



REPUBLIC OF KENYA



KENYA LAW
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Koyoo v Kenya College of Accountancy (KCA) University (Cause E641 of 2023) [2026] KEELRC 198 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 198 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E641 OF 2023
ON MAKAU, J
JANUARY 29, 2026

BETWEEN

FRANK OTIENO KOYOO CLAIMANT

AND

THE KENYA COLLEGE OF ACCOUNTANCY (KCA)
UNIVERSITY RESPONDENT

JUDGMENT

1. By a Memorandum of Claim dated 28th July 2023 the Claimant sued the Respondent alleging unfair and unlawful termination of employment and prayed for reinstatement, back dated pay or in the alternative damages, costs and any other relief the Court deems fit.
2. The Respondent opposed the claim through a Statement of Response dated 26th January 2024 urging the court to dismiss the suit with costs because the termination was on account of the Claimant's misconduct, and that fair procedure was followed.
3. The main issue for determination is whether the termination was unfair and unlawful and whether the Claimant is entitled to the reliefs sought. Both parties tendered evidence to urge their respective positions and thereafter filed written submissions. Having carefully considered all the materials presented to by the two sides and the applicable law, the Court now renders its decision.

Factual background

4. The Claimant was employed by the Respondent as an Administrator at the Executive Office effective 13th April 2021 and was confirmed in that position on 3rd November 2021. On 20th January 2022, he was internally appointed as Administrator Campus Services (Town Campus). His monthly salary was Kshs.137,800 but late it was increased to 144,000.



5. On 13th June 2022, the Claimant was served with a show-cause letter detailing seven (7) charges ranging from issuing threats, insubordination, sexual harassment, absence from work and neglect of duty. He responded on 16th June 2022. A disciplinary hearing was convened on 4th July 2022, adjourned and the Claimant was interdicted on 5th July 2022. The hearing resumed on 26th July 2022, after which he was summarily dismissed for gross misconduct via a letter dated 2nd August 2022. His internal appeal was dismissed on 25th August 2022.
6. The Claimant contends that his dismissal was both substantively and procedurally unfair, alleging a pre-determined process, lack of proper investigation, denial of cross-examination and violation of his constitutional right to a fair hearing. The Respondent maintains that the dismissal was for valid reasons, followed due process, and was substantively and procedurally fair.
7. During the hearing the Claimant testified as CW1 and adopted his witness statement dated 28th July 2023 as his evidence in chief. He then produced two bundles of documents as exhibits. His evidence basically echoed the summary of facts set out above including his appointment, transfer to Town Campus and salary.
8. He testified stated that his immediate supervisor at the Town Campus was the Manager, Central Services, and that although the Director, Town Campus was senior to him, the said Director was not his direct supervisor. He further testified that he at times held the Director's brief in his absence, including chairing a disciplinary meeting on 30th March 2022, as reflected in minutes produced in evidence.
9. The Claimant confirmed that complaints were made against him, culminating in a show cause letter dated 13th June 2022 containing seven charges, to which he responded on 16th June 2022. He was thereafter invited to a disciplinary hearing scheduled for 4th July 2022, and he was informed of his right to be accompanied but he attended alone. The hearing was adjourned after he requested for the complainants' statements.
10. The following day, 5th July 2022, he received an interdiction letter followed by an invitation for a second hearing on 26th July 2022. He attended the second disciplinary hearing, during which he was supplied with witness statements. However, his request to cross-examine the witnesses was not granted as no witnesses were present. He further stated that the same committee members sat in both hearings, contrary to the Respondent's Human Resource Manual. He contended that the disciplinary committee was not properly constituted and the witnesses had been coached.
11. He confirmed that he was issued with a letter of dismissal dated 2nd August 2022, and he appealed against on 5th August 2022 but it was dismissed without being accorded a hearing as provide in the Human Resource Policy.
12. Finally, he faulted the disciplinary process because the investigations were conducted by the Director, Town Campus, and not his immediate supervisor as required under the policy. He was also not afforded adequate opportunity to interrogate the allegations or cross-examine the complainants.
13. The Respondent called one witness, Veronica Thiong'o, the Human Resource Manager, who testified as RW1. She adopted her witness statement dated 30th September 2024 as her evidence in chief and produced as exhibits, a bundle of documents dated 26th January 2024.
14. She confirmed that the Claimant was employed by the Respondent on 13th April 2021, initially reporting to the Vice Chancellor, and was later appointed Administrator, Town Campus effective 1st February 2022, reporting to the Manager, Central Services. She also confirmed that the Director, Town Campus was not the Claimant's supervisor.



