

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E1055 OF 2024

MICHELLE ALANNA DENNARD.....CLAIMANT

VERSUS

CCI KENYA LIMITED.....RESPONDENT

JUDGMENT

1. By way of a Statement of Claim dated 11th December 2024, the Claimant alleges that she entered into an employment contract with the Respondent commencing on 18th September 2023, in the position of Managing Executive Operations, with a gross monthly salary of Kshs 1,600,000.00. She further alleges that the contract was of indefinite duration and was to terminate automatically upon her attaining the age of 65.

2. The Claimant asserts that she was recruited following a competitive selection process and, upon confirmation in the role, relocated with her family from the United States of America to Kenya, in accordance with the requirements of the employment contract. She contends that, despite repeated requests, she was never provided with formal job descriptions, as mandated under section 2.18.1(h) of the

Respondent's Human Capital Policy Manual and clause 4.1 of her employment contract. The Claimant avers that, nevertheless, she consistently performed her duties diligently, professionally, and timely, consistently meeting and exceeding expectations.

3. The Claimant avers that her employment was abruptly terminated on 13th June 2024. She contends that the circumstances surrounding the termination fail to satisfy the legal standards of validity. Further, she asserts that her termination was in clear contravention of Section 41 of the Employment Act, the Fair Administrative Action Act, the Constitution, and the Respondent's Human Capital Policy Manual. On this basis, the Claimant seeks the following reliefs from the Respondent:

- a) A declaration that Claimant's dismissal from the Respondent's employment was unprocedural, discriminatory, unfair, unlawful and unconstitutional.***
- b) An order do issue revoking or annulling the Claimant's termination and reinstating the Claimant as the Respondent's Managing Executive Operations forthwith without loss of any salary and benefits thereof.***
- c) Compensation equivalent to 12 months' salary being KES 19,200,000.00.***
- d) The Claimant's contractual bonus pay of KES 3, 840,000.00.***

- e) Punitive and aggravated damages.*
- f) Certificate of Service.*
- g) A fine of KES 100,000 against the Respondent for failure to comply with the mandatory provision of section 51(3) of the Employment Act, 2007.*
- h) Interests on (b) to (h) above from the date of filing the suit.*
- i) Costs of this suit.*
- j) Any other relief that the court may deem appropriate to grant.*

4. In opposition to the Claim, the Respondent filed a Memorandum of Response dated 3rd April 2025. The Respondent contends that the employment contract expressly provided that the Claimant's employment could be terminated either with the requisite notice or, in circumstances permitted by law, with no or shortened notice.
5. The Respondent further asserts that the Claimant's termination arose from repeated absenteeism and unsatisfactory performance of her work duties. The Respondent maintains that the termination was conducted in compliance with the Constitution, the Employment Act, and its internal policies.

6. The Respondent further maintains that the reasons for terminating the Claimant's employment were genuine and lawful. It further asserts that the Claimant had received a copy of her job description and was fully aware of her roles and responsibilities. The Respondent has termed the Claimant's suit as frivolous, vexatious, and an unnecessary burden on the courts, and accordingly prays that the Claim be dismissed with costs.
7. The matter proceeded for hearing on 29th October 2025, during which both parties called oral evidence.

Claimant's Case

8. The Claimant testified in support of her case as CW1, and at the outset, she sought to adopt her witness statement and the list and bundle of documents filed on her behalf to constitute her evidence in chief.
9. The Claimant testified that she enjoyed a conducive work environment until April 2024, when she began reporting to the new Managing Director of Operations, **Mark Reddin**. She alleged that under his supervision, she experienced severe workplace harassment, including the refusal to pay her contractual bonus of **Kshs. 3,840,000.00**, which she had earned prior to Mr. Reddin's appointment.

10. The Claimant further asserted that Mr. Reddin frequently engaged in derogatory conduct towards her. Pursuant to section 12.3 of the Human Capital Policy Manual, she lodged formal complaints with the Human Capital Department, including emails dated 13th May 2024 and 27th May 2024, and reasonably expected that these complaints would be addressed.

11. The Claimant stated that she was surprised when, on 4th June 2024, she was physically served with a letter dated 4th June 2024, which referred to a meeting held on 15th May 2024 between her, the Respondent's Chief People Officer, Jennifer Luseno, and Mr. Reddin, in which several allegations were raised against her.

12. She contended that during the 15th May 2024 meeting, she had again raised harassment concerns regarding Mr. Reddin to the Chief People Officer. She added that the Show Cause letter dated 4th June 2024 acknowledged receipt of one of her complaints submitted via email on 27th May 2024.

