



**Kenafriic Manufacturing Limited v Kenya Shoe and Leather Workers Union  
(Appeal E291 of 2024) [2026] KEELRC 582 (KLR) (2 March 2026) (Judgment)**

Neutral citation: [2026] KEELRC 582 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E291 OF 2024  
NJ ABUODHA, J  
MARCH 2, 2026**

**BETWEEN  
KENAFRIC MANUFACTURING LIMITED ..... APPELLANT  
AND  
KENYA SHOE AND LEATHER WORKERS UNION ..... RESPONDENT**

*(Appeal from a Judgement of the Senior Principal Magistrate's  
Court at Nairobi (Hon.th day of September, 2024))*

**JUDGMENT**

1. By a Memorandum of Appeal dated 17<sup>th</sup> November, 2025 the appellant appeals against the judgment of Hon. A. Nyoike delivered on 5<sup>th</sup> September, 2024 on grounds inter alia:-
  - a. That the Learned Magistrate erred in law and in fact by delivering a Judgement which failed to acknowledge that the Appellant accorded the Respondent's grievant sufficient time to prepare a defence.
  - b. That the Learned Magistrate erred in law and in fact for faulting the Appellant when they invited the Respondent's grievant to a disciplinary hearing immediately, he responded to the notice to show cause letter, yet it was procedural.
  - c. That the Learned Magistrate erred in fact and in law by failing to appreciate that the Respondent's grievant had no plausible defence towards the fraud charges hence the reason he responded to the show cause letter within 24 hours.
  - d. That the Learned Judge erred in law and in fact by failing to appreciate that the Appellant had served the Respondent's grievant with the investigation report and witness statements before the disciplinary proceedings.



- e. That the Learned Judge erred in Law and in fact by failing to delve into the merits of the Appellant's suit which clearly indicated that the Respondent's grievance was accorded a fair disciplinary hearing and still failed to give a satisfactory defense.
  - f. That the Learned Judge erred in Law and in fact by failing find that the Appellant conducted a fair disciplinary procedure.
  - g. That the Learned Judge erred in Law and in fact by failing to appreciate that the Respondent had an opportunity during trial to request for production of the hand-written statement by the maker but failed to request for the same.
  - h. That the Learned Judge erred in fact and in law by failing to appreciate that parties are bound by their pleadings and the Respondent never raised the issue of not being accorded sufficient time to prepare for his defence.
2. The appellant therefore prayed that the appeal be allowed, the judgment of the trial court be set aside and the appellant be granted the costs of the appeal.
  3. The appeal was disposed of by written submissions and the appellant submitted among others that at page 55 of the record of Appeal was a show cause letter asking the grievant to respond to the same within 48 hours and that the grievant responded the same day. According to the appellant, it usually submitted that the Notice to show cause together with the supporting documents were available to the grievant to adequately prepare his defense and this was evident since the grievant never raised an issue of not being supplied with the documents during the disciplinary hearing, conciliator's meeting and in their pleadings. According to counsel, the evidence on record clearly showed that the grievant was served with a show cause letter, he wrote a response promptly and the very next day he was invited to a disciplinary hearing, and given the opportunity to be heard, in compliance with section 41 of the *Employment Act*. Counsel further submitted that the law did not prescribe a rigid time frame for notice of a disciplinary hearing. What was required was reasonable opportunity and relied on the case of *Kenya Revenue Authority v Menginya Salim Murgani* [2010] eKLR, where it was held that, the right to be heard did not mean a right to endless adjournments, but simply a fair opportunity.
  4. Counsel further relied on the case of *Hosea Akunga Ombwori v Bidco Oil Refineries Ltd* (2017, ELRC) where it was held that to satisfy the requirements of section 41 of the *Employment Act*, 2007, an employer issues what is called in ordinary parlance a show cause notice/letter. Such a letter or notice should outline the allegations or charges against the employee and also request him to respond within a reasonable time and further in the case of *Nicholus Muasya Kyula V Farmchem Ltd* [2012] eKLR, the court held that a notice to show cause letter must explicitly outline the grounds for termination, such as misconduct, poor performance, or physical incapacity. It should provide sufficient details to enable the employee to prepare an adequate defense. Additionally, the letter must allow the employee reasonable time to respond.
  5. Counsel urged the Court to refer to pages 48 to 54 of the record which had a report generated by the Appellant's security team and which was used as a basis for inviting the grievant for the disciplinary hearing and that the grievant barely took 12 hours to respond to the Notice to show cause and his response was a mere denial of the allegation. Therefore in all fairness, the grievant was accorded sufficient time to respond which he did promptly hence the issue of time could not be revisited upon the Appellant.
  6. On the issue of valid ground for the dismissal, Counsel argued that the Appellant had at the trial established valid reasons for termination under section 43 (1) & (2) of the *Employment Act*. Counsel further urged the Court to note that the conduct of the Respondent when he received monies from



