

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**CAUSE NO. E072 OF 2025**

**ALLAN WANJALA KHISA .....**  
**CLAIMANT**

**VERSUS**

**BUREAU VERITAS KENYA LIMITED .....**  
**RESPONDENT**

**JUDGMENT**

The claimant is a male adult. The respondent is a limited liability company.

The respondent employed the claimant as a laboratory technician through a letter dated 9 July 2018. He claims that his employment was terminated over alleged performance issues for 2024 and alleged sexual harassment, which was not substantiated. He was denied a hearing, resulting in the unlawful and unfair termination of his employment. His case is that the respondent selectively relied on phone text messages that only favoured the complainant. He claims the following:

- a) A declaration that his employment was terminated unfairly with compensation and terminal dues.
- b) An order of reinstatement with full salary, benefits and continuity of service.
- c) Exemplary damages
- d) Costs and interests.

The claimant testified that the respondent employed him as a laboratory technician. He was allocated an open office, which he shared with another employee, "X". The office had four sections;

- i) Decontamination section;
- ii) Samples,
- iii) Incubation,

iv) Stores.

The washrooms were also a different section.

The claimant testified that his employment was terminated over alleged sexual harassment of X. The notice indicated that he had harassed X and engaged in unethical conduct. He was issued with a notice to show cause dated 28 May 2025, following a complaint from X that he was harassing her at work.

The claimant demanded evidence of such allegations. He was given the phone text messages through WhatsApp and a video recording. He was invited to the disciplinary hearing, where he noted that the text messages were part of routine office communications. He denied ever harassing X. There was no complaint from X, and the screenshots used against him comprised cordial conversations between friends.

Upon cross-examination, the claimant admitted that he sent text messages to X, calling her *sweet kamamii* (good woman). Calling a workmate during working hours with such words was not good, but in his case, he called X during off-work hours.

The claimant admitted that X replied to his text message with an emoji of rolling eyes and the message "wewe ni mshenzi sana" (you are silly). This was sent at 11 am while X was working remotely. It was not in the office, and they both had cordial conversations.

The claimant testified that he continued sending X other messages of a sexual nature. He was the senior officer to X and had a duty to supervise her. He continued sending similar messages, including explicit love notes and emojis. The messages were sent during working hours, and some openly discussed private matters. Such a discussion was okay with a workmate who encouraged them.

The claimant admitted that X did not appreciate her messages and asked him to stop sending them because she was married. The messages he had sent to X were meant only for her to read, not for any other workmates. X threatened to tell her husband about the messages and keep punching on your phone, which he took as encouragement and appreciation of his text messages. He continued to send more messages. X did not directly go to him to tell him to stop sending the messages.

The complaints that he had sexually harassed X were not valid because the respondent did not address the context of his messages and the responses set by X. As the supervisor, he had

a duty to maintain professionalism at work. He was married, and his wife did not know that he was sending love messages and emojis to X. He even invited her to social gatherings because she had good boots, but she did not attend.

The claimant testified that at some point she allocated X some work as the supervisor, but she failed to address. She had a problem with X's mood swings and thought this was why she had failed to do her work. He reported the matter to the supervisor, and a meeting was held in April 2024.

Upon the issue being resolved, the claimant and X returned to their office, and X recorded him making explicit sexual comments to her. The claimant testified that he had given the video during the disciplinary hearing. He insisted that he did not use foul language on X, and they had a respectful working relationship. X told him to stop harassing her, but he was only complimenting her for her good looks. She was like a beautiful flower.

The claimant testified that during the disciplinary hearing, he called his witness, who testified that he had cautioned him on how he related to a female employee. Justus Amenyha had previously cautioned him on his conduct around female employees. That person should stop harassing the female workmates.

He was issued a notice of termination, which was unfair since he had done nothing wrong. He was allowed an appeal, which was not heard. He only got a summary letter stating that the appeal had been rejected.

During the pendency of the appeal, the respondent had directed the claimant not to speak or reach out to X. He did try to contact her contrary to the directions of the employer.