13. The Show Cause letter required her to respond in writing, via email, to the allegations raised against her, including queries concerning her complaint dated 27th May 2024, by 6th June 2024.

14. The Claimant asserted that she provided a detailed written response addressing both the allegations and the queries related to her complaint.
15. She further stated that on 7th June 2024, she was served with a letter inviting her to a disciplinary hearing scheduled for 10th June 2024 at 6:00 pm.
16. On 10th June 2024, she received a termination letter dated 13th June 2024, informing her that her employment had been terminated with effect from that date.
17. The Claimant contended that the termination reflected spite and malice, given her clean employment record and dedication to the Respondent.
18. She averred that she had comprehensively addressed all allegations in her response to the Show Cause letter, yet the Respondent disregarded her explanations, appearing determined to terminate her employment.
19. She further contended that the Respondent ignored all complaints she lodged against her supervisor, Mr. Reddin.

20.The Claimant averred that she consistently performed her duties to a high standard, for which she was awarded a bonus. She contends that during the disciplinary hearing, the Respondent presented no evidence of absenteeism or dereliction of duty, such as job or meeting attendance records or clock-in logs, and that the allegations against her were vague and baseless.

21.She averred that she is severely aggrieved by the Respondent's decision to terminate her employment without valid or justifiable reasons, in an unprocedural manner, and in a discriminatory manner.

22.The Claimant further asserted that the Respondent failed to issue her with a Certificate of Service, as required by law.

Respondent's case

23.The Respondent called oral evidence through **Jennifer Luseno**, who testified as RW1. Ms. Luseno stated that she holds the position of Chief People Officer at the Respondent company. Similarly, she adopted her witness statement to constitute her evidence in chief. She further produced the initial and supplementary lists and bundle of documents filed on behalf of the Respondent, as exhibits before the Court.

24.RW1 testified that the Claimant demonstrated a lack of diligence in performing her duties, including poor attendance at critical job meetings and substandard performance in certain campaigns under her leadership.

25.She stated that the Claimant reported directly to the Managing Director of Operations, Mr. Mark Reddin, and that no harassment concerns were raised by the Claimant to the Respondent until her email dated 27th May 2024.

26.RW1 averred that the Claimant's email of 27th May 2024 raised issues regarding the implementation of her Performance Improvement Plan and concerns about her direct manager, Mr. Reddin.

27.She further stated that the Claimant's complaints followed a critique by Mr. Reddin regarding her non-availability and lack of engagement in her work duties, as communicated to her via email dated 13th May 2024.

28.In RW1's view, the Claimant, dissatisfied with her manager's critique, lodged complaints against him in retaliation.

29. RW1 explained that, to assess the Claimant's performance and address concerns about work neglect, Mr. Reddin provided her an opportunity to respond to specific queries regarding her job performance.

30. She averred that on 15th May 2024, a meeting was held between herself, the Claimant, and Mr. Reddin, during which he (Mr. Reddin) expressed concerns about the Claimant's frequent absence from Daily Leadership meetings, rare attendance at Senior Leadership meetings, and poor management of her campaigns.

31. Following this meeting, the Respondent issued the Claimant with a Show Cause Letter dated 4th June 2024, outlining alleged infractions in her job performance and providing her an opportunity to respond to detailed queries on the matters raised. The Claimant submitted a detailed written response addressing all queries regarding her performance.

32. Upon review of her response, the Respondent issued the Claimant with a letter on 7th June 2024 inviting her to a disciplinary hearing scheduled for 10th June 2024 at the Tatu City Office at 1800 hours.

33.RW1 averred that the disciplinary hearing was conducted thoroughly on 10th June 2024. To ensure transparency and fairness, the proceedings were minuted, and the minutes were shared with and verified by the Claimant in an email dated 12th June 2024.

34.On 13th June 2024, the Claimant was served with a Notice of Termination citing non-attendance of Daily Leadership meetings, infrequent attendance at Senior Leadership meetings, and lack of engagement in her duties.

35.RW1 maintained that the termination of the Claimant's employment was lawful, conducted in accordance with fair labour practices, and did not infringe any constitutional or statutory rights.

36.She added that the termination was based on the Claimant's failure to attend key meetings and negligence in performing her duties.

37.RW1 was categorical that the termination was not malicious and complied with the provisions of the Employment Act.

38. She further averred that all the Claimant's terminal dues were computed and paid in accordance with the Employment Act adding that she was not entitled to the contractual bonus she alleged.