a stranger with the promise of offering a job with the appellant. In the disciplinary meeting he acknowledged knowing the complainant's husband but when tasked to substantiate his defense by producing his Mpesa statement he totally refused. The grievant's defense has always been premised on mere denial and that during the disciplinary process, meeting with the conciliator and during the trial proceedings the grievant never bothered to request for the audience with the complainant who had written a witness statement which was produced without any objection. In the circumstance, the Respondent undoing should not be visit upon the Appellant since they produced all documents in good faith and without concealing any fact unlike the Respondent.

7. On the issue whether the trial Court erred in failing to appreciate that a party was bound by their own pleadings, Counsel submitted that in their pleadings the Respondent alleged unfair termination and under Section 47(5) of the *Employment Act*, the burden of proof rested on him to demonstrate unfairness, while the Appellant's duty was to justify the reasons. At page page 10 to 13 of the Record the Respondent's pleadings alleged that they never saw the name of the complainant in the show cause and the complainant was never brought. However, during the disciplinary proceedings he acknowledged that he knew the complainant's wife but failed to produce his Mpesa statement to substantiate his defense. Further, having perused the above pleadings by the Respondent, there was no place where they respondent indicated that they had an issue with the timelines for responding to the Notice to Show Cause and not being served with the Appellant's supporting documents. The trial court therefore wrongly shifted the burden entirely on the Appellant, contrary to law and in that regard, counsel relied on the case of *Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya) [2017] eKLR* where the Court held that both parties bear responsibility in proving fairness or lack thereof.
8. Counsel further submitted that having found that termination was purely on procedure, the learned magistrate erred in law and fact by awarding damages without considering the Appellant's documents and submissions.
9. In conclusion counsel prayed the court finds merit in the appeal and set aside the judgement.
10. The respondent on the other hand submitted that its supported the judgment and order of Hon. Nyoike based on their submissions and their response to the memorandum of appeal. The respondent questioned who the complainant was and why the appellant entertained a matter outside its premises. The union further wondered why the appellant did not invite the persons who raised the complaint during the disciplinary hearing for cross-examination by the grievant and further why the appellant did not disclose the names of the complaints. The Union further submitted that the appellant ought to have brought Janapher Vutagwa and Silas Waswa to testify before the court as witness and not Human Resource Manager Mr. Julius Angoli Atetwe as witness.
11. It was the Union's contention that the appellant violated article 50 of the Kenya constitution which states that:

Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before court or, if appropriate another independent and impartial tribunal or body.

Every accused person has the right to fair trial which include right-

- a. To be presumed innocent until contrary is proved
- b. To be informed of the charges with sufficient details to answer it.
- c. To have adequate time and facilities to prepare defence.



According to the respondent, the grievant was given show cause letter dated 14/10/2020 which he acknowledged received and signed for it as shown at page 55 of the appellant documents and to which he responded at paragraph 56 of the appellant documents. The respondent grievant also acknowledged receiving the appellant's documents served to the grievant. If they served him then the question was by what means did the appellant serve the said documents to the grievant?

