



**Musyoka v Independent Electoral and Boundaries Commission (Cause E156 of 2024)  
[2026] KEELRC 567 (KLR) (17 February 2026) (Judgment) (with dissent)**

Neutral citation: [2026] KEELRC 567 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E156 OF 2024  
SC RUTTO, J  
FEBRUARY 17, 2026**

**BETWEEN**

**DAVID KILUNDO MUSYOKA ..... CLAIMANT**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. The Claimant states that he was initially employed by the Respondent in January 2011 on a six-month renewable contract. In April 2012, he underwent a suitability assessment, after which he qualified for appointment as a Stores Clerk/Supply Chain Management Assistant on permanent and pensionable terms. He further avers that upon his confirmation to the permanent position, he submitted the requisite academic and professional certificates for the role of Stores Clerk/Supply Chain Management Assistant, none of which included a degree certificate or any qualification higher than a diploma.
2. The Claimant asserts that he diligently and faithfully performed his duties for a period of 12 years until 23<sup>rd</sup> November 2023, when he was issued with a Notice To Show Cause requiring him to explain why disciplinary action should not be taken against him for allegedly presenting to the Respondent a Public Administration and Leadership degree certificate, number 3624, purportedly issued by Jomo Kenyatta University of Agriculture and Technology (JKUAT).
3. The record indicates that following the ensuing disciplinary process, the Claimant's employment was terminated through a letter dated 19<sup>th</sup> March 2024. The Claimant maintains that his dismissal was unlawful, asserting that he was never invited to a disciplinary hearing as mandated by law. He therefore seeks the following reliefs against the Respondent:
  - a. A declaration that the Claimant's dismissal from employment on 14<sup>th</sup> March 2024 was illegal, unlawful, unfair and unconstitutional.



- b. An order directing the Respondent to pay the Claimant his terminal dues amounting to Kshs 17,307,599/-
  - c. In the alternative, reinstatement into employment as a Supply Chain Management Assistant in charge of Nairobi and Kajiado counties without loss of benefits.
  - d. Costs of the cause.
  - e. Interest of the cause at court rates.
  - f. Any other relief the court deems fair, just and expedient to grant.
4. The Respondent opposed the Claim through its Statement of Response dated 20<sup>th</sup> June 2024, maintaining that the Claimant's dismissal was lawful and procedurally sound. The Respondent asserts that the Claimant was summoned on two separate occasions to attend disciplinary hearings, but he deliberately failed to appear without offering any explanation. In the Respondent's view, the reliefs sought in the Claim are devoid of merit and should be dismissed with costs.
  5. The Respondent further filed a Notice of Preliminary Objection dated 20<sup>th</sup> June 2025, founded on the following grounds:
    1. That the Memorandum of Claim is incompetent, incurably defective and an abuse of the process of this court having been lodged in violation of the provisions of Section 9(2) of the *Fair Administrative Action Act*, 2015 (FAA) as the Claimant has not exhausted all the respondent's internal dispute resolutions mechanisms for appeal under clause 12.14 of the respondent's Human Resource and Administration Manual (Policies and Procedures) 2020. Thus, this court ought to direct the Claimant to exhaust the available remedies before instituting the claim in accordance with the provisions of Section 9(3) of the FAA.
    2. That the Memorandum of Claim is incompetent, incurably defective and an abuse of the process of this court having been lodged without seeking exemption under the provisions of Section 9(4) of the FAA. No application for exemption has been placed before this court in this regard.
    3. That the Memorandum of Claim constitutes an attempt to unlawfully invoke the jurisdiction of this court and circumvent the mandatory requirements of Sections 9(2) and 9(4) of the FAA with respect to the requirement for exhaustion of internal dispute resolution mechanisms available to the claimant prior to approaching the court.
    4. That the Memorandum of Claim is thus for dismissal with costs to the respondents.
  6. On 23<sup>rd</sup> June 2025, when the matter came up for hearing, the Respondent's Counsel, Mr. Mukele, informed the Court that they required directions on the Preliminary Objection. In response, Mr. Mwirigi, holding brief for Mr. Mageto, Counsel for the Claimant, indicated that his instructions were limited. Consequently, the matter was taken out of the day's cause list and scheduled for mention on 10<sup>th</sup> July 2025.
  7. On 10<sup>th</sup> July 2025, Ms. Karanja, holding brief for Mr. Mukele for the Respondent, requested that the Court grant an additional seven days to await a ruling that was to be delivered concerning the appointment of the Respondent's commissioners. The matter was thereafter listed for further mention on 22<sup>nd</sup> July 2025, and on that date, Ms. Karanja again sought the Court's directions on the Respondent's Preliminary Objection.



