



REPUBLIC OF KENYA



KENYA LAW
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**Mulavu v World Vision Kenya (Cause E048 of 2024)
[2026] KEELRC 326 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 326 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE E048 OF 2024
SC RUTTO, J
FEBRUARY 4, 2026**

BETWEEN

DOMINIC MUTUKU MULAVU CLAIMANT

AND

WORLD VISION KENYA RESPONDENT

JUDGMENT

1. The Claimant avers that he was employed by the Respondent on 9th March 2012 as a driver under a fixed-term contract, which was subsequently and continuously renewed from 1st October 2012 until his termination from employment on 16th May 2024. He further contends that during the 12 years of service, he was promoted from job grade 8 to job grade 12, reflecting his commendable performance and dedication.
2. The Claimant contends that the Respondent fished for grounds to terminate his employment and, in doing so, infringed upon his rights to privacy, human dignity, and freedom of association between consenting adults. Consequently, the Claimant seeks the following reliefs against the Respondent:
 - a. A declaration that the Act of the Respondent of terminating the service of the Claimant was unfair, illegal and unlawful.
 - b. Declaration that the Respondent's Policy on Child & Adult Safeguarding is unconstitutional.
 - c. A declaration that the Claimant's constitutional right has been violated
 - d. Damages for unfair & unlawful termination Kshs. 87,822.00/= *12
Kshs.1,053,864.00/=
 - e. Notice Pay Kshs. 87,822.00/=
 - f. Compensation for breach and violation of constitutional rights



Kshs. 6,000,000.00/=

- g. Cost of this suit
 - h. Interest.
 - i. Any other relief this honorable court may feel just and reasonable to award.
3. The Claim is contested. Putting the Claimant to strict proof, the Respondent denies that the termination of employment was unlawful. It maintains that the reasons for termination were clear, valid, fair, and lawful, and that due process was fully observed. The Respondent therefore asserts that the Claimant is not entitled to any of the reliefs sought in the memorandum of claim and accordingly urges the Court to dismiss the suit with costs.
4. The matter proceeded for hearing on 25th July 2025 and 26th September 2025, during which both sides called oral evidence.

Claimant's Case

5. The Claimant testified in support of his case as CW1 and called one additional witness, Mercy Kailu, who testified as CW2. The Claimant, who testified first, adopted his witness statement as his evidence-in-chief and proceeded to produce the documents filed in support of his Claim as his exhibits before the Court.
6. The Claimant stated that during his assignment in Mutha Mutomo between 1st October 2022 and 8th November 2023, he met an adult woman, Mercy Kailu, with whom he developed a romantic relationship intended to culminate in marriage.
7. He asserted that the consensual relationship lasted for three years but ended around September 2023, shortly before his transfer to Kitise AP in Makueni County. As the relationship had already broken down, he believed he was under no obligation to inform Ms. Kailu of his transfer a matter he suspects may have displeased her. He thereafter proceeded to Kitise to take up his new assignment.
8. The Claimant further stated that around January 2024, a former colleague from Mutomo informed him that Ms. Kailu had visited the office looking for him since she could not reach him following his transfer. He added that she made no further attempts to contact him thereafter.
9. He testified that on 4th April 2024, he was surprised to receive a show-cause letter requiring him to respond to allegations of engaging in a sexual relationship with an adult community member in Mutomo.
10. According to the Claimant, during the subsistence of the relationship, Ms. Kailu was a businesswoman in Mutomo and was neither a direct nor indirect beneficiary of the Respondent.
11. The Claimant further stated that the Respondent's Child & Adult Safeguarding Policy defines "beneficiaries" broadly to include adult community members who may suffer harm at the hands of staff, yet it does not specify the nature of harm that would justify termination.
12. He contended that the termination notice cited his alleged sexual relationship with an adult community member as the reason for dismissal, yet no statement from the woman concerned was provided to indicate that she had been harassed, exploited, or harmed.
13. He added that during the disciplinary hearing, the Respondent did not inquire into whether the relationship had been consensual. Instead, it relied on hearsay to support the allegations and justify termination.



