



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

CAUSE NO. E021 OF 2025

CHRISTOPHER WATEMBO.....**CLAIMANT**

VERSUS

WE! HUB VICTORIA LTD.....**RESPONDENT**

JUDGMENT

1. The Claimant vide the memorandum of claim filed in court on 7th April 2025 the Claimant impleaded the Respondent alleging unfair termination of employment. It is his case that he was employed with effect from 1st April 2024 to manage the Respondent's brand sales and customer relationship within the larger Nyanza region, earning a salary of Kshs. 200,000/- a month. He asserts that on 20th May 2024, he was

assigned Key Performance Indicators (KPI's) for the Katito Hub for a 4-month period during which he was required to consult with the company director. He avers that he performed diligently and met all targets, despite the Director's busy schedule which limited timely consultations. Notwithstanding the foregoing the Claimant avers that he was served with a show cause on 20th August 2024 containing a hearing date of 3rd September 2024, citing failure to meet expected standards in his job description, complaints regarding his attitude and its alleged negative impact on team morale, and failure to adhere to procurement procedures. He contends that he responded to the notice to show cause by denying being previously notified of any complaints relating to his attitude and stating that he had designed a sales strategy to achieve maximum performance in a number of areas across Nyanza. The Claimant averred that the impugned procurement processes had been approved by the Company Director.

2. Following his response the Claimant avers that a disciplinary hearing was conducted on 3rd September 2024 despite his

reservations regarding the alleged bias of the Respondent's Human Resource Manager. After which he was dismissed from employment via a letter dated 13th September 2024. In light of the foregoing the Claimant asserts that the dismissal was both substantively and procedurally unfair as: no valid reason within the meaning of sections 43 and 45 of the Employment Act was established; the Respondent disregarded its Human Resource Policy as well as his satisfactory performance; the disciplinary committee was impartial since the Human Resource Director who was the complainant, sat in the committee; and the hearing as a whole was unfair. The Claimant further contends that the inclusion of a disciplinary hearing date in the Notice to Show Cause, prior to consideration of his response, demonstrated a predetermination to terminate his employment. He therefore seeks that the Court:

- (a) Declares his termination of employment substantially and procedurally unfair
- (b) Award him 12 months' salary as compensation for unfair termination of employment amounting to Kshs. 2,400,000/-.

- (c) Award interest on item 2 above
- (d) Award him costs of the suit

3. In opposition to the claim, the Respondent filed a statement of response dated 17th June 2025. While admitting the employment relationship, the Respondent contended that the Claimant's performance was unsatisfactory. It averred that the Claimant repeatedly complained that the set targets were unachievable. It averred that the Claimant was only able to meet the KPI's for the Katito hub because of its decision to reduce water prices. The Respondent further averred that the Claimant's response to the Notice to Show Cause was unsatisfactory as it failed to explain his neglect of other hubs, his unwillingness to cooperate harmoniously with colleagues, and his breach of procurement procedures while feigning ignorance.

4. Regarding the allegation of predetermination, the Respondent averred that the inclusion of a hearing date in the Notice to Show Cause was intended merely to afford the Claimant an opportunity to be heard. On the issue of bias, it

asserted that the Human Resource Manager acted impartially and within her core mandate, and that in any event the Claimant did not object to her participation during the disciplinary proceedings. The Respondent further contended that the termination was substantively justified by the Claimant's failure to drive sales growth across all sixteen hubs under his charge, his poor working relations with colleagues which negatively affected productivity, and his breach of procurement procedures. It was also asserted that since the Claimant was on probation, the Respondent was entitled to regularly review his performance to assess his suitability for continued employment. On the question of procedural fairness, the Respondent averred that the Claimant was issued with a Notice to Show Cause on 20th August 2024, responded on 26th August 2024, attended a disciplinary hearing on 3rd September 2024 where minutes were recorded and signed, and was thereafter terminated by a letter dated 13th September 2024 after his representations were found unsatisfactory.

Claimant's case

5. At the hearing, the Claimant testified on his own behalf and adopted his witness statement as evidence in chief. He produced the Notice to Show Cause dated 20th August 2024, his employment contract dated 27th March 2024, his job description annexed to the contract, his demand letter of the 17th February 2025, an email evincing his good performance at Katito dated 10th July 2024, numerous emails showing communication between team members, his termination notice, an email communicating approval of using one service provider in branding dated 29th April 2024, the Respondent's Human Resource Policy and the Respondent's short term KPIs for Katito Hub dated 20th May 2024 as exhibits 1-8. In cross-examination he acknowledged not covering all the hubs and not availing strategies on how he would cover all the hubs. He also stated that he was not made aware of the procurement procedure.