Submissions

39. The Claimant contended that the reasons cited for her termination were neither valid nor fair, arguing that the Respondent failed to produce evidence showing that she had defied an express directive from her supervisor or breached any policy requirement. To support this position, the Claimant relied on the decisions in *Ochieng v Rhombus Concrete [2025] KEELRC 1010 (KLR)* and *Abraham Gumba v Kenya Medical Supplies Authority [2014] KEELRC 463 (KLR)*. She further asserted that none of the elements constituting insubordination were present in her case.

40. Referencing the case of *David Wanjau Muhoro v Ol Pejeta Ranching Limited [2014] KEELRC 296 (KLR)*, the Claimant submitted that the Respondent had not demonstrated wilful negligence or careless and improper performance of her duties.

41. The Claimant also argued that her termination was procedurally unfair, as the Respondent failed to adhere to its own Human Capital Policy Manual. On this score, she contended that she was never provided with particulars of the charges or the evidence against her, which hindered her ability to adequately prepare for the disciplinary hearing.

42. The Claimant further submitted that the presence of the Chief People Officer, Jennifer Luseno, on the disciplinary committee compromised the fairness of the process. She contended that Luseno effectively acted as accuser, jury, judge, and executioner, particularly since the Claimant had previously raised complaints and grievances against her supervisor to Luseno, which had been ignored. The Claimant relied on the case of *Barmao v G4S Kenya Limited [2024] KEELRC 1141 (KLR)* in support of her argument.

43. The Claimant further submitted that the Respondent disregarded her appeal against the termination, further undermining procedural fairness.

44. In its submissions, the Respondent argued that the contract of service was tainted by illegality from its inception. In the same vein, the Respondent contended that the illegality rendered the contract illegal *ab initio*, depriving both parties of any enforceable rights. To support this position, the Respondent invited the Court to

consider the decision in *Five Forty Aviation Limited v Richard Oloka [2015] eKLR*.

Analysis and determination

45. It is noteworthy that on 25th November 2025, the Respondent informed the Court that it had not yet filed its submissions and sought a further 10 days to comply. The Court granted the request and proceeded to reserve a judgment date.

46. However, the Respondent did not file its submissions within the extended period. Instead, it filed a Notice of Preliminary Objection dated 23rd January 2026, in which it contends that this Court lacks jurisdiction to hear the matter pursuant to **Section 45(2) of the Kenya Citizenship and Immigration Act**. As a judgment date had already been fixed, the objection was not placed before the Court for directions. Nonetheless, the Court will address and determine the objection within this judgment.

47. In light of the foregoing and upon review of the record, the Court has distilled the following issues for determination:

- i. Whether the Respondent's preliminary objection meets the legal threshold;***

- ii. *Depending on (i) whether the Respondent has established that there was a valid and fair reason for terminating the Claimant's employment;*
- iii. *Depending on (i) whether the Claimant was accorded procedural fairness prior to the termination; and*
- iv. *Depending on (i) whether the Claimant is entitled to the remedies sought.*

Whether the Respondent's preliminary objection meets the legal threshold

48. The Respondent's preliminary objection is anchored on **Section 45(2) of the Kenya Citizenship and Immigration Act**, which provides as follows:

“(2) It shall be the duty of every employer to apply for and obtain a work permit or a pass conferring upon a foreign national the right to engage in employment before granting him employment and it shall be presumed that the employer knew at the time of the employment that such person was among those referred to in subsection (1).”

49. In its submissions in support of the objection, the Respondent argues that the contract of service between the parties is tainted by illegality. The Respondent further contends that the alleged illegality arose at the inception of the contract, thereby rendering it illegal *ab initio*.

50. It is well settled that a preliminary objection must be founded on a pure point of law. It is also trite that such an objection proceeds on the assumption that all the facts pleaded by the opposing party are correct and cannot be raised where the court must first ascertain any fact. This principle was affirmed in *Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd (1969) EA 696*, where the Court stated as follows:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

51. And further, in the case of *Avtar Singh Bhamra & Another vs Oriental Commercial Bank, Kisumu HCCC No.53 of 2004*, it was held as follows: -

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

52. In the present case, it is evident that the Respondent's preliminary objection can only be resolved through a factual and evidential analysis. Specifically, the question of whether the Respondent obtained a work permit under **Section 45(2) of the Kenya Citizenship and Immigration Act** is a factual matter requiring

proof. Consequently, the Respondent's preliminary objection cannot be said to raise a pure point of law.