14. The Claimant further stated that he was never informed of any complaint by the woman alleging harassment, exploitation, or harm, nor was he supplied with any statement from her. He maintains that the Respondent instead claimed that the relationship undermined its credibility, integrity, and reputation.
15. The Claimant testified that his relationship with Ms. Kailu was consensual, lawful, and a protected form of association between adult persons of opposite sex, and that during the three years of their relationship, no complaint of misconduct was ever raised.
16. He asserted that he was subjected to humiliation and degrading treatment by being compelled to divulge intimate details of a private relationship with a consenting adult, information he only disclosed in an effort to safeguard his job.
17. The Claimant averred that the Respondent mischaracterized his acknowledgement of the relationship as an admission of wrongdoing where none existed.
18. He contended that no preliminary investigation report was ever furnished to him during or after the disciplinary process, thereby denying him access to information critical for preparing his defence.
19. The Claimant further argued that clause B.5 of the Respondent's People & Culture Policy Manual on Child & Adult Safeguarding is unconstitutional as it infringes Article 27(5) and Article 31(1) of the Constitution concerning equality, non-discrimination, and freedom of individual conscience.
20. In his view, the Respondent's Safeguarding Policy contravenes Articles 28, 31, 32, 41, 45, and 47 of the Constitution by effectively criminalising consensual relationships between staff and adult community members.
21. He opined that given the Respondent's countrywide presence, the effect of the policy would be to permanently bar employees from engaging in any relationship unless they resign or retire.
22. The Claimant further stated that his employment record has been tarnished by baseless allegations, exposing him to emotional distress and uncertainty after the abrupt disruption of his career, which he relied upon to support and educate his family.
23. CW2, Mercy Kailu, testified that she is a businesswoman residing in Mutha Mutomo, Kitui County. Equally, she adopted her witness statement as her evidence in chief.
24. CW2 confirmed that she met the Claimant in Mutomo, where they were neighbours during his assignment from 1st October 2022 to 8th November 2023. She stated that they entered a romantic relationship intended for marriage, which lasted for three years until his transfer.
25. She testified that upon losing contact with the Claimant following his transfer to Kitise, she approached his colleague, Patrick, seeking his current contact information.
26. She stated that the colleague informed her he did not have the Claimant's number but referred her to another person who could assist. Unknown to her at the time, this colleague had personal differences with the Claimant and deliberately directed her elsewhere to create grounds for implicating him.
27. CW2 stated that she later received a call from one Alex Kariuki, who asked whether she had been in a relationship with the Claimant. While she had no objection to speaking with him by phone, she found the inquiries intrusive and demeaning as they concerned deeply personal matters.
28. She testified that Mr. Kariuki asked whether the relationship was consensual or non-consensual, to which she responded that it had been consensual and intended for marriage.



29. CW2 further stated that Mr. Kariuki, seemingly dissatisfied with her response, requested that she meet a team from the Respondent's Nairobi office for further questioning.
30. Out of courtesy, she met the team at a hotel in Mutomo, where she was verbally questioned based on a questionnaire. At the end of the session, she was asked to sign documents, which she declined.
31. She later learned that the Respondent had criminalised relationships between staff and community members, including consensual adult relationships, and she came to view the questioning session as an attempt to extract incriminating evidence against the Claimant.
32. CW2 maintained that she has never been a direct or indirect beneficiary of the Respondent and viewed the attempt to criminalise her relationship with the Claimant as an intrusion into her personal life and freedom of conscience.
33. She testified that the relationship was purely consensual and based on mutual affection, without coercion, intimidation, or promises of advantage.
34. She reiterated that she is a businesswoman and was never promised employment or any form of benefit by the Claimant, contrary to suggestions by the Respondent.
35. She believed the Respondent acted with improper motives during the questioning, repeatedly attempting to induce her to claim that the Claimant had taken advantage of her.
36. CW2 maintained that her relationship with the Claimant was consensual, lawful, and without incident during the three years it lasted.
37. She added that she was subjected to humiliating and degrading treatment during the questioning session, where she was pressed to divulge intimate details of her private relationship. She found the process embarrassing, intrusive, and at one point declined to continue.

