



**Mbwiria v Biodeal Laboratories Limited (Cause E118 of 2025)
[2026] KEELRC 568 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 568 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E118 OF 2025
SC RUTTO, J
FEBRUARY 27, 2026**

BETWEEN

BETH KAGWIRIA MBWIRIA CLAIMANT

AND

BIODEAL LABORATORIES LIMITED RESPONDENT

JUDGMENT

1. By a Statement of Claim dated 19th June 2025, the Claimant avers that she was employed by the Respondent on or about 15th March 2011 as a Medical Representative. She states that, at the time of her employment, she was informed that her duties would include visiting doctors, hospitals, clinics, and chemists to generate demand, sell and market human products, process orders, ensure customer satisfaction, and manage bill settlements.
2. The Claimant avers that she diligently performed her duties to the extent that the Respondent progressively increased her gross salary in recognition of her performance.
3. She further states that on 5th August 2024, the Respondent issued her with a notice to show cause, alleging that she had neglected her duties. She contends that the duties were never assigned to her.
4. The Claimant avers that she responded to the notice, but on 19th August 2024, she received a letter terminating her employment on the grounds of alleged neglect of her duties.
5. It is against this background that the Claimant seeks the sum of Kshs 1,126,250.00, comprising notice pay, compensation for unlawful termination, and accrued leave pay. Additionally, the Claimant seeks a declaratory order that her termination was unlawful and illegal, together with the costs of the suit and interest.
6. Opposing the Claim, the Respondent filed a Response dated 12th May 2025, in which it asserts that the Claimant was accorded both procedural and substantive fairness prior to her termination from



employment, including the issuance of a notice to show cause and an invitation to a disciplinary hearing.

7. The Respondent further avers that, following the termination letter, the Claimant utilised her accrued leave days. According to the Respondent, the Claimant's suit is misconceived, lacks a proper foundation, and is without merit. Consequently, the Respondent prays that the Court dismisses the Claim with costs.
8. In reply to the Respondent's Statement of Response, the Claimant reiterated that she was never invited to a disciplinary hearing. She contends that after responding to the notice to show cause, the next communication she received from the Respondent was her termination on 19th August 2024.
9. She further avers that the alleged new responsibility of heading a team was contingent upon a corresponding increase in her salary. Nevertheless, she assisted her team members and carried out the role diligently and exemplarily, despite the Respondent's refusal to adjust her remuneration.
10. The matter proceeded for hearing on 5th November 2025, during which both parties presented oral evidence.

Claimant's Case

11. The Claimant testified in support of her case as CW1. At the outset, the Claimant adopted her witness statement as her evidence in chief. She further produced the initial and supplementary lists and bundle of documents filed on her behalf as exhibits before the Court.
12. The Claimant testified that in the notice to show cause dated 5th August 2024, she was accused of neglecting her duties, specifically failing to follow up with a team she was allegedly heading, to ensure that daily sales reports were submitted, and to prepare reports and facilitate discussions on target variances.
13. She averred that she responded to the notice, clarifying that her job description was that of a Medical Representative and that she had never been formally assigned to head any team.
14. The Claimant contended that, until her dismissal, the Respondent had never issued any communication indicating a change in her job description. Despite her response, she received a termination letter on 19th August 2024.
15. The Claimant further testified that the termination letter was issued without affording her an opportunity to be heard.
16. She further contended that she had not taken any leave for the year 2023 at the time of her termination.

Respondent's Case

17. The Respondent called oral evidence through Mital Shah, who testified as RW1. Mr. Shah identified himself as the Respondent's Director and equally, he adopted his witness statement, together with the list and bundle of documents filed on behalf of the Respondent, as his evidence in chief.
18. In his testimony, RW1 stated that the Claimant was aware that she was responsible for heading a team, guiding its members in the field, and ensuring the submission of daily sales reports to enable the Respondent to track team activities, responsibilities which, according to RW1, she neglected.
19. RW1 further testified that the Claimant was invited to a disciplinary hearing but declined to acknowledge receipt of the invitation and refused to attend, thereby squandering the opportunity to be heard.



20. He added that the Claimant utilized her leave days following the issuance of the termination letter.
21. RW1 also contended that the Claimant delayed the return of company property in her possession, which hindered the determination of any final dues owed to her.
22. In RW1's view, the Claimant was the architect of her own misfortune, and to this end, he urged the Court to dismiss the Claim with costs.