Respondent's case

6. After the Claimant closed his case, the Respondent called its Head of Human Resource, Ms. Regina Atieno Onyango, who adopted her witness statement dated 28th July 2025 as her evidence in chief. She testified that the Claimant violated the

Respondent's standard operating procedures by seeking procurement approvals directly from the Director. She further testified that some of the quotations submitted by the Claimant were inflated. She also stated that section 7.5 of the Human Resource Manual did not apply as the Claimant was on probation and his performance was under regular review to gauge his suitability for the job. In cross-examination she conceded that the KPI's were only issued for the Katito Hub for which the Claimant had met. She further admitted that no evaluation was carried out to ascertain the Claimant's performance in other hubs. She also acknowledged that complaints against the Claimant were not availed, clause 10.2.1 of the Human Resource Policy on compliance with workplace conflict was not complied with and no evidence was availed to show the impact of his attitude on the Respondent's sales. That marked the close of the Respondent's case. Thereafter, both parties filed written submissions.

Claimant's Submissions

7. In support of his case, the Claimant identified the following issues for determination:

- (i) Whether valid grounds/reasons existed for termination of his employment;
- (ii) Whether termination of his employment followed due process; and
- (iii) Whether he is entitled to the remedies sought.

8. On the first issue the Claimant submitted that the reasons cited for his termination were invalid and insufficient. He asserted that the Respondent bore the statutory burden, under sections 43 and 45 of the Employment Act, 2007, to prove the validity of the reasons for termination and the fairness of the procedure, and that failure to do so rendered the termination unfair. To buttress his position he cited the case of **Janet Nyandiko v Kenya Commercial Bank Limited [2017] eKLR**, in which the court held that an unfair termination is one which the employer fails to prove that the reason for termination was valid; that the reason for termination was a fair reason and that the same was related to the employee's conduct, capacity, compatibility or

alternatively that the employer did not act in accordance with justice and equity. Regarding the Respondent's contention that he failed to manage sales across all hubs, he submitted that he adopted a practical "hub-by-hub" approach for improvement across all 16 hubs. He asserted that despite resource constraints he was able to push sales initiatives at Muhuru Bay, Katito, Sori, Litare, Mbita, eMobility, Ice, and Cold Room project. Crucially, the Claimant asserted that he met the short term KPI's at Katito Hub where daily sales of water increased by 3,000 litres daily translating to 90,000 litres per month. The Claimant refuted the Respondent's assertion that his achievements at Katito hub were solely attributable to the Respondent's unilateral reduction of water prices, maintaining that the price reduction was as a result of his research and recommendation.

9. Further impugning the validity of the reasons for termination the Claimant submitted that the Respondent failed to comply with its own Human Resource Policy before termination for poor performance, particularly clause 7.5, which prescribes

training and coaching focused on the employee's weaknesses, supervision to confirm improvement, counselling on areas requiring improvement, and retention where performance improves. Given that the Human Resource Policy was expressly incorporated into his contract and bound the Respondent even during probation, the Claimant submitted that disregard of the policy rendered the termination unfair. To buttress this position, he cited **Jane Samba Mukala v Ol Tukai Lodge Limited [2013] KEELRC 794 (KLR)**, where it was observed:

- i) *“Where poor performance is shown to be the reason for termination, the employer is placed at a high level of proof as outlined in section 8 of the Employment Act, 2007. The employer must show that in arriving at the decision of noting the poor performance of an employee, they had put in place an employment policy or practice on how to measure good performance as against poor performance.*
- ii) *It is imperative on the part of the employer to show what measures were in place to enable them assess the performance of each employee and further, what*

measures they have taken to address poor performance once the policy or evaluation system has been put in place. It will not suffice to just say that one has been terminated for poor performance as the effort leading to this decision must be established.

iii) Beyond having such an evaluation measure, and before termination on the ground of poor performance, an employee must be called and explanation on their poor performance shared where they would in essence be allowed to defend themselves or given an opportunity to address their weaknesses.

iv) In the event a decision is made to terminate an employee on the reasons for poor performance, the employee must be called again and in the presence of an employee of their choice, the reasons for termination shared with the employee.

v) Where this procedure as set out under section 41 of the Employment Act is not followed, then a termination that arises from it will be procedurally flawed. It is procedurally irregular.”