Respondent's Case

38. The Respondent adduced oral evidence through two witnesses, Alex Macharia and Elizabeth Akoth Owino, who testified as RW1 and RW2 respectively. Mr. Macharia, who testified first, identified himself as the Respondent's Child Protection, Participation & Safeguarding Technical Programme Manager. Similarly, he adopted his witness statement as his evidence in chief and produced the Respondent's list and bundle of documents as exhibits before the Court.
39. RW1 testified that the Child and Adult Safeguarding Policy is constitutional as it aims to protect all children and adult beneficiaries from harm, including any form of exploitation or abuse by employees or affiliates of the Respondent. In his view, the Policy aligns with *the Constitution* of Kenya by upholding human dignity and promoting the welfare of children, and does not interfere with an individual's right to association, contrary to the Claimant's assertions.
40. RW1 further stated that in January 2024, a community member from the Mutha Mutomo area lodged a complaint alleging that the Claimant, while stationed at Mutomo AP, had engaged in a sexual relationship with one of the Respondent's beneficiaries, Ms. Mercy Kailu.
41. Upon receipt of an allegation concerning the Claimant's failure to provide child support, an officer of the Respondent contacted Ms. Kailu for verification and further inquiry.
42. According to RW1, Ms. Kailu confirmed that:
 - a. She resided within the Respondent's area of operation;



- b. She had been in a relationship with the Claimant, which resulted in the birth of a child;
 - c. The Claimant had blocked communication with her and stopped providing support for the child;
 - d. She visited the Respondent's Mutomo Area Programme office to seek assistance after exhausting other avenues; and
 - e. At the time of contact, she had received no financial or other support from the Claimant.
43. RW1 stated that due to the seriousness of the allegations, and in accordance with the Safeguarding Policy, the Respondent classified Ms. Kailu as a survivor and prioritised her safety and well-being, actions which he maintained, fell squarely within the Respondent's mandate and policy framework.
44. The Respondent thereafter reached out to the Claimant for his account of events. On 11th March 2024, he recorded a statement in which he admitted to having engaged in a sexual relationship with an adult beneficiary, which had resulted in the birth of a child out of wedlock.
45. During the same interview, the Claimant further stated that Ms. Kailu had visited the Respondent's offices complaining that he had failed to support her and the child since his departure from Mutomo AP, but that the matter had, according to him, been resolved.
46. RW1 added that following these developments, the Claimant was issued with a Show Cause Notice, to which he responded on 8th April 2024. A disciplinary hearing was subsequently conducted on 26th April 2024.
47. Upon reviewing the Claimant's statement of 11th March 2024, his written response to the Show Cause Notice, and his oral submissions at the disciplinary hearing, the Respondent concluded that he had breached the Policy. As a result, his employment was terminated, with payment of one month's salary in lieu of notice.
48. RW2, Ms. Elizabeth Akoth Owino, testified that she is the Senior Manager, People and Culture, at the Respondent organisation. Similarly, she adopted her witness statement as her evidence in chief.
49. RW2 stated that the Respondent is an international Christian humanitarian organisation focused on child welfare, committed to advancing child rights and improving the lives of vulnerable children and adults through a community development model.
50. She explained that the purpose of the Child Protection and Adult Safeguarding Policy is to set out high-level obligations for protecting all children and adults from harm arising from the conduct of the Respondent's staff or affiliates.
51. RW2 reiterated that in January 2024, the Respondent received a report from a community member in Mutha Mutomo alleging that the Claimant had engaged in a sexual relationship with Ms. Kailu while stationed in the area.
52. Upon receiving the complaint, an officer of the Respondent contacted Ms. Kailu, who confirmed that she had been in a relationship with the Claimant and that the two had conceived a child.
53. Thereafter, the Respondent contacted the Claimant, and on 1st March 2024, he recorded a statement in which he stated that:
- a. Sometime in mid-2021, while residing in Mutomo, he met Ms. Kailu, who lived on the same plot. Their interaction began when they agreed that she would wash his clothes for payment.