In response, the respondent admitted that the claimant was an employee whose employment was lawfully terminated in accordance with due process. There was a substantive justification for the termination of employment.

The claimant was employed as a laboratory technician at the Mombasa office effective 16 July 2018. In 2022, a female colleague of the claimant, X, started working with the claimant at the Mombasa office. The claimant supervised her.

The claimant started harassing X in 2022. The harassment involved sending inappropriate messages, making lewd and inappropriate comments, making unwelcome advances, comments on X's body parts, including her breasts, and verbally abusing her. This also led to

acts of intimidation based on seniority, coercing X into attending a birthday party outside work.

These text messages were captured and shared with the claimant. X asked him to stop, but this only escalated the harassment.

In February 2024, the Respondent held a meeting for the laboratory department targeting performance. X informed the respondent that the claimant had been harassing her and that she wanted him to cease the harassment. X did not present any evidence, as she feared that the claim would retaliate against her. The line manager advised the claimant to stop the harassment and cautioned him that any further complaints would be forwarded to the human resources department for action.

In 2025, the claimant made further inappropriate comments towards X while at work. X recorded these comments and informed the claimant that the remarks were not welcome.

The video was produced during the disciplinary hearing. This was also played in court.

X reported the matter to the human resource department, and the claim was issued with a notice to show cause on 28 May 2025. The claimant was required to reply by 31 May 2025 and was also suspended from duty due to the gravity of the matter. This was to allow for investigations and disciplinary hearings. The respondent furnished the claim with the offending materials.

On 29 May 2025, the claimant was directed not to contact X, not to discuss the details of the case with third parties, including colleagues, and not to share or distribute any information provided to him with third parties. He was also cautioned that any form of retaliatory conduct would not be tolerated. These measures were applied to safeguard X.

Despite the instructions to the claimant, he contacted X and sent a message to her WhatsApp.

The claimant responded to the notice to show cause on 30 May 2025, in which he admitted sending the offending messages and uttering words as shared in the video. He attempted to justify the offending words as a form of verbal appreciation for a colleague. He described the messages as mutual and cordial, despite X telling him they were unwelcome.

The claimant was invited to a disciplinary hearing on 9 June 2025. He attended with a witness, Justus Ameyia. He was allowed to make his representation and admitted that X had told him to stop harassing him in the video, but he ignored it. X was not at the disciplinary

hearing, as there was reliable video and text messages demonstrating harassment, and it was necessary to protect her in accordance with section 6(3)(v) of the Employment Act. The claimant did not deny the allegations made against him. He had been provided with all the necessary evidence before the hearing.

The claimant had been cautioned not to contact X, but he did so anyway.

The claimant apologised to the disciplinary panel and undertook to apologise to X and to sign a commitment letter stating that he would not harass her again.

Edwin Senengo, the claimant's line manager, reported to the disciplinary panel that X had made complaints to him about harassment. He had personally warned the claimant about the ad and issued a caution. The claimant's witness, Justus Amenity, admitted that he had previously cautioned him about harassing X and about his interactions with other female employees. Amenity noted that X may not have reported any sexual harassment because she was an intern at the time the incidents started. Amenity requested that the disciplinary panel issue the claimant a final warning.

The respondent found that the claimant committed gross misconduct and, by notice dated 16 June 2025, his employment was terminated. The reasons for termination were outlined in the notice, including harassment of X and repeated misconduct despite warnings. The video relied on the hearing to show that the claimant was aware that X was uncomfortable with the harassment.

The claimant was allowed to appeal, which he did through a letter dated 19 June 2025. He did not raise any new grounds, and the appeal was rejected on 23 June 2025.

The claimant's terminal dues have since been tabulated and paid together with the Certificate of Service dated 16 June 2025.

The claims made have no legal basis. The respondent has a duty to protect its employees, including stopping harassment of X. To grant the prayer for reinstatement would deny X and other employees peace at work, as they would fear harassment. Despite the claim being directed to contact X while he was on suspension, he proceeded to do so. Bringing him back to the workplace would be impractical, given the daily interactions with X, who were the only laboratory technicians in the department.