8. Upon considering the substance of the Respondent's Preliminary Objection, which essentially sought dismissal of the Claim on the ground that the Claimant had not exhausted the available remedies, the Court noted that under Rule 59(5)(c) of the Employment and Labour Relations Court Rules (2024), it is required to stay proceedings where a matter ought to have been filed only after exhaustion of remedies. The Court further observed that it was unclear whether the mechanism referenced in the Preliminary Objection remained viable, given that the Claimant had been terminated from employment on 4<sup>th</sup> March 2024. In the circumstances, and noting that the matter had previously been scheduled for hearing on multiple occasions, the Court found it just and expedient to proceed with setting the matter down for hearing.
9. The matter proceeded for hearing on 13<sup>th</sup> October 2025, during which both parties called oral evidence in support of their respective cases.

### **Claimant's Case**

10. The Claimant testified in support of his case and at the outset, he adopted his amended witness statement to constitute his evidence in chief. He thereafter produced the initial and further lists and bundles of documents, filed on his behalf, as exhibits before the Court.
11. The Claimant averred that the Notice to Show Cause was not accompanied by a copy of the impugned degree certificate and did not disclose when or under what circumstances the certificate was allegedly presented to the Respondent, nor how it came to be placed in his personal employment file, despite the Respondent being the custodian of all employee records.
12. He averred that on 4<sup>th</sup> December 2024, he responded to the Notice to Show Cause and denied any knowledge of, or involvement in presenting, the degree certificate in question. He further explained that his position as Supply Chain Management Assistant did not require a degree in Public Administration and Leadership for purposes of promotion, and that he had not received any promotion.
13. The Claimant denied ever enrolling in the alleged degree programme or any other degree programme at JKUAT, adding that his academic background is in Supply Chain Management, not Public Administration and Leadership.
14. He testified that on 15<sup>th</sup> February 2024, he received a letter of interdiction accusing him of denying having presented the impugned degree certificate to the Respondent, despite the certificate bearing his name.
15. According to the Claimant, the interdiction was unlawful as it was backdated to 26<sup>th</sup> January 2024, yet was only served upon him on 15<sup>th</sup> February 2024 via WhatsApp by the Director of Human Resources, who indicated that the Respondent's official email systems were not operational at the time.
16. He further averred that the substance of the allegations levelled against him changed significantly, from allegedly presenting the degree certificate to the Respondent, to the mere fact that the certificate bore his three names. The letter of interdiction stipulated that he would remain on half salary plus allowances for an indefinite period.
17. The Claimant contended that the interdiction was irregular and contrary to section 12.11.1(iv) of the Respondent's Human Resources Policy Manual, which requires that a matter be referred to the relevant disciplinary committee after an unsatisfactory response to a notice to show cause.
18. He further asserted that the Notice to Show Cause itself demonstrated that investigations, specifically the authentication process, had already been completed, and that a conclusion had been reached that



the impugned degree certificate was not authentic. Thus, in his view, no further investigations were required to justify the interdiction.

19. He further stated that on 21<sup>st</sup> March 2024, during the pendency of this suit and despite the Court's directions issued on 7<sup>th</sup> March 2024, he was dismissed from employment on 14<sup>th</sup> March 2024 through a letter dated 19<sup>th</sup> March 2023 issued by the Respondent.
20. The Claimant testified that at the time of his dismissal, he was 48 years old and had 12 years remaining before attaining retirement age.
21. It was the Claimant's position that his dismissal was unlawful as he was never invited to a disciplinary hearing and did not attend any such hearing with a colleague, as required by law.
22. The Claimant further asserted that the dismissal letter dated 19<sup>th</sup> March 2023 claimed that the Respondent had conducted two disciplinary hearings on 26<sup>th</sup> February 2024 and 14<sup>th</sup> March 2024 in his absence, despite no hearing notices ever having been issued to him.