- b. Her young son from a previous relationship often visited the Claimant's house to watch cartoons and sometimes followed him around, even when he was leaving the premises.
 - c. Ms. Kailu once hosted a birthday party for her son, which the Claimant attended. Afterwards, she followed him to his house and they engaged in sexual intercourse, which later resulted in the birth of a child, Lewis.
 - d. He further stated that after this one-off encounter, Ms. Kailu began harassing him, causing him to relocate from the premises. He admitted that his wife was aware of the incident and that he had blocked communication with Ms. Kailu, though he continued providing support to the child.
54. On 4th April 2024, the Respondent issued the Claimant with a Show Cause Notice on grounds that he may have violated several of its policies, including the Child and Adult Safeguarding Policy.
55. The Claimant received and responded to the Notice to Show Cause on 8th April 2024, reiterating that he had engaged in a sexual encounter with Ms. Kailu, which resulted in a child. He described the incident as a one-off lapse in judgment and undertook that it would not recur.
56. Upon reviewing his response, the Respondent invited the Claimant to a disciplinary hearing and informed him of his right to attend with a representative. The Claimant opted to attend alone.
57. RW2 testified that the disciplinary hearing took place on 26th April 2024, during which the Claimant appeared without a representative. The hearing commenced with the Respondent inviting him to make oral submissions on the matters raised in the Show Cause Notice.
58. During the hearing, the Claimant admitted that his conduct contravened the Child Protection and Adult Safeguarding Policy. He noted that the incident "should not have happened," acknowledging that the Policy prohibits sexual engagement with community members within the Respondent's programme areas. He added that, after the incident, he had repeatedly reviewed the Policy to ensure he did not breach it again.
59. RW2 stated that the Respondent considered the Claimant's explanations but found them unsatisfactory. Consequently, it proceeded to summarily dismiss him through a Summary Dismissal Notice dated 16th May 2024, which set out the reasons for termination.

Submissions

60. The Claimant submitted that the Respondent's decision to terminate his employment was motivated by malice and lacked justification. He contended that the allegations of a sexual relationship involving him and Ms. Kailu were a pretext for a dismissal decision that had already been made without a valid reason.
61. Relying on the case of *Matsesho v Newton* (Cause 9 of 2019) [2022] KEELRC 1554 (KLR), the Claimant argued that the Respondent engaged in a "fishing expedition," seeking a reason to justify his termination rather than acting on a genuine basis.
62. The Claimant submitted that the Respondent failed the test under Section 45(2)(a) and (b)(ii) of the *Employment Act* by not providing valid reasons for the termination.
63. He further contended that the Respondent deliberately disregarded its own policy, which requires an investigation to establish reasonable cause of misconduct before issuing a summary dismissal.



64. The Claimant further argued that by denying him access to the investigation report, the alleged statements of Ms. Kailu, and the statement of the community member who lodged the complaint, the Respondent effectively prevented him from preparing an adequate defence, thereby violating Section 41(2) of the *Employment Act*.
65. In support of these arguments, the Claimant relied on the cases of Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited [2013] eKLR and Geoffrey Gikonyo Mathu v Intex Construction Company Limited [2017] eKLR.
66. The Claimant further asserted that the Respondent abused its powers by terminating his employment unfairly, without following due process or observing the law.
67. Referring to the cases of Kenya Human Rights Commission v Communications Authority of Kenya & 4 others [2018] eKLR and T.O.S. v Maseno University & 3 others [2016] eKLR, the Claimant submitted that the Respondent violated his rights to privacy and dignity. He contended that the intrusion into his private life was deliberate, causing mental suffering, shame, and humiliation, in breach of Articles 28 and 31 of *the Constitution*.
68. The Claimant further submitted that it was wrong to target him for termination simply for acting on natural feelings and pursuing a relationship intended for marriage.
69. While acknowledging the stated objective of the Respondent's Safeguarding Policy, the Claimant argued that its application infringed on the fundamental rights of employees. He noted that the policy's broad definition of beneficiaries potentially captures individuals who may not benefit directly from the organization but are within its operational areas. He urged the Court to protect employees who may lack the voice to challenge the policy by declaring the Respondent's Child & Adult Safeguarding Policy unconstitutional.
70. On the Respondent's part, it was submitted that the Claimant's allegations of malice were unfounded and contradicted by objective evidence. It argued that the Claimant's claims were an attempt to distance himself from repeated and unequivocal admissions of misconduct.
71. The Respondent highlighted that the Claimant admitted to a sexual relationship with Mercy Kailu across three forums: the Subject Interview Statement, his written Show Cause response, and the disciplinary hearing. The Respondent argued that these admissions constituted a clear and serious breach of the Safeguarding Policy.
72. The Respondent further submitted that the subsequent turmoil, including police involvement, financial entanglements, and public altercations, illustrated the type of harm the Safeguarding Policy seeks to prevent.
73. Citing the case of Mauti v Oshwal College [2025] KEELRC 2854 (KLR), the Respondent submitted that the Claimant's admitted breach directly undermined the credibility and integrity of its work and constituted a valid and fair reason for termination.
74. According to the Respondent, the disciplinary procedure was conducted in strict compliance with Section 41 of the *Employment Act*, and the Claimant failed to discharge the burden under Section 47(5) of the Act.
75. The Respondent maintained that a formal investigation report was unnecessary because the Claimant's repeated and unequivocal admissions provided the most compelling evidence.