15. She stated that in May and June 2022, Human Resource received complaints against the Claimant through several internal memoranda authored by the Director, Town Campus. She confirmed that no formal witness statements were initially recorded and that the Claimant was not notified of the complaints at the time they were first raised.
16. She testified that the Claimant was issued with a show cause letter dated 13th June 2022 and was subjected to a disciplinary hearing on 4th July 2022, chaired by the Deputy Vice Chancellor (Finance), with other members drawn from senior management, legal and human resource departments. She confirmed that the Claimant's immediate supervisor was not a member of the disciplinary committee and that the complainants did not attend the first hearing.
17. She further testified that following the hearing of 4th July 2022, the committee resolved to conduct further investigations, leading to a second disciplinary hearing held on 26th July 2022, before the same committee. She confirmed that the Claimant was supplied with witness statements during the second hearing but was not accorded an opportunity to cross-examine the witnesses.
18. She stated that the disciplinary process was conducted in accordance with the Respondent's Human Resource Manual and that the disciplinary committee ultimately recommended dismissal, which was communicated to the Claimant by letter dated 2nd August 2022. She confirmed that the Claimant appealed against the decision, but the dismissal was upheld.
19. Finally, contended that the composition of the disciplinary committee complied with clause 7.4 of the Human Resource Manual and that the Claimant did not request to cross-examine witnesses during the hearing.

Issues for Determination

20. Having considered the pleadings, evidence and submissions, it is clear that the Respondent terminated the Claimant's employment contract on 2nd August 2022. Section 45(1) & (2) of the [Employment Act](#) provides that:-
 - “(1) No employer shall terminate the employment of an employee unfairly.
 - (2) A termination of employment by an employer is unfair if the employer fails to prove:
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - i. related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”
21. Applying the above law to the facts of this case the following issues emerge for determination:-
 - a. Whether the termination of the Claimant's employment was substantively unfair (Reason).
 - b. Whether the termination of the Claimant's employment was procedurally unfair.
 - c. Whether the Claimant is entitled to the remedies sought.



Analysis and determination

a. The reason(s) for the termination

22. Section 43(1) of the *Employment Act*, 2007 provides that an employer must prove the reason(s) for termination. Then sub-section (2) defines reason(s) for termination of the contract as:

“... the matters that the employer at the time of the termination genuinely believed to exist, and which caused the employer to terminate the services of the employee.”

23. Section 45(2) clarifies the reason(s) must be valid, and related to the employee’s conduct, capacity, or compatibility, or based on the operational requirements of the employer. The Court of Appeal in *Bamburi Cement Ltd v Farid About Mohammed* [2016] eKLR emphasized that the reason for termination must be valid and fair.

24. The reason advanced for the Claimant’s summary dismissal was gross misconduct, as detailed in the dismissal letter of 2nd August 2022. The misconduct took the nature of threats to fellow staff, insubordination, soliciting for donations, absence from duty, neglect of duty, sexual harassment, and purporting to have authority from the Vice Chancellor to fire other staff. Specifically, he was accused of being involved in a scuffle with another employee at the campus main entrance on 20th May 2022, and on 10th June 2022, he locked 6th to 9th floor of the campus building and disappeared leading to destruction of the premises by students who wanted to use locked premises for a party.

25. Having considered the evidence before the court, I find that the Respondent has proved the reason for dismissing the claimant from employment. The RW1 presented memos dated 27th May, 8th June, and 13th June 2022, containing complaints from staff and witness statements collected during the process. The disciplinary and appeals committees found the Claimant guilty of most charges.

26. The Claimant admitted in evidence that he had a scuffle with Mr Ahindu as alleged and also that he locked the 6th to 9th floor for purposes of fumigation and went to see a doctor. He admitted that the Campus Director called him about the locked premises but he maintained the students’ party be held on 4th floor. I am satisfied that the actions by the Claimant, to say the least; bullying, insubordination, and neglect of duty amount to misconduct. Therefore I must hold that the respondent was entitled to dismiss him summarily.

B. Procedural fairness

27. Procedural fairness is a cornerstone of employment law, codified in Section 41 of the *Employment Act*. The section amplifies the right to fair labour practices, administrative action and hearing guaranteed by Articles 41, 47 and 50 of *the Constitution*. Section 41 of the Act provides that: -

“(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations



which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”

28. In *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR, the court held that:-

“ 14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers’ human resource manual or as set out in the *Employment Act* or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee’s guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.”

29. The Respondent argued that it followed a fair procedure because it served the Claimant with a show-cause letter and thereafter accorded him hearing. It maintained that the Claimant was given an opportunity to defend himself and he did so. However, the Claimant, attacked the foundation of the process, alleging it was a “charade” and a “fishing expedition.” He contended that the disciplinary process was not initiated by his supervisor and the disciplinary committee was not properly constituted as per the HR policy.

30. I have considered the above rival contentions against the law and the relevant provisions of the HR Policy. Clause 6.1.1 of the HR Policy, provides that:-

“In all cases, allegations must be fully investigated. The purpose of the investigation is to establish whether a case exists for consideration by a formal disciplinary hearing.

- a. When an employee commits, or is alleged to have committed an offence, the immediate supervisor will investigate the matter and will establish the facts surrounding the complaints, if appropriate, considering the statements of any available witnesses.
- b. If on completion of the investigation the Head of Department believes on reasonable grounds that the staff member has committed the alleged offence, but in view of the nature of the offence and of the employee’s previous record, an informal oral reprimand would suffice, he/she may administer it without proceeding further.
- c. ...
- d. If on completion of the investigation, the Head of the Department considers that on the balance of probabilities, a complaint of misconduct or other alleged breach of contract is justified and may require more than an oral reprimand, s/he will forward a statement of charge or charges on the employee specifying the offences s/he is alleged to have committed to the Human Resources Director/Manager for noting and reference for subsequent action.