### **Respondent's Case**

23. The Respondent adduced oral evidence through Hassan Abdalla, who testified as RW1. Mr. Abdalla identified himself as the Acting Director of Human Resources and Administration at the Respondent Commission. Similarly, RW1 adopted his witness statement to constitute his evidence in chief and proceeded to produce the initial and supplementary lists and bundles of documents filed by the Respondent as exhibits before the Court.
24. RW1 testified that by letters dated 19<sup>th</sup> October 2022 and 22<sup>nd</sup> May 2023, the Public Service Commission issued a directive requiring all authorized officers to:
  - a. Conduct an audit of academic and professional certificates for all officers appointed within the preceding ten (10) years across Ministries, Departments, Agencies and State Corporations, and submit a report by 1st January 2023.
  - b. Dismiss, in accordance with the *Public Service Commission Act*, 2017, the *Public Officer Ethics Act*, 2020, and the *Leadership and Integrity Act*, 2012, any officer found to be in possession of forged certificates; and
  - c. Continuously validate academic and professional certificates prior to appointments and promotions, and submit the validations through quarterly and annual Compliance and Quality Assurance reports.
25. In compliance with this directive, the Respondent's Human Resource Department wrote to the Claimant via email dated 28<sup>th</sup> October 2022, requesting that he provide his degree certificate for verification, as the document was missing from his personal file.
26. RW1 testified that the Claimant subsequently submitted a degree certificate bearing number 19/3624, purportedly issued by JKUAT, indicating that he had earned a Bachelor of Science in Public Administration and Leadership.
27. On 11<sup>th</sup> September 2023, the Respondent forwarded 27 certificates submitted by its staff, including the Claimant's, to the Registrar of Academics at JKUAT for authentication.
28. According to RW1, JKUAT, through a letter dated 4<sup>th</sup> October 2023, confirmed that the Claimant's certificate was not genuine, as his name did not appear in the university's alumni records, and the



- certificate number belonged to another student. The said university therefore concluded that the certificate allegedly submitted by the Claimant was neither authentic and was in fact a forgery.
29. Following this finding, the Respondent issued the Claimant with a Notice to Show Cause dated 23<sup>rd</sup> November 2023 informing him of the authentication results and requiring him to respond within 14 days.
  30. The Notice to Show Cause further notified the Claimant that the Respondent was considering instituting disciplinary action against him, including possible dismissal on grounds of gross misconduct.
  31. The Claimant responded by a letter dated 4<sup>th</sup> December 2023, denying knowledge of the impugned degree certificate and asserting that he had never presented it to the Respondent.
  32. Upon reviewing the Claimant's explanation, the Respondent referred the matter to the Human Resource Management Advisory Committee (HRMAC) in accordance with its Human Resource and Administration Manual (HR Manual).
  33. RW1 further averred that by a letter dated 15<sup>th</sup> February 2024, the Respondent interdicted the Claimant in accordance with the law and its HR Manual. He maintained that the interdiction formed part of a lawful disciplinary process.
  34. Through a letter dated 19<sup>th</sup> February 2024, the Respondent invited the Claimant to appear before the disciplinary committee for a hearing scheduled for 26<sup>th</sup> February 2024. The invitation informed the Claimant of his right to be accompanied to the hearing by a person of his choice.
  35. RW1 further averred that on 26<sup>th</sup> February 2024, the scheduled hearing date, the Claimant failed to appear before the disciplinary committee, and attempts to reach him by phone were unsuccessful. RW1 added that the Claimant did not provide any reason for his absence.
  36. The disciplinary committee resolved to accord the Claimant a second opportunity to attend a hearing before making a final decision. Accordingly, through a letter dated 7<sup>th</sup> March 2024, the Respondent invited the Claimant to a second hearing scheduled for 14<sup>th</sup> March 2024.
  37. The invitation reiterated the Claimant's right to be accompanied by a person of his choice.
  38. RW1 testified that the Claimant again failed to attend the hearing on 14<sup>th</sup> March 2024 without any justification, and did not respond to several phone calls made by the Respondent's representatives.
  39. He further stated that the Respondent made all reasonable efforts to secure the Claimant's attendance, but he nevertheless failed to appear on both occasions without explanation.
  40. At its sitting on 14<sup>th</sup> March 2024, the disciplinary committee noted that the Claimant had failed to satisfactorily address the issue of the forged certificate and had twice ignored invitations to appear before it, despite being given ample opportunity. The committee concluded that the case should be closed and recommended that the Claimant be dismissed from service with effect from 14<sup>th</sup> March 2024 on account of presenting a forged certificate.
  41. The Respondent issued a dismissal letter dated 19<sup>th</sup> March 2024, terminating the Claimant's employment with effect from 14<sup>th</sup> March 2024, noting that he had failed to exculpate himself from the allegations.
  42. The Respondent also informed the Claimant of his right to appeal the dismissal within six weeks, but no appeal was lodged.



43. In RW1's view, both the interdiction and the termination were lawful and fully compliant with the provisions of the *Employment Act*.
44. According to RW1, the Claimant's failure to attend the disciplinary hearings demonstrated a lack of willingness to respond to the allegations made against him.