10. In light of the foregoing, the Claimant asserted that his termination was founded on subjective opinion rather than objective evaluation in accordance with the Human Resource Manual. He relied on the case of **Njuguna v Times U Sacco Limited [2024] KEELRC 1249 (KLR)**, where the court found the termination of the Claimant's employment to be unfair due to the Respondent's breach of its own Human Resource Procedures.

11. Regarding the allegation of having a negative attitude and failure to integrate with the team, the Claimant submitted that the Respondent failed to produce any documented complaints from colleagues to substantiate the claim. He asserted that what was characterised as a "negative attitude" was in fact his good-faith reporting of serious organisational, safety, and integrity concerns, including alleged forgery, safety lapses, water quality issues, and operational inefficiencies. He submitted that the Respondent neither investigated nor resolved these concerns but instead penalised him for raising them. The Claimant further submitted that the Respondent breached clause

10.2.1 of its Human Resource Policy, which prescribes structured steps for resolving work relationship problems, including joint meetings, mediation, and escalation to the Director where necessary. In conclusion he submitted that the Respondent had failed to establish any causal link between his alleged attitude and loss of productivity, and that increased sales data contradicted the claim that his conduct adversely affected organisational performance. On the allegation of failure to adhere to procurement procedures, the Claimant submitted that the Respondent had no codified procurement policy in force at the material time, a fact acknowledged by the Respondent itself. He drew attention to the Notice to show Cause, which expressly stated that a procurement policy was still under formulation. He contended that he reported directly to the Director, obtained the Director's approvals, and could not be faulted for acting on such approvals. He further asserted that even though he previously sought approval directly from the director, he made amends after training and there was no evidence of repeated or wilful breach thereafter. Consequently, the Claimant submitted that termination was

a disproportionate sanction, particularly in the absence of prior warnings, and that the alleged conduct did not meet the threshold for summary dismissal.

12. On the aspect of due process, the Claimant submitted that in as much as a Notice to Show Cause was issued and a disciplinary hearing conducted, the process was fundamentally flawed. He asserted that the outcome was predetermined, as the disciplinary hearing was scheduled in the notice to show cause before his written response was received or even considered. He further submitted that the disciplinary committee was biased, as the Director and the Human Resource Coordinator acted in multiple conflicting roles as accusers, investigators, adjudicators, and, in the case of the Human Resource Coordinator, the recipient of his prospective appeal (if any). According to the Claimant, this commingling of roles violated the principles of natural justice and procedural fairness, rendering the process invalid. In support of his position, he relied on **Republic v National Police Service Commission Exparte Daniel Chacha Chacha [2016]KEHC 7755 (KLR)**, in which it was stated:

“The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material”

13. On remedies sought, the Claimant submitted that, having demonstrated both substantive and procedural unfairness, he was entitled to the reliefs sought pursuant to section 49 of the Employment Act. He referenced the case of **OI Pejeta Ranching Ltd v Muhoro (Civil Appeal 42 of 2015) [2017] KECA 329 (KLR)**, where the court stated:

“Remedies for wrongful dismissal and unfair termination are provided for in section 49 of the Act. They include and which the learned Judge invoked, payment equivalent of a number of months wages or

salary not exceeding twelve months based on the gross monthly wage or salary of the employees at the time of dismissal. In deciding whether to adopt some of the remedies, the court has to take into account a raft of considerations such as the wishes of the employee, circumstances in which the termination took place and the extent of the employee's contribution, practicability of reinstatement, employee's length of service, opportunity available to the employee, severance payable, right to press other claims or unpaid wages, expenses reasonably incurred by the employees as a consequence of termination, conduct of the employee which to any extent caused or contributed to the termination, failure by the employee to reasonably mitigate the losses and any other compensation in respect of termination of employment paid by the employer and received by the employee."