- e. Depending on the nature of the allegation, the Audit, ethics and compliance, and Security offices will be involved.
 - f. ...
 - g. ...
 - h. ...
 - i. ..
 - j. ...
 - k. ...
 - l. The head of Department who conducted the investigation will not be a member of the panel but will present the supporting facts and material.
 - m. The employee or the chosen representative and the members of the panel will have the opportunity of questioning any witnesses who may attend the hearing....”
31. The letter dated 20th January 2022 which appointed the Claimant as Administrator- Campus Services (Town Campus), and the annexed Job Description, stated that he was to report to the Manager - Central Services and the Manager - Security & Safety. There is no evidence that the said immediate supervisors conducted any investigation and recommended for disciplinary action against the claimant. All that happened was reporting of the claimant’s misconduct to the Head of Human Resource by the Town Campus Director, Dr. Ibrahim Tirimba Ondabu.
 32. It is clear from the evidence that the above elaborate disciplinary process was thrown under the bus. The Claimant’s immediate supervisors never investigated and initiated any disciplinary proceedings against him as contemplated in Clause 6.1.1 (a) & (b) of the HR Policy. Rather, the process was initiated prematurely by the Town Campus Director while acting contrary to the express provision of the said Respondent’s mandatory procedure. No good reason was shown as to why the said critical step in the disciplinary process was not followed.
 33. In addition, none of the two supervisors participated in disciplinary process by giving evidence against the Claimant nor was the claimant given any opportunity to cross examine the witnesses who wrote statement against him as none testified in his presence. According to the claimant, he was only allowed to enter the hearing chamber after all the witnesses gave evidence and left. The respondent alleged that the claimant did not request to cross examine the witnesses, however the court is of the view that the burden of ensuring that fair procedure was followed lied with the employer and not the employee.
 34. It is now trite law that where the employer fails to follow fair procedure as set out in the law, or regulation or its internal disciplinary process, the termination is unfair. In a case like the instant one, any witness whose word was relied upon by the employer to indict the Claimant ought to have been availed for cross examination by the claimant without any request from him. That was not done herein because the minutes of the disciplinary committee do not indicate that the Claimant was ever offered this opportunity. The committee questioned the witnesses in the absence of the Claimant and let them go before they were questioned by him. The failure to afford this right rendered the hearing fundamentally unfair.



35. In *OI Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR, the Court of Appeal held that:-

“Even assuming for once that the Appellant had a valid and fair reason for terminating the Respondent’s services, we must go further and interrogate whether the right procedure was followed to determine whether the termination was fair under the Act. The termination can be held to be unfair if it is proved that the termination procedure was unfair. The import of the foregoing case law is that even if the employer proves the reason(s) for the dismissal to be valid and fair and that there was misconduct, failure to prove that the procedure was fair would result in an unfair dismissal.”

36. Guided by the above precedent and section 41 of the *Employment Act*, I find that the termination of the Claimant’s employment was not done in accordance with a fair procedure. As highlighted above, the whole process was marred with irregularities from the start to the end. Consequently, I hold that the termination was unfair and unlawful within the meaning of section 45 of the *Employment Act*.

Remedies

37. Having found the termination unfair and unlawful, the Claimant is entitled to remedies under Section 49 of the *Employment Act*. He prayed for reinstatement with back pay but the law does not permit the court to order reinstatement if three years have lapsed after the separation. In this case reinstatement is not possible since the dismissal occurred on 2nd August 2022 and three years lapsed in August 2025. Besides the claimant did not demonstrate that the said relief is practicable in the circumstances of this case where the relationship between the parties appears to have broken down irretrievably.

38. The Claimant prayed for alternative award of Compensation for the unfair termination. In assessing the compensation, I have considered the fact that the Claimant served for approximately 1 year and 4 months and that he contributed to his dismissal through misconduct. I have further considered that the Respondent deliberately violated the Claimant a fundamental right to due process of law. Taking all the said factors into account, I award the Claimant the equivalent to 3 months’ gross salary as compensation for the unfair and unlawful dismissal.

39. The claim for back dated salary is declined because the same is only tenable where an employee is reinstated.

Conclusion

40. I have found that the reasons for the dismissal of the Claimant were valid and fair but the dismissal was rendered unfair and unlawful by the failure to follow fair procedure as set out in the Act and the Respondent’s HR Policy manual. I have further found that the Claimant is not entitled to reinstatement to his employment due to the limitation of time and awarded him compensation. Consequently, I enter Judgment for him against the Respondent as follows:-

- a. Kshs. 144,362 x 3 monthsKshs. 433,086.
- b. Costs of this suit, together with interest at court rates from the date of Judgment.
- c. The award of damages shall be subject to statutory deductions.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

ONESMUS MAKAU



JUDGE

Appearance:

Ndeto for the Claimant

Koome for the Respondent