Submissions

23. The Claimant contended that the Respondent had never formally assigned her the responsibility of leading the team, guiding its members, or ensuring the submission of daily sales reports as alleged. She asserted that it was only after she sought an increase in remuneration for performing these additional tasks that the Respondent terminated her employment.
24. Relying on the authorities of *Gilbert Mariera Makori v Equity Bank Limited* [2016] eKLR, *Mueni & 5 others v Ponders Limited* [2025] KEELRC 525 (KLR), and *Kiilu v Isinya Resorts Limited (Cause E022 of 2021)* [2022] KEELRC 13240 (KLR), the Claimant submitted that the Respondent failed to conduct a disciplinary hearing, resulting in her condemnation and dismissal without an opportunity to present her defence.
25. The Claimant further argued that by denying her the opportunity to make representations during a disciplinary hearing, the Respondent failed to comply with the mandatory procedure set out under Section 41(2) of the *Employment Act*, rendering the dismissal procedurally unfair.
26. The Respondent submitted that the Claimant was physically served with an invitation to the disciplinary hearing but declined to acknowledge receipt and failed to attend, thereby squandering her opportunity to be heard.
27. The Respondent further contended that the Claimant was aware that she was responsible for heading a team, guiding its members in the field, and ensuring the submission of Daily Sales Reports to assist the Respondent in tracking team sales activities, responsibilities she neglected.
28. To this end, the Respondent argued that it cannot be faulted for dismissing the Claimant for a valid reason that was evident to her, particularly as she failed to take the opportunity to be heard by refusing to attend the scheduled disciplinary hearing.
29. In support of the Claimant's position, reliance was placed on the case of *Feroz Ali Omar v ECU Worldwide Limited* [2018] KEELRC 868 (KLR).

Analysis and Determination

30. Having considered the pleadings of both parties, the evidence on record, and the rival submissions, the Court has identified the following issues for determination:
 - i. Whether the Respondent has established a valid and fair reason for termination of the Claimant's employment;
 - ii. Whether the Claimant was afforded procedural fairness prior to termination of her employment; and
 - iii. Whether the Claimant is entitled to the reliefs sought.



Valid and fair reason for termination from employment?

31. The reasons for the Claimant's termination from employment cannot be ascertained from the termination letter, as none were stated therein. This notwithstanding, the record bears that prior to her termination from employment, the Claimant was issued with a notice to show cause dated 5th August 2024, alleging that she had neglected her duties. Specifically, the Claimant was accused of failing to follow up with the team she was purportedly heading to ensure that daily sales reports were submitted, and of failing to prepare and submit reports on past sales targets versus achievements, targets for upcoming weeks, discussions on target variances, challenges encountered, and solutions implemented.
32. In response to the notice to show cause, the Claimant stated that she had never been assigned to head any team, and no letter had been issued to that effect. With respect to the submission of daily sales reports, she asserted that she had submitted these reports to RW1 through the Senri app.
33. Given the divergent positions taken by the parties, it is imperative to revisit the applicable legal framework, particularly regarding the evidential burden.
34. Under Section 43(1) of the *Employment Act*, the employer bears the burden of proving the reason or reasons for terminating an employee's employment. Failure to discharge this burden renders the termination unfair within the meaning of Section 45 of the Act.
35. On its part, Section 45(2)(a) and (b) of the *Employment Act* provides that a termination is unfair if the employer fails to demonstrate that the reason for termination of employment was valid, fair and related to the employee's conduct, capacity, or compatibility, or based on its operational requirements.
36. Applying these statutory provisions to the present case, it follows that the Respondent was required to demonstrate that the reasons for terminating the Claimant's employment were valid and fair; specifically, that she had neglected her duties in ensuring that the team she led submitted daily sales reports and in preparing her reports on sales targets versus actual achievements.
37. Regarding the submission of the sales reports, it is notable that the Respondent did not dispute the Claimant's assertion that she had submitted the said reports through the Senri app.
38. The record also indicates that, by an email dated 25th February 2023, the Claimant forwarded to Nihal Shah the sales numbers for January and February 2023, along with the medical representative reports for February 2023.
39. Applying Sections 43 and 45(2)(a) and (b) of the *Employment Act*, the Court finds that the Respondent has not proved, on a balance of probabilities, that the termination of the Claimant's employment on the basis of failure to submit her sales reports was valid and fair.
40. Turning to the allegation that the Claimant failed to ensure that her team submitted daily sales reports, her primary contention is that she had not been assigned a team and had received no letter to that effect.
41. Discounting the Claimant's assertion, the Respondent relied on email correspondence between the Claimant and Nihal Shah. In an email dated 15th February 2023, the Claimant requested a pay increase, stating that she had taken over a team, trained, recruited, and guided them in the field, and she had seen the sales volumes reflecting better than the previous year.
42. In response, Nihal Shah acknowledged that since the Claimant now had a team, the company was investing more.