76. The Respondent further submitted that the Child & Adult Safeguarding Policy is constitutional, lawful, reasonable, and necessary. In its view, it constitutes a justifiable limitation under Article 24 of *the Constitution* in pursuit of a legitimate public and organizational interest.
77. According to the Respondent, the policy does not criminalize relationships but establishes professional boundaries for staff operating in contexts of vulnerability. It argued that as a humanitarian organization, the Respondent has a duty of care to prevent exploitation and abuse, creating a positive obligation to implement preventative measures.
78. Relying on the case of the Kenya National Commission on Human Rights & 2 others v Attorney General; Director of Public Prosecutions & 3 others; Law Society of Kenya (Amicus Curiae) [2025] KEHC 6 (KLR), the Respondent argued that the policy is legally prescribed through the Claimant's employment contract and duly executed organizational policies. It argued that the Policy's objective to protect vulnerable adults and children and preserve the integrity of the organization's mission is pressing and substantial.
79. It was the Respondent's further submission that the policy represents a proportionate measure and does not prohibit relationships but requires that they occur outside the context of the organization's power-laden program areas. That this minimal restriction balances the Claimant's rights against the serious risk of harm, satisfying the proportionality test under Article 24 of *the Constitution*.

Analysis and Determination

80. I have considered the parties' pleadings, the evidentiary material placed before me and the rival submissions, and have distilled the following issues for determination:
- i. Whether the Respondent has demonstrated the existence of a valid and fair reason for terminating the Claimant's employment;
 - ii. Whether the Claimant was afforded procedural fairness prior to the termination of his employment;
 - iii. Whether Clause B.5 of the Respondent's Child & Adult Safeguarding Policy is unconstitutional;
 - iv. Whether the Claimant's right to privacy under Article 31 of *the Constitution* was infringed;
 - v. Whether the Claimant is entitled to the remedies sought.

Valid and fair reason?

81. From the termination letter dated 16th May 2024, it is evident that the Claimant's employment was terminated on the ground that he had violated the Respondent's Code of Conduct by engaging in a sexual relationship with an adult community member residing in Mutomo, an area programme in which the Respondent operates and where the Claimant had been stationed.
82. The Claimant acknowledged that between 1st October 2022 and 8th November 2023, while assigned to Mutomo, he was involved in a romantic relationship with one Mercy Kailu (CW2), a relationship he stated was intended to lead to marriage.
83. He maintained that the relationship was consensual and lasted for a period of three years, eventually ending around September 2023, shortly before his transfer to Kitise AP in Makueni County for his new assignment.