### **Submissions**

45. The Claimant submitted that the Respondent failed to produce any evidence demonstrating that the degree certificate in question was forged; that he was involved in such forgery; that he presented the certificate to the Respondent; the date of its alleged submission; or that the document was officially received, stamped, and acknowledged by any authorised officer.
46. In the same vein, the Claimant argued that the Respondent did not tender any evidence showing that the impugned certificate had been subjected to forensic examination to verify the alleged forgery.
47. In the Claimant's view, the reasons proffered for instituting disciplinary action were unsubstantiated, speculative, and grounded on rumours, innuendo, and hearsay, without any written or oral proof. He therefore argued that the Respondent failed to establish valid reasons for terminating his employment.
48. The Claimant further contended that he was not accorded a fair hearing as required under Sections 41 and 45 of the *Employment Act* and Articles 35, 41, 47, 50, 159, and 236 of *the Constitution*.
49. He further submitted that the Respondent failed to demonstrate that it served or delivered the disciplinary hearing notices dated 19<sup>th</sup> February 2024 and 7<sup>th</sup> March 2024. He maintained that the Respondent did not prove that it conducted a fair hearing, arguing that he was neither invited to the session nor informed, in a language he understood, of the reasons for the contemplated termination in the presence of a colleague of his choice.
50. According to the Claimant, failure to serve the hearing notices amounted to a breach of Section 41 of the *Employment Act*, as well as Articles 35, 47, 50, 159, and 236 of *the Constitution* and the rules of natural justice.
51. In response to the Respondent's Preliminary Objection, the Claimant, relying on *Mukisa Biscuit Manufacturers Ltd v West End Distributors Ltd (1969) EA 696*, submitted that the objection did not raise a pure point of law determinable on the presumption that all pleaded facts are true. He argued that the issues raised, including whether he filed an appeal against the dismissal, were factual in nature and therefore incapable of sustaining a preliminary objection.
52. The Claimant further submitted that Section 9(2) of the *Fair Administrative Action Act* is not absolute, and that Section 9(4) provides exceptions to the exhaustion requirement where exceptional circumstances exist. He argued that the absence of Commissioners at the Respondent being a matter of public knowledge rendered the internal appeal mechanism unavailable, thereby constituting exceptional circumstances excusing exhaustion.
53. On the other hand, the Respondent submitted that the suit amounted to a deliberate attempt to circumvent the appellate process provided under Section 12.14 of its HR Manual. It further argued that the amended memorandum of claim was defective and contrary to Section 9(2) of the *Fair Administrative Action Act*.
54. In support of its position, the Respondent relied on *Geoffrey Muthinja & Another v Samuel Muguina Henry & 1756 Others (KECA 304) (KLR)* and *Krystaline Salt Limited v Kenya Revenue Authority (2019) eKLR*.



55. The Respondent argued that this Court lacks jurisdiction to entertain the claim, contending that the Claimant ought to have exhausted the internal appellate mechanism before approaching the Court.
56. Relying on the case of Republic v Council for Legal Education ex parte Desmond Tutu Owuoth (2019) KEHC 1742 (KLR), the Respondent submitted that the Claimant had neither pleaded nor demonstrated exceptional circumstances to warrant the Court's intervention despite non-exhaustion.
57. The Respondent further submitted that the Claimant's termination was lawful and in full compliance with the law and its HR Manual.
58. It was the Respondent's further submission that the Claimant willfully failed to attend the disciplinary hearing and did not respond to the multiple calls placed to him by the disciplinary committee.
59. The Respondent posited that the allegations of forgery were grave and had a direct effect on the employment relationship, as they pointed to dishonesty and a breach of trust.
60. Citing the decision in Wanyagah v Market Development Trust t/a Kenya Markets Trust [2023] KECA 998 (KLR) and Okun v Kenyatta University [2023] KEELRC 2340 (KLR), the Respondent contended that the Claimant could not claim to have been condemned unheard when he was granted two opportunities to appear before the disciplinary committee but chose not to participate in the proceedings.

### **Analysis and Determination**

61. Flowing from the parties' pleadings, the evidence on record, and their respective submissions, the following issues arise for determination:
  - i. Whether the Claimant's Preliminary Objection is merited;
  - ii. Whether the Respondent has established that there was a valid and fair reason for terminating the Claimant's employment;
  - iii. Whether the Claimant was afforded a fair process prior to the termination of his employment; and
  - iv. Whether the Claimant is entitled to the reliefs sought.