43. The Claimant replied to Mr. Nihals' email on 16th February 2023, noting that the previous year she had been trusted to take over the products again, and this time to recruit new representatives, train them, and ensure product sales.
44. What can be discerned from this email correspondence is that it is evident that, as of February 2023, the Claimant was leading a team which she had recruited and trained.
45. The Court further finds the Claimant's assertion that the responsibility of heading a team was contingent upon a salary increase not to be plausible. This is for the reason that in the Claimant's emails of 15th and 16th February 2023, there is no indication or suggestion that she had led and trained the team on condition that she would get a salary increase. What is apparent is that she had brought up the issue of her leadership of the team as leverage for a salary increment, not as a condition for assuming the responsibility.
46. In light of the foregoing, the Court is not persuaded by the Claimant's assertion that she was not in charge of a team.
47. What the Court finds to be problematic is that the Respondent did not tender any evidence to establish that it was part of the Claimant's responsibility to ensure that the team she was heading submitted their daily sales reports.
48. To prove that the Claimant had indeed neglected this duty, the Respondent was required to demonstrate a clear disparity between her documented job description and her actual performance.
49. In this case, the only job description presented in court was as contained in the Claimant's letter of appointment. There was no evidence that, upon being assigned a team, she was issued with an updated job description clarifying her responsibilities regarding that team.
50. In the absence of evidence establishing that it was the Claimant's duty, and that she was aware of her responsibility to ensure her team submitted daily sales reports, the Respondent's claim of negligence in this regard cannot be sustained.
51. Applying Sections 43(1) and 45(2)(a) and (b) of the *Employment Act* to the present case, and for the reasons stated above, the Court finds that the Respondent has not established, on a balance of probabilities, that there existed a valid and fair reason for terminating the Claimant's employment, namely her failure to follow up with the team she was leading to ensure the submission of daily sales reports.

Procedural fairness?

52. Section 45(2)(c) of the *Employment Act* requires an employer to demonstrate that the termination of an employee was carried out in accordance with a fair procedure. In particular, Section 41 provides that an employee must be notified of the allegations against them and afforded an opportunity to make representations in the presence of a fellow employee or a shop-floor union representative of their choice.
53. It is common ground that the Claimant was issued with a notice to show cause and that she responded to it. The dispute centers on whether the Claimant was invited to a disciplinary hearing and, if so, whether she failed to attend.
54. The Respondent alleges that the Claimant declined to accept the invitation to the disciplinary hearing, thereby forfeiting the opportunity to be heard. The Claimant, on the other hand, contends that after



submitting her response to the notice to show cause, the next communication she received from the Respondent was the termination letter.

55. In support of its position, the Respondent exhibited a letter dated 9th August 2024, which it contends served as the invitation for the disciplinary hearing. The Claimant denies having received the said letter.
56. Notably, the Respondent did not specify the mode of service of the disciplinary hearing invitation. When cross-examined on this point, RW1 did not clarify how the Claimant was notified of the hearing.
57. Even assuming the letter was delivered by hand, there is no evidence to suggest that the Claimant refused to acknowledge or accept it.
58. The Claimant testified during cross-examination that the notice to show cause had been sent by email, a fact not disputed by the Respondent. In these circumstances, it is unclear why the Respondent did not equally send the disciplinary hearing invitation electronically, in the event the Claimant had indeed declined physical service.
59. Considering the Respondent's evidential burden under Section 45(2)(c) of the *Employment Act* to prove that the Claimant's termination was in accordance with a fair procedure, the Court is not satisfied, based on the evidence on record, that the termination complied with the minimum procedural requirements outlined in Section 41 of the Act.
60. Accordingly, the Court finds that the Claimant's termination from employment was procedurally unfair.

Reliefs?

61. Having found that the Respondent failed to demonstrate on a balance of probabilities that the reason for the termination of the Claimant's employment was for a fair and valid reason and that the termination was procedurally unfair, the Court awards the Claimant one (1) month's salary in lieu of notice and compensatory damages equivalent to six (6) months' gross salary. In determining this award, the Court has taken into account the duration of the employment relationship and the circumstances surrounding the termination.
62. The Claimant also claimed Kshs 21,250.00 in respect of accrued leave days. The termination letter indicated that the Claimant's leave balance of 7.5 days would be paid together with her final dues. However, there is no evidence on record that the Claimant's final dues were settled following her termination from employment. Accordingly, the Claimant's claim for accrued leave pay is upheld.

Orders

63. 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 unfair and unlawful.
 - b. The Claimant is awarded one (1) month's salary in lieu of notice, totaling Kshs 85,000.00.
 - c. The Claimant is awarded compensatory damages of Kshs 510,000.00, equivalent to six (6) months' salary.
 - d. The Claimant is awarded Kshs 21,250.00 in respect of accrued leave, equivalent to 7.5 days.
 - e. The total award amounts to Kshs 616,250.00.
 - f. Interest shall accrue on the amount in (e) at the court rate from the date of judgment until full payment.



g. The Claimant shall also be entitled to the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Quinter instructed by Mr. Chimei

For the Respondent Ms. Chenger instructed by Mr. Biyogo

Court Assistant Mohammed

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.