The claim should be dismissed with costs.

In evidence, the respondent called Christine Mbaya, the human resources manager, who testified that the claim was processed through the disciplinary process and that he was not coerced into admitting to any allegations. He was allowed to bring another employee of his choice. Termination of employment was justified, and a Certificate of Service has since been issued.

Mbaya testified that the claimant was employed as a laboratory technician. His employment was regulated under his written contract and company policy.

In 2022, a female employee, X, began working with the respondent at the Mombasa office under the claimant's supervision. The claimant started harassing X by sending inappropriate messages, lewd and inappropriate comments about her body parts and coercing her to attend a birthday party outside work. Some of the messages would be sent during working hours, late into the night. X asked the claimant to stop this conduct since it was not welcome, but he persisted.

Mbaya testified that X made a complaint against the claimant in 2024; however, there was no evidence to support this claim. However, the respondent cautioned him to desist from such conduct. His workmates also intervened personally and warned him.

In 2025, the claimant continued harassing X. She recorded the message and warned him to stop this conduct, but he refused. She reported the matter to the respondent. The claimant was issued a notice to show cause and then suspended. He was instructed not to contact X, but he still communicated with her via WhatsApp.

The claimant was invited to a disciplinary hearing with his chosen employee. He admitted to sending messages to the claimant but tried to justify his conduct by claiming that they were mutual. He apologised and offered to cease any further communications with the claimant.

The respondent took the conduct of the claim into account, the fact of previous warnings and the fact that his witness during the disciplinary hearing admitted that he had warned him to stop harassing female employees. There were justifiable grounds for the termination of employment. The claimant was found culpable of harassing X, and seeking reinstatement would not create a conducive working environment for X. The respondent has only one laboratory in Mombasa, and the claimant cannot be placed in any other department. It would violate X's confidence to continue working with the claimant. The respondent has since lost

trust in the claimant, and during his exit interview, he admitted that he did not wish to return; hence, an order of reinstatement would not be appropriate.

The respondent filed electronic evidence and video. This was presented in court.

At the conclusion of the hearing, the parties submitted written statements.

#### Determination

The issues for determination are whether there was unlawful and unfair termination of employment and whether the remedies sought, including reinstatement, should be allowed.

Through a notice dated 16 June 2025, the respondent terminated the claimant's employment for engaging in behaviour considered unacceptable and harassment of a colleague, including sending inappropriate messages, making lewd comments or actions at work and abusing X.

The act of harassment was defined to include phone messages going back for 3 years, comprising lewd and inappropriate comments. There was video evidence that contained threats, acts of intimidation and obscene language.

The respondent found the claimant's conduct inappropriate and issued a notice to show cause dated 28 May 2025. He was directed to respond to his conduct of harassing X.

On 30 May 2025, the claimant filed his responses to the show cause notice that:

#### *Regarding the claims made:*

*Message evidence: I have reviewed the screenshots provided, which are more than 3 years old. At the time, there were no concerns or complaints raised. The tone of the messages was not coercive, harassing, inappropriate, or threatening, and the conversations appeared to be mutual and cordial.*

*Video evidence: the video presented reflects a recent moment in which I offered verbal appreciation to a colleague after a successful meeting with one of our clients. While I understand that compliments can be perceived differently depending on context, there was no intent to offend or make anyone uncomfortable. I did not use any inappropriate language or make physical contact. The mood at the time was positive, and I believed we had a respectful working relationship.*

In essence, the claimant justified his conduct towards X.

He reiterated his conduct and justification during the disciplinary hearing held on 9 June 2025. The claimant was taken through the phone WhatsApp messages exchanged with X from 2022. X had made a complaint against him over harassment through the use of lewd messages, comments and emojis. He responded that the messages were sent by mutual consent while X was out of the office.