12. According to the Union having found that termination was purely on procedure the learned Magistrate never erred in law by awarding damages to the grievant, in fact the learned magistrate was lenient to the appellant by awarding 5 months' salary as compensation, the learned magistrates would have awarded maximum of 12 months' salary as compensation which was pleaded/asked by the respondent as outlined under section 49(c) of *Employment act* 2007 and that the award herein was not excessive. The respondent therefore urged the Court to uphold the judgment of the trial court.

### **Determination And Disposition**

13. The Court has reviewed and considered the grounds of appeal, the submissions by the appellant and the respondent. The court has further reviewed and considered the judgment of the trial court and is of the view that in order to dispose of this appeal, the issues that require to be determined is whether there existed valid grounds for the termination of the grievant and in that regard whether the trial court erred in finding that there existed no valid grounds for terminating the grievant's service.

14. The role of this court as an appellate court has been set out in several cases for instance in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal stated that: -

“[A]n appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect”

15. In the trial Court's judgment found at page 97 to 103 of the record of appeal, at page 100 to 101, the trial court observed as follows:-

“... the respondent conducted investigations led by its security team which revealed that indeed the some transaction occurred between the claimant and the said Jennifer and that there was another transaction between the claimant and Jennifer's husband. In his testimony, Mr. Julius indicated that the basis of the transactions was his business affiliations with Jennifer outside work. However, he did not demonstrate the nature of the business relation, nor account for the contested transaction. On this basis, I find that the respondent has well established on a balance of probabilities that the claimant engaged in gross misconduct.”

16. At page 102 of the record, the trial court proceeded as follows:-

“... was the notice period in the instant matter sufficient to allow the claimant to prepare his defence? In my view, he should have been afforded sufficient time to prepare a good defence especially considering the nature of the allegations raised against him. Moreover, the respondent did not provide the claimant with the evidence against him, for instance, the said Jennifer did not attend the disciplinary hearing denying the claimant the opportunity



to question them. In light of the above, I find that the respondent did not follow the right procedure before summarily dismissing the claimant.”

17. The grievant in his evidence found at page 90-91 of the record admitted to receiving money from Jennifer but defended it on the ground that he had business affiliations with Jennifer. The grievant further admits that he received the show cause letter and responded to the same immediately explaining everything. From the record, there is no evidence that the grievant asked for more time to respond to the show cause letter. The grievant further alleged that the money he received from Jennifer was on account of some business they had together. However as the trial Court rightly observed, he never disclosed the nature of the business he had with Jennifer. The trial Court therefore concluded that the grievant engaged in gross misconduct and the appellant was therefore justified in dismissing him.
18. The finding thereafter by the trial court that the appellant did not follow proper procedure while dismissing the grievant by failing to call Jennifer as witness during the disciplinary hearing and thereafter, was therefore erroneous for the reason that the grievant having admitted that he received money from Jennifer but defended it on the ground that he they had business dealings with Jennifer, the burden of proof shifted to him to call Jennifer to corroborate his allegations and displace the accusations against him by the appellant that he received the said funds on account of promise that he would help Jennifer secure a job at the appellant. Further, failure or omission by the grievant to ask for more time to respond to the show cause letter and did respond almost immediately, estopped him thereafter from complaining that he never had sufficient time to respond to the accusations against him.
19. In conclusion the Court finds and holds that the appeal is merited and is hereby allowed except for the order on unutilized leave which is a statutory entitlement regardless of whether the termination was fair or not. In any event the appellant never contested the same. The order thereon is therefore not disturbed and the appellant is entitled to be paid the same.
20. There will be no order as to costs of this appeal.
21. It is so ordered.

**DATED AT NAIROBI THIS 2ND DAY OF MARCH 2026**

**DELIVERED VIRTUALLY THIS 2ND DAY OF MARCH 2026**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