84. Ms. Mercy Kailu, with whom the Claimant was alleged to have been romantically involved and who testified in his support, confirmed the existence of the relationship and affirmed that it was consensual.
85. The Respondent contends that the Claimant, by engaging in a romantic relationship with Ms. Kailu, violated its policies, including the Child and Adult Safeguarding Policy (Policy), which is designed to set high-level standards for protecting all children and adults from harm caused by its employees or affiliates in the course of its programme activities.
86. The Respondent further asserts that, pursuant to the Policy, CW2 was classified as a “survivor,” and that her welfare and interests were given priority in handling the complaint.
87. The key issue for determination at this juncture is whether the Claimant, by engaging in a romantic relationship with Ms. Kailu, breached the Respondent’s Child and Adult Safeguarding Policy.
88. It is therefore necessary to examine the provisions of the said Policy to determine whether a violation occurred.
89. The Policy’s preamble indicates that it is designed to protect all vulnerable groups, particularly women and children. It reiterates the Respondent’s zero-tolerance stance toward incidents of violence or abuse, including sexual exploitation or abuse, committed by employees or affiliates.
90. The Claimant contends that, at the material time, Ms. Kailu was a businesswoman in Mutomo and was neither a direct nor indirect beneficiary of the Respondent. Ms. Kailu herself confirmed this position.
91. The Policy defines a “beneficiary” broadly to include not only direct project beneficiaries but also any adult or child who may suffer harm caused by the Respondent’s employees or affiliates in the course of its programme presence.
92. It further defines “adult safeguarding” as the prevention, reporting, and response to harm, abuse, or exploitation of an adult beneficiary (aged 18 or above) by a Respondent employee or affiliate.
93. The Respondent did not lead any evidence to establish that Ms. Kailu was, in fact, a beneficiary of any of its programmes. Indeed, the Respondent did not rebut the testimony of the Claimant and Ms. Kailu that she was a businesswoman and had no direct or indirect connection to the Respondent’s projects.
94. Even assuming, for argument’s sake, that Ms. Kailu could be considered an indirect beneficiary, there was no evidence that she suffered or was exposed to harm as a result of the romantic relationship with the Claimant. Indeed, there was no indication or proof of sexual exploitation, nor that the Claimant abused his position within the Respondent organisation to obtain sexual favours from Ms. Kailu.
95. Under Section 43 of the *Employment Act*, the employer bears the burden of justifying the reason for terminating an employee’s employment. Further, Section 45(2)(a) and (b) requires that the employer must prove that the reason was valid, fair, and related to the employee’s conduct, capacity, or compatibility or its operational requirements.
96. Connected to the foregoing statutory provisions is the employer’s duty to demonstrate the reasonableness of its decision to terminate the employment relationship.
97. This principle is commonly referred to as the ‘reasonable responses test’. In *British Leyland UK Ltd v. Swift* [1981] IRLR 91, Lord Denning explained the application of this test as follows:

“The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be



remembered that in all these cases there is a band of reasonableness, within which an employer might reasonably take one view: another quite reasonably take a different view. One would quite reasonably dismiss the man. The other quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him”

98. Similarly, in *Nampak Corrugated Wadeville v Khoza* [1998] ZALAC 24 , the Court rendered itself thus:

“The determination of an appropriate sanction is a matter which is largely within the discretion of the employer. However, this discretion must be exercised fairly. A court should, therefore, not lightly interfere with the sanction imposed by the employer unless the employer acted unfairly in imposing the sanction. The question is not whether it could have imposed the sanction imposed by the employer, but whether in the circumstances of the case the sanction was reasonable.”

99. Applying the ‘reasonable responses test’ to the present case, this Court finds that a reasonable employer, confronted with the same set of circumstances as the Respondent, would not have terminated the employment of the Claimant.

100. I reach this conclusion as both the Claimant and Ms. Kailu confirmed that their relationship was consensual. Moreover, there is no evidence that Ms. Kailu was a direct or indirect beneficiary of the Respondent’s projects; that she suffered any harm as a result of the relationship; or that she was sexually exploited by the Claimant; or that the Claimant abused his position within the Respondent organisation to obtain sexual favours from Ms. Kailu.

101. In my view, the Respondent misconstrued the nature of the relationship between the Claimant and Ms. Kailu, wrongly characterizing it as prohibited under its Child & Adult Safeguarding Policy. It is this Court’s respectful view that if the Policy were interpreted and applied in the manner adopted by the Respondent in this case, it would effectively bar all its employees from engaging in any romantic relationship with any person residing within the locality of the Respondent’s operations.

102. The breakdown of the romantic relationship between the Claimant and Ms. Kailu prior to his transfer to Kitise, which prompted her visit to the Respondent’s offices, is insufficient to characterize the relationship as harmful. Romantic relationships naturally experience conflicts and may end, and it is common for such breakups to elicit emotional or negative reactions.

103. Consequently, the Respondent’s argument that the subsequent discord described in the Claimant’s statements constitutes the type of harm the Policy seeks to prevent is unconvincing. Romantic relationships do not always succeed as intended, and conflicts or breakups are normal occurrences that cannot, by themselves, render a relationship harmful.

104. All things considered, the Court is not satisfied that the Respondent has established that the reason given for terminating the Claimant’s employment was valid, fair, and reasonable within the meaning of Sections 43 and 45 of the [Employment Act](#).

Procedural fairness?

105. The requirement for procedural fairness is generally provided under Section 45(2)(c) of the [Employment Act](#). Additionally, Section 41 of the same Act sets out specific requirements regarding the process an employer must follow when terminating an employee’s employment.