53. Accordingly, the Respondent's preliminary objection fails to meet the legal threshold.

54. For the foregoing reasons, the Respondent's Preliminary Objection dated 23rd January 2026 is hereby overruled.

55. What's more, the matter is at its tail end and well past the stage at which evidence could be tendered. I say so, noting that the Respondent has not filed a formal application seeking the reopening of the case.

Valid and fair reason for termination of employment?

56. From the record, it is evident that the Claimant's employment was terminated on the grounds that she failed to follow a written command that was within her duty to follow and neglected to perform her work, which it was her duty to perform.

57. Regarding the allegation of failing to follow a written command, it was alleged that the Claimant had missed numerous daily leadership meetings and rarely

attended the senior leadership team meetings since their commencement in January 2024. It was also alleged that on the few occasions she attended, she did not make any contribution.

58. Notably, the allegation of negligence was closely intertwined with the first allegation, as it was alleged that the Claimant was expected to attend and participate in both the senior leadership team meetings and the daily leadership meetings, and to represent the campaigns under her supervision, expectations she allegedly failed to meet.

59. **Section 43(1) of the Employment Act** places the burden on an employer to prove the reasons for terminating an employee's contract, failing which the termination is deemed unfair. Further, pursuant to **Section 45(2)(a) and (b)**, a termination is unfair unless the employer demonstrates that the reason was valid, fair, and related to the employee's conduct, capacity, compatibility, or the employer's operational requirements.

60. The allegations against the Claimant arose from the notice to show cause issued on 4th June 2024. In her response, the Claimant stated that she had been attending senior leadership team meetings virtually. She explained that the invitations

indicated “face to face if onsite in Garden City,” and therefore, when she was not onsite, she joined virtually where possible. She added that she did not consistently receive invitations explicitly requiring in-person attendance and provided a breakdown of the dates she missed, together with reasons for each absence.

61. With respect to the daily leadership meetings, the Claimant conceded that she had failed to attend many sessions, explaining that she lacked clarity on reporting lines until early May. She further stated that she frequently had conflicting meetings with the shopper VM from Instacart during that time, which she opted to attend. She acknowledged that she ought to have communicated her absence in advance and apologized for any inconvenience caused.

62. According to the minutes of the disciplinary hearing, the Claimant admitted that she did not communicate her absence from both the senior leadership and daily leadership meetings, assuming her line manager knew she had travelled or was otherwise unavailable. She also admitted that she did not notify the convenor of the meetings, who was not her line manager.

63. Clause 4.8 of the Claimant's contract of employment required her to attend all meetings as directed by the company unless she had a valid reason for being unable to do so, in which case she was obligated to give notice to the company.

64. It therefore follows that by failing to attend the meetings as expressly required under Clause 4.8, the Claimant failed to comply with a written command within the scope of her duties.

65. Respectfully, the Claimant's argument that she was not issued with a job description does not hold, as the contract of employment clearly stipulated her obligation to attend all required meetings. Indeed, a job description was not necessary to inform her of this duty.

66. While some absences may have been justified, Clause 4.8 obligated the Claimant to give notice of any inability to attend scheduled meetings. Indeed, in her capacity as a senior executive in the company, she was expected to communicate such absences without fail. It was imprudent on the Claimant's part to assume that her reasons were known to her supervisor without communicating them.

67. Under **Section 44(4)(a) of the Employment Act**, an employee's failure to obey a lawful and proper command within the scope of their duties constitutes a ground for termination.

68. Applying the provisions of Section 44(4) (a) aforementioned to the case herein, the Court finds that the Claimant's unexplained failure to attend the daily leadership meetings, as required, constituted a valid and fair reason for the Respondent to terminate her employment.

Procedural fairness?

69. The general requirement of procedural fairness is anchored in **Section 45(2)(c) of the Employment Act**, while the specific safeguards for a fair hearing are set out under Section 41. Essentially, an employer must notify an employee of the intended termination in a language the employee understands and provide an opportunity to respond to the allegations in the presence of a fellow employee of their choice.

70. The Claimant has raised several issues regarding the process followed by the Respondent prior to her termination.

71. One such issue is that the disciplinary committee was not properly constituted under Clause 10.7.1 of the Respondent's Human Capital Policy Manual, as Mark Reddin, the complainant named in the show cause letter, was never called to testify.

72. Revisiting the notice to show cause dated 4th June 2024, it is apparent that it references concerns raised by the Claimant's direct manager, Mark Reddin. As it were, these concerns formed the basis of the allegations that ultimately led to the Claimant's termination from employment, making Mark Reddin a potential witness in the disciplinary proceedings. Despite this, Mark Reddin was absent from the disciplinary hearing.