14. The Claimant thus urged the court to award maximum compensation, asserting that the termination was predetermined, implemented in bad faith, and executed in blatant disregard of statutory requirements, contractual terms, and the Respondent's own internal policies. He cited the case of **D.K. Njagi Marete v Teachers Service Commission [2013] KEELRC 575 (KLR)**, in which the court awarded the maximum compensation of 12 months pay upon finding that termination of the Claimant's contract of employment was unfair under section 43 as read with section 45, of the Employment Act. In conclusion, the Claimant submitted that the Respondent failed to establish valid grounds for termination, breached mandatory internal procedures, and conducted a biased and predetermined disciplinary process. He therefore urged the Court to find the termination unfair and to grant all the reliefs sought in the Statement of Claim.

Respondent's Submissions

15. The Respondent submitted that it had valid and fair reasons for terminating the Claimant's employment and had

fully discharged its statutory burden under section 43 of the Employment Act. It asserted that the reasons for termination were matters it genuinely believed to exist at the time and which justified termination within the meaning of sections 43 and 45 of the Employment Act. On performance, the Respondent submitted that achievement of short-term KPIs at the Katito hub alone did not demonstrate satisfactory performance. It asserted that the Claimant's duties as Sales and Marketing Coordinator extended across all hubs and all products, including lanterns and e-bikes, as set out in his job description, hence selective performance in a few hubs, did not constitute satisfactory performance. The Respondent further contended that the Katito KPIs were achieved only after its intervention through a reduction in water prices, and not solely through the Claimant's efforts. To support its position the Respondent pointed to the email on reduction of water prices produced as REXH 10, the Claimant's email complaining that the KPIs were unattainable (REXH 9) as well as the Claimant's job description produced as (REXH 1). The Respondent further submitted that although the Claimant alleged to have developed a hub-by-hub strategy, no such

strategy was produced in evidence or shown to have been communicated to or approved by his line manager.

16. With respect to the applicability of Clause 7.5 of the Human Resource Policy, the Respondent submitted that the Claimant's reliance on the clause was misplaced. It asserted that the Claimant received routine feedback and guidance from his line manager during the six-month probationary period. The Respondent emphasized that termination was not based solely on probationary performance, but on a combination of poor performance, policy violations, and inability to work harmoniously with colleagues. Reliance was placed on the case of **Muga v CCI Kenya Limited [2025] KEELRC 2980 (KLR)** for the proposition that probation exists to allow an employer to assess suitability and to terminate employment where an employee is found unsuitable. The Respondent also cited the case of **Monica Munira Kibuchi & 6 others v Mount Kenya University [2021] eKLR** to buttress the position that during probation an employer is entitled to evaluate performance and provide

guidance, but may terminate where suitability is not demonstrated.

17. On the issue of negative attitude and team integration, the Respondent submitted that its concerns were genuine and supported by email correspondence showing negative interactions between the Claimant and colleagues. It asserted that the Claimant exhibited a pattern of resistance to assigned duties, persistent complaints, and failure to integrate with colleagues, which adversely affected teamwork and productivity and demotivated other employees. The Respondent relied on the case of **Dede Esi Annie Amanor-Wilks v Action Aid International [2014] KEELRC 439 (KLR)** to support the argument that an employer is entitled to maintain harmonious working relationships and may lawfully terminate employees who are disruptive.

18. Regarding procurement process violations, the Respondent submitted that the Claimant repeatedly breached procurement procedures. It highlighted the series of emails produced as REXH 11 evincing an inflated

quotation for the branding of the Muhuru Hub ATMs. The Respondent equally juxtaposed the actual market costs it paid for branding Muhuru Bay (REXH 13) and branding motorcycles (REXH 15), with the Claimant's quotations for the same jobs REXH 12 and 13 respectively, asserting that there was significant inflation. The Respondent further submitted that despite awareness of established channels with regard to procurement the Claimant still engaged the Director directly. In view of the foregoing the Respondent submitted that approval by the Director could not sanitize a flawed procurement process or absolve the Claimant from compliance with internal controls. It therefore averred that such incompatibility with governance structures during probation justified his termination from employment. On observation of procedural fairness, the Respondent reiterated that a Notice to Show Cause dated 20th August 2024 setting out allegations against the Claimant was issued, the Claimant responded on 26th August 2024, a hearing was conducted 3rd September 2024 and a termination letter was issued on 13th September 2024, in compliance with section 41 of the Employment Act and the case of **Postal**

Corporation of Kenya v Tanui (Civil Appeal 127 of 2015) [2019] KECA 489 (KLR), which highlighted the following standards for a fair procedure:

(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

19. In response to allegations of predetermination, the Respondent submitted that the inclusion of a tentative hearing date in the Notice to Show Cause was a purely administrative step intended to ensure timely resolution and did not demonstrate bias. It further asserted that the lapse of ten days between the disciplinary hearing and the date of termination showed that the matter was duly considered. On the alleged bias of the disciplinary panel, the Respondent submitted that the participation of the Director and the

Human Resource Coordinator did not amount to bias. It averred that in small and medium-sized organisations, complete separation between managerial, Human Resource and disciplinary roles was unattainable maintaining that all that was required was fairness. The Respondent also asserted that; the Claimant did not raise any objection to the composition of the panel during the hearing and was accompanied by a fellow employee; and the Claimant did not demonstrate how the Director and the Human Resource Manager's participation in the disciplinary process jeopardized him or the resultant outcome. It urged the court to treat allegations of bias raised after an adverse outcome with caution.

20. In respect of final dues, the Respondent submitted that the Claimant was paid all terminal dues, including salary in lieu of notice, and was issued with a Certificate of Service in compliance with section 51 of the Employment Act. It therefore asserted that the Claimant suffered no financial prejudice from the termination of his employment. In conclusion the Respondent was adamant that; the

termination of employment termination was both substantively and procedurally fair, the Claimant failed to demonstrate unfair termination, and entitlement to the reliefs sought. It accordingly urged the Court to dismiss the suit with costs.

Disposition

21. The Claimant was engaged by the Respondent who also issued the Claimant with key performance indicators for the Katito Hub for a 4-month period and the Respondent acknowledged that the Claimant met these targets. The Claimant asserted the price reduction was largely due to his own initiative and recommendation. It seems the Respondent was unhappy that the Claimant did not exert himself and cover other areas not in his KPIs leading to a show cause alleging poor work relationships and underperformance. The Respondent contended that the Katito KPIs were achieved only after its intervention through a reduction in water prices, and not solely through the Claimant's efforts. To support its position the Respondent pointed to the email on reduction of water prices produced in

evidence, the Claimant's email complaining that the KPIs were unattainable as well as the Claimant's job description.

22. Where poor performance is alleged, there are means an employer can deploy to ensure an employee performs better and failing that, separation. In this case, the Claimant was not put on any performance improvement matrix. Whereas the Court notes there is no defined formula on how to effect a performance improvement plan, the Court draws inspiration from the case of **Churchil Winstones Ochieng v I&M Bank Limited (Cause E866 of 2023) [2025] KEELRC 3338 (KLR) (27 November 2025) (Judgment)** where Baari J. held:

65. For starters, nothing suggests that the Claimant was placed on a performance improvement plan if indeed the issue concerned his performance. None of the Respondent's witnesses attested to the Claimant having been placed on PIP, nor is the same pleaded.

66. Although the court notes that PIP is not the only way to improve performance where the same is rated as unsatisfactory, PIPs have, in general practice, become the

judicial standard. Failure to place an employee on a PIP now renders termination unfair.

67. It therefore follows that before terminating an employee for poor performance, the employer must give the employee a fair opportunity to improve.

23. In this case, no evaluation was carried out to ascertain the Claimant's alleged poor performance in other hubs the Respondent asserted were to be covered by the Claimant. The Respondent did not produce any complaints against the Claimant. No evidence was availed to show the impact of the Claimant's alleged poor attitude on the Respondent's sales. The Respondent did not comply with clause 10.2.1 of the Human Resource Policy on compliance with workplace conflict with the result that the termination was contrary to section 41 of the Employment Act.

24. The Claimant proved he was targeted by the Respondent in the termination as no cogent reasons were advanced for the alleged poor performance and alleged poor attitude affecting staff morale. The Respondent having failed to demonstrate the termination accorded with the law

particularly sections 41, 43 and 45 of the Employment Act, is liable to meet the following:-

- a. A declaration do hereby issue that the Claimant's termination of employment was substantially and procedurally unfair
- b. 6 months salary as compensation under section 49 of the Employment Act - Kshs. 1,200,000/-;
- c. Interest at 14%pa on the sum in (b) above from the date of judgment till payment in full;
- d. Costs of the suit.

It is so ordered.

Dated and delivered at Kisumu this 18th day of February

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**