106. In this case, the Claimant was issued with a Notice to Show Cause dated 4th April 2024, to which he does not dispute having responded.
107. Subsequently, the Claimant was invited to a disciplinary hearing by a letter dated 23rd April 2024 and was informed of his right to be accompanied by a colleague. He attended the hearing, after which he was summarily dismissed from employment. The minutes of the disciplinary hearing exhibited in Court reveal that the Claimant was afforded an opportunity to present and explain his case.
108. In relation to the requirements of Section 41 of the *Employment Act*, the Court of Appeal observed as follows in *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR:

“ Four elements must thus be discernible for the procedure to pass muster:-

- (i) an explanation of the grounds of termination in a language understood by the employee;
- (ii) the reason for which the employer is considering termination;
- (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- (iv) hearing and considering any representations made by the employee and the person chosen by the employee.”

109. Applying the above binding precedent to the present case, I am satisfied that the Respondent, in terminating the Claimant’s employment, complied with the minimum requirements of a fair hearing as prescribed under Section 41 of the *Employment Act*.

Constitutionality of Clause B.5 of the Respondent’s Child & Adult Safeguarding Policy

110. The Claimant contends that Clause B.5 of the Respondent’s Child & Adult Safeguarding Policy is unconstitutional, as it undermines Articles 27(5) and 31(1) of *the Constitution*.
111. He further asserts that the provision contravenes Article 45(2) of *the Constitution*, which guarantees every adult the right to marry a person of the opposite sex based on the free consent of the parties.
112. From the record, it is clear that the primary objective of the Policy is to protect children and vulnerable adults from sexual exploitation and abuse, and to prevent intentional or unintentional harm, particularly in respect of adult beneficiaries.
113. Evidently, the Policy does not explicitly prohibit sexual relationships with members of the community. It is this Court’s view that the Policy’s intent is well-founded, particularly given the Respondent’s work involving engagement with children and vulnerable adults.
114. Fundamentally, the issue in this case relates to the interpretation and application of the Policy by the Respondent in the context of a consensual relationship between adults where no beneficiary relationship exists and no sexual abuse has occurred.
115. Accordingly, the Court finds that Clause B.5 of the Policy is not unconstitutional.

Breach of the Claimant’s Constitutional Right to Privacy

116. The Claimant alleges that his right to privacy under Article 31 of *the Constitution* was violated as he was compelled by the Respondent to disclose personal details regarding his intimate and consensual relationship with an adult female, which he describes as embarrassing, intrusive, and degrading.



117. In the circumstances of this case, the Court finds that the Respondent was obligated to conduct an investigation upon receiving information regarding the relationship between the Claimant and a community member, particularly in accordance with its Child & Adult Safeguarding Policy.
118. Notwithstanding the Respondent's findings, the Court finds that it was entitled to investigate the nature of the relationship between the Claimant and Ms. Kailu within the context of its Policy.
119. What's more, there is no evidence to suggest that the information provided by the Claimant was disclosed to any unauthorized parties unrelated to the disciplinary proceedings.
120. For these reasons, the Court is not persuaded that the Claimant's right to privacy under Article 31 of *the Constitution* was infringed.

Reliefs?

121. Having found that the reason given for the termination of the Claimant's employment was not fair, valid, or reasonable, the Court awards the Claimant one (1) month's salary in lieu of notice, together with compensatory damages equivalent to eight (8) months' gross salary. This award reflects the nearly twelve-year duration of the employment relationship and the finding that the Claimant's career was prematurely curtailed for reasons that were not valid, fair, and unreasonable.
122. The Claimant's claim for damages arising from alleged constitutional violations is disallowed for the reasons stated above.

Orders

123. In the final analysis, Judgment is entered in favour of the Claimant against the Respondent as follows: -
 - a. A declaration that the termination of the Claimant's employment was unlawful for lack of substantive justification.
 - b. The Claimant is awarded one (1) month's salary in lieu of notice, amounting to Kshs 87,822.00.
 - c. The Claimant is awarded compensatory damages of Kshs 702,576.00, equivalent to eight (8) months of his gross salary.
 - d. The total award is therefore Kshs 790,398.00.
 - e. Interest on the total amount in (d) shall accrue at court rates from the date of this Judgment until payment is made in full.
 - f. The Claimant is also entitled to the costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Onyango

For the Respondent Mr. Mbaji instructed by Mr. Njoroge



Court Assistant Catherine

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.