Section 6 of the Employment Act (the Act) outlaws any form of harassment at the workplace. It is harassment where an employee's rights at work are violated by a co-worker when:

- (a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express—***
  - (i) promise of preferential treatment in employment;***
  - (ii) threat of detrimental treatment in employment; or***
  - (iii) threat about the present or future employment status of the employee;***
- (b) uses language whether written or spoken of a sexual nature;***
- (c) uses visual material of a sexual nature; or***
- (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.***

The direct or indirect request of a sexual nature or activity is harassment. This is more exacerbated when the employee asks a co-worker, in any language, written or spoken, by use of threats, show of physical force, or other methods, including phone and text messages, for behaviour that is unwelcome or offensive to that employee.

In Kagocha v Multimedia University of Kenya & 11 others [2024] KEELRC 1718 (KLR) and Osok v Parliamentary Service Commission & another [2024] KEELRC 582 (KLR), the court held that bullying and harassment at work are acts of gross misconduct and specifically outlawed under section 6 of the Act.

In the case of P O v Board of Trustees, A F & 2 others [2014] KEELRC 623 (KLR), the court defined gender based violence at the workplace and held that:

*[harassment at work is] the most prevalent human rights violation in the world. Of the varied ways in which sex discrimination manifest itself across the globe, such violence is exceptionally dehumanizing, pervasive and oppressive. No other form of sex discrimination violates so many fundamental human rights as articulated in the 1948 United Nations Universal Declaration of Human Rights.*

In this case, the claimant admits to sending X various text messages.

A few extracts:

On 2 March 2022, he wrote to X that:

*How's my sweet kamamii*

*Am missing you tonight.*

These messages were sent at 21.59 hours.

On 7 June 2022, the claimant wrote to X that:

*Your boobs are growing bigger kila siku.*

*Umemeza nimi*

These messages continue to be more explicit and lewd.

On 8 June 2023, X wrote to the claimant that:

*Last time I checked, we were colleagues. If you want your personal puppet/errand girl, I'd recommend you purchase one at the store. Respect is a two-way traffic. You want things done, respectfully address them,*

*Next time you have some sentiments, how about you copy the lab manager instead of intimidating my work environment. ...*

The video evidence presented in court was taken on 27 May 2025 at 15.49 hours. This was after X had directly asked the claimant to stop harassing and intimidating her at work. The claimant persisted with his conduct, and he is captured making both verbal and gestures towards X and that:

*... smile, smile, look at you. You look like that amazing little girl who is like a flower. Unaona ile maua nzuri yaani like waridi.*

X asked the claimant to leave her alone, but this seemed to encourage him to be more explicit. Using mimicking words and acts, and laughing back at her.

There can be no doubt that harassment of any form at the workplace is a heinous and horrendous conduct since it undermines the dignity of an employee and the values enshrined in our Constitution under Article 41 Of the constitution and the Employment Act section 6. At the workplace, the employer should ensure that all employees are protected and secured from any form of harassment by fellow employees. This can be through workplace policies and training. Once such conduct is detected, cautionary measures or immediate action should be taken.

Although it is practically impossible for an employer to ensure, with certainty, that employees do not contravene section 6 of the Act, once an incident of harassment is reported, it should be addressed firmly and immediately. This builds employees' confidence that the working environment is safe and conducive.

This is because, oftentimes, acts of harassment, including sexual harassment, do not happen openly, and they involve only the harasser and the harassed. The most practical step an employer can take to ensure employees do not contravene the law is to adopt employment policies, such as a policy against sexual harassment as contemplated under section 5 of the Act.

In this case, the claimant, both verbally and in writing, sent messages that were demeaning to the person of X, reflected negatively on her body and person, were lewd and unwelcome. Despite constant requests to cease sharing such messages, the claimant persisted.