73. Clause 10.7.1 of the Respondent's Human Capital Policy Manual specifies that the following persons are to be present at a disciplinary hearing: *the chairperson, the alleged offender, an employee representative, an interpreter, the complainant, and witnesses.*

74. Further, Clause 10.7.2 of the same Manual provides that an employee has the right, *inter alia*, to question the complainant and witnesses.

75. Therefore, by failing to ensure Mark Reddin's presence at the disciplinary hearing, the Respondent denied the Claimant an opportunity to exercise her right under the Manual to question him on the allegations he had raised against her.

76. The Claimant has also contended that the Respondent ignored her appeal against the termination of her employment.

77. The record shows that, upon termination, the Claimant was notified of her right to appeal the decision using the "*Lodging of Appeal Form*" within 7 days from the date of the termination letter.

78. The Claimant submitted her appeal via email to Rishi Jatania on 24th June 2024. However, the email did not elicit any response from the Respondent.

79. In cross-examination, RW1 stated that the Claimant's appeal was not in the prescribed form. It is worth noting that the Claimant was not informed that her appeal had been submitted in the wrong form and, therefore, it could not be addressed.

80. Ultimately, the Respondent neither responded to the Claimant's appeal email nor addressed the issues raised therein.

81. Notwithstanding the fact that the Claimant had submitted the appeal in the wrong form, the Respondent was enjoined to notify her as much as much opposed to going quiet and letting the matter slip.

82. In any case, the issue of form was merely a technicality, which the Respondent appears to have relied upon, thereby prejudicing the Claimant's right to appeal.

83. As a result of the Respondent's inaction, the Claimant's appeal went entirely unaddressed.

84. On this issue, I find it imperative to refer to **Section 45(5)(a) of the Employment Act**, which provides as follows:

“(5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for this section, a labour officer, or the Industrial Court shall consider—

(a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;”

Underlined for emphasis

85. Applying the aforementioned statutory provision to the case herein, the Court finds that the Respondent's failure to act on the Claimant's appeal effectively denied her an opportunity to be heard, which was both unjust and inequitable.

86. Although the Respondent issued the Claimant with a Notice to Show Cause and convened a disciplinary hearing, the denial of her right to cross-examine the witnesses and the subsequent neglect of her appeal demonstrate that, when considered as a whole, the process was neither fair nor equitable to the Claimant.

87. Accordingly, taking all circumstances into account, the Court concludes that the Claimant's termination was procedurally flawed, unjust, and inequitable.

Reliefs?

88. Having found that the Respondent had a valid and fair reason to terminate the Claimant's employment but conducted the process in a procedurally flawed, unjust, and inequitable manner, the Court awards the Claimant compensation equivalent to two (2) months' gross salary. In determining this award, the Court has considered the relatively short duration of the employment relationship and the Claimant's contribution to the termination of her employment.

89. The Claimant's claim for a contractual bonus is dismissed for lack of evidence.

While her contract entitled her to participate in the company's bonus scheme, no proof was provided to show that she had earned the bonus claimed. The only evidence produced in this regard was an email dated 22nd May 2024 to Mark Reddin, questioning the removal of her bonus on the basis that her performance was not subject to management intervention. Given that this was a specific claim, the Claimant was required not only to plead it but also to support it with evidence. In the absence of such proof, the Court finds that the Claimant has not established her entitlement to the bonus to the requisite standard.

90. The Claimant is entitled to a certificate of service in accordance with Section 51(1) of the Employment Act.

Orders

91. In the final analysis, the Court makes the following final orders: -

- (a) The Court declares that the termination of the Claimant's employment was procedurally flawed and, therefore, unlawful.**
- (b) The Claimant is awarded Kshs 3,200,000.00 as compensatory damages, equivalent to two (2) months' gross salary.**
- (c) Interest on the amount in (b) shall accrue at the prevailing court rates from the date of judgment until full payment.**

(d) The Respondent shall bear the costs of the suit.

(e) The Respondent shall issue the Claimant with a certificate of service within 14 days from the date of this judgment.

DATED, SIGNED and DELIVERED at NYERI this 17th day of February, 2026.

.....

**STELLA RUTTO
JUDGE**

In the presence of:

Mr. Manyara for the Claimant

Ms. Koriri for the Respondent

Ndati Court Assistant

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.

STELLA RUTTO

JUDGE