in the company.
68. What manifests from the record is that the Claimant's employment came to an end on account of the criminal charges preferred against her.
69. It is apparent that at the time the Claimant was terminated from employment, the criminal case against her was still pending. Therefore, there was no determination as to her guilt or otherwise. Differently expressed, the charges against the Claimant were yet to be confirmed as to result in a conviction.
70. Granted, the charges against the Claimant were serious in nature and bordered on her integrity and trustworthiness. However, it is this Court's respectful view that the same did not warrant the Claimant's termination from employment, seeing that her guilt and level of culpability were yet to be established through the criminal trial process.
71. What's more, the Respondent has not indicated, let alone suggested, that it undertook independent investigations to establish the Claimant's suitability to remain in its employment in light of the nature of the allegations levelled against her.
72. While the Court agrees with the Respondent that a criminal process and a disciplinary process are two distinct processes that are subject to different standards of proof, it should also be appreciated that in the present case, the mere fact that criminal charges had been preferred against the Claimant did not automatically translate to her culpability. In the circumstances, it was incumbent upon the Respondent to undertake an independent verification to establish to the required standard the Claimant's suitability as its employee in light of the criminal charges leveled against her.
73. In the instant case, it is apparent that upon being cognizant of the criminal charges levelled against the Claimant, the Respondent moved to institute disciplinary proceedings against her without ascertaining to the required standard, the level of her culpability hence her suitability as its employee moving forward.



74. If indeed the Respondent was of the view that the Claimant's continued stay in employment was prejudicial, it had the option of suspending her pending the determination of the criminal case, whereafter it could take appropriate action against her.
75. Under Section 43(1) of the [Employment Act](#), the Respondent was required to prove the reasons for the termination of the Claimant's employment. In addition, Section 45 (2) (a) and (b) enjoined the Respondent to prove that the reasons for the termination of the Claimant's employment were fair, valid and related to her conduct.
76. In light of the foregoing statutory provisions, one wonders how the Respondent was in a position to establish that the Claimant's actions had resulted in its reputational damage hence breach of the common law duties, without its own independent investigations to ascertain her level of culpability in the allegations leveled against her in the criminal process.
77. As can be discerned from Section 45 (2) (a) and (b) aforementioned, an employer is required to prove the substance of the reasons for termination of employment over and above proving the existence of such reason.
78. Applying the provisions of Section 45 (2) (a) and (b) of the [Employment Act](#) to the case herein, the Court finds that the Respondent has not proved on a balance of probabilities, that it had a valid and fair reason to terminate the Claimant's employment, seeing that her guilt with regards to the criminal charges preferred against her was yet to be confirmed and further, there were no independent investigations to determine her level of culpability. To this end, the Claimant's termination from employment was not substantively fair.

Fair process?

79. On this limb, the Respondent was required to prove under Section 45 (2) (c) of the [Employment Act](#) to prove that it accorded the Claimant a fair hearing prior to terminating her employment. Under Section 41 of the [Employment Act](#), the Respondent was required to notify the Claimant of the reason for which it was considering termination of her employment. The Respondent was further required to accord the Claimant a hearing in which she was entitled to be accompanied by another employee or a shop floor union representative of her choice.
80. It is not in dispute that the Claimant was notified of the allegations against her through the Notice to Show Cause dated 7th February 2022 and that she attended a disciplinary hearing on 8th March 2022. The Claimant's contention is that she was denied legal representation during the disciplinary hearing as well as an opportunity to produce a witness conversant with the case. According to the Claimant, she did not have any witnesses from within the Respondent company who had an idea of what was happening.
81. According to the Respondent, the people who accompanied the Claimant to the disciplinary hearing were unsuitable as they were not its employees, with one of them being a lawyer.
82. It is notable that the Respondent's Industrial Relations Handbook has not drawn a distinction between an employee representative and a witness. While the Handbook stipulates who may appear as an employee representative, it does not expressly state that witnesses who may appear are limited to employees of the company.
83. Further, it is noteworthy that the letter inviting the Claimant to the disciplinary hearing was not clear on the foregoing aspects. The letter was partly couched: "At the disciplinary hearing, you will be given an opportunity to state your case, call relevant witnesses and present evidence. You have the right to be



accompanied by one fellow employee of your choice during the hearing as specified in the Disciplinary Code.”

84. In light of the foregoing, I am led to conclude that the Claimant was blindsided as to whom she could call for the disciplinary hearing as a witness. Ultimately, the Claimant proceeded with the disciplinary hearing unaccompanied.
85. The foregoing gaps notwithstanding, it is notable that the Claimant has not discounted the Respondent’s assertions that she agreed to proceed with the hearing without a representative. In this regard, the Respondent cannot be faulted for failing to allow the Claimant the right to representation as contemplated under Section 41 of the Employment Act.
86. All in all, the Court finds that the termination of the Claimant from employment was not substantially justified.

Reliefs?

87. As the Court has found that the Claimant’s termination from employment was substantively unjustified, the Court awards her compensatory damages equivalent to seven (7) months of her last gross salary. In issuing this award, the Court has taken into account the length of the employment relationship as well as the circumstances attendant to the Claimant’s termination from employment.
88. The claim for service pay is declined as it is evident from the Claimant’s pay slip that she was contributing to the National Social Security Fund. Therefore, she falls within the exclusions under Section 35(6) of the Employment Act.
89. The Claimant is entitled to a Certificate of Service as the employment relationship is admitted.

Orders

90. In the final analysis, Judgment is entered in favour of the Claimant against the Respondent in the following manner: -
 - a. A declaration that the termination of the Claimant from employment was substantively unjustified.
 - b. The Claimant is awarded compensatory damages in the sum of Kshs 1,613,549.00 being equivalent to seven (7) months of her gross salary.
 - c. Interest on the amount in (b) at court rates from the date of Judgment until payment in full.
 - d. The Claimant shall also have the costs of the suit.
 - e. The Respondent shall issue the Claimant with a Certificate of Service, within 14 days from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025.

.....

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Owade



For the Respondent Ms. Mwaura

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court 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