The complaint lodged against the claimant by X was both a proactive and a responsive step to prevent the claimant from engaging in unwelcome conduct, as defined under the Act, which is prohibited workplace harassment. In the case of **Heena Bachheta v Dr Yash Pal Bansal & others Petition E057 of 2021**, the court held that:

*[sexual harassment is] a type of employment discrimination consisting in verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks and unwelcome touching ... the main elements of sexual harassment that applied in this case were firstly, unwanted verbal, non-verbal or physical conduct of a sexual nature. ... the purpose or effect of the conduct was to violate the victim's dignity or create an intimidating, hostile, degrading humiliating, or offensive environment for him or her.*

*In addition, sexual harassment also arises if there is less favourable treatment or detriment that arises as a result of the rejection or submission to the unwanted conduct. ...*

Therefore, when such conduct occurs at the workplace:

*[Sexual harassment] creates an intimidating, hostile and offensive work environment. . . . Inferiors who are subjected to sexual harassment by their superiors in the employment hierarchy are placed in an invidious position. How should they cope with the situation? It is difficult enough for a young girl to deal with advances from a man who is old enough to be her father. When she has to do so in an atmosphere where rejection of advances may lead to dismissal, lost promotions, inadequate pay rises . . . her position is unenviable. Fear of the consequences of complaining to a higher authority often compels the victim to suffer in silence.*

In this case, the claimant's conduct towards X cannot be justified as being mutual and welcome, whereas X had explicitly told him to stop. X was specific that the continued sharing of lewd messages would not be tolerated, and she would report to her husband.

In the given circumstance, the claimant was invited to show cause why his employment should not be terminated due to his harassment of X. He opted to justify his conduct. He was invited to the disciplinary hearing and further justified his conduct. This is conduct outlawed under the Act. It cannot be justified through whatever means as done by the claimant.

Despite filing an appeal, the claimant further demonstrated and justified his conduct. He did not raise any new grounds. The dismissal of the appeal was inevitable.

In Campbell Scientific Africa (Pty) Ltd v Adrian Simmers and Others (CA 14/2014) [2015] ZALAC 23 (23 October 2015), the court held that a comment made to a fellow employee may not be harassment. However, repeated comments that are deemed unwelcome indeed constitute harassment. The unwelcome conduct as defined in Gaga v Anglo Platinum Limited and Others (JA 44/10) [2011] ZALAC 20 (20 October 2011). Conduct that violates a person's dignity is prohibited, and the employer should protect its employees from any person who

commits such conduct. See Liberty Group Limited v Masango (JA 105/2015) [2017] ZALAC 107 (7 March 2017)

As the employer, the respondent had a legal duty to protect its employees from workplace harassment. Any conduct that demeaned X should have been stopped as early as 2022 when it first occurred or upon the report in April 2024. Victims of harassment find it embarrassing and humiliating. It creates an intimidating, hostile and offensive work environment. See Maepe v Commission for Conciliation, Mediation and Arbitration and Another (JA 48/04) [2008] ZALAC 2 (18 April 2008).

The court finds the termination of employment was justified.

The remedy of reinstatement is not available to the claimant. His conduct during suspension, in which he contacted X despite being directed not to, further supports the finding that his conduct was unbecoming and justified termination of employment.

That addressed, this should serve as a warning to the claimant. Harassment or unwelcome behaviour through comments and gestures of a sexual nature to a fellow employee, any person or persons who refuse such conduct invites is both criminal and civil sanctions. Whether in public or in private, harassment of any person(s), particularly on the shop floor, physical or virtual, is prohibited under sections 5 and 6 of the Employment Act. Continued conduct of such nature attracts a criminal charge and a civil suit for damages for the psychosocial trauma such conduct causes to the other person(s). The claimant's friends, including Ameyna, had advised him to stop harassing female employees. He chose to ignore. Save for the loss of employment, the claimant has exposed himself to criminal charges. See Ooko & another v SRM & 2 others [2022] KECA 44 (KLR).

This will suffice.

**The claim is without merit and is hereby dismissed with costs to the respondent.**

Delivered in open court at Mombasa, this 15<sup>th</sup> day of December 2025.

M. MBARŪ  
JUDGE

In the presence of:

Court Assistant:

..... and .....