### **Merit in the Preliminary Objection**

62. The Respondent contends that the Claimant's Memorandum of Claim is incurably defective, having been filed in contravention of Section 9(2) of the Fair Administrative Actions Act (FAA), on the basis that the Claimant failed to exhaust the Respondent's internal dispute resolution mechanisms for appeal as provided under Clause 12.14 of the Respondent's Human Resource Manual.
63. Section 9(2) of the FAA provides as follows:

“9(2) The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.”
64. Clause 12.14 of the Respondent's HR Manual provides for an appeals procedure to the Commission where an employee is dissatisfied with a disciplinary decision.



65. It is evident from the record that the Claimant approached the Court prior to his dismissal. As such, his dismissal from employment occurred while the matter was still pending before the Court.
66. It is common knowledge that at the time of the Claimant's dismissal on 14<sup>th</sup> March 2024, the Respondent's Commission was not properly constituted. It is also a matter of public notoriety that it was not until July 2025 or thereabout that the Chairperson and members of the Respondent Commission were appointed.
67. Under Clause 12.14(ii) of the Respondent's HR Manual, any appeal against a disciplinary decision must be lodged with the Commission within six weeks from the date of the disciplinary letter. Notably, this provision is couched in mandatory terms.
68. As the Claimant's dismissal letter is dated 19<sup>th</sup> March 2023, it follows that he had six weeks from that date to file an appeal against his dismissal from employment.
69. Therefore, by the time the Respondent's Commission was constituted in July 2025, the statutory six-week period for filing an appeal had long expired, rendering such an appeal non-viable.
70. Even if the Claimant had filed an appeal within the stipulated timeframe, it is likely that it would have remained pending indefinitely, given the uncertainty regarding the Commission's constitution. Therefore, requiring the Claimant to appeal to a Commission that did not exist at the relevant time would have effectively undermined the principles of fair administrative process.
71. In the premises, the Court finds that the case herein falls within the exceptional cases contemplated under Section 9(4) of the FAA, which exempts a person from the obligation to exhaust available remedies.
72. In light of the above, the Court finds no merit in the Respondent's preliminary objection and accordingly, it is overruled.

#### **Valid and fair reason for termination?**

73. Section 43(1) of the *Employment Act* obliges an employer to establish valid reasons for terminating an employee; failure to do so renders the termination unfair. Relatedly, Section 45(2)(a) and (b) of the Act provides that a termination is unfair if the employer cannot demonstrate that the reason for termination was valid, fair, and related to the employee's conduct, capacity, or compatibility, or alternatively, based on the operational requirements of the employer.
74. In the instant case, the Claimant was dismissed from employment on the basis that he submitted a forged degree certificate in Public Administration and Leadership, bearing serial number 3624, allegedly issued by JKUAT.
75. The record bears that the Respondent initiated the authentication of academic and professional certificates following a circular dated 22<sup>nd</sup> May 2023 from the Public Service Commission. Accordingly, by a letter dated 11<sup>th</sup> September 2023 to the Vice Chancellor of the JKUAT, the Respondent forwarded a list of employees who had submitted certificates from the university, including copies of the degree certificates. The Claimant's name appeared on this list.
76. As part of its evidence, the Respondent exhibited a copy of the degree certificate in question, which bears the Claimant's full name, "David Kilundo Musyoka."
77. The Respondent also produced a letter dated 4<sup>th</sup> October 2023 from the Registrar of Academic Affairs at JKUAT, confirming that the certificate was not genuine, that the Claimant's name did not appear



in the university's alumni records, and that the certificate number belonged to another student. The university was categorical that it had not issued the certificate.

78. In his response to the Notice to Show Cause, the Claimant expressed surprise that a degree certificate was found in his file, denied enrolling in any degree course at JKUAT, and disassociated himself from the certificate, asserting that it was unrelated to his career and that he did not submit it.
79. Notwithstanding the Claimant's denial, it is highly unlikely that a degree certificate bearing his full name would appear in his personal employment file without his knowledge or involvement.
80. Further, Clause 10.19.3 of the Respondent's HR Manual requires employees to submit their certificates to the Directorate of Human Resource and Administration for updating of training and skills records. It is therefore highly probable that the Claimant himself submitted the degree certificate. What's more, it is logical that only the Claimant would have benefited from the degree certificate.
81. Contrary to the Claimant's suggestion, the Court finds it highly improbable that a third party would have inserted the degree certificate into his employment file.
82. The Court further finds the Claimant's assertion that the impugned degree certificate is unrelated to his career path not to be persuasive, given that he had previously submitted certificates in other fields, including Public Relations and Electrical Installations. Consequently, the fact that the degree in question fell outside his role in Supply Chain Management does not, by itself, exclude the possibility that he submitted it.
83. Under Clause 10.19.4 of the Respondent's HR Manual, any employee found to have submitted forged certificates is liable to disciplinary action.
84. It therefore follows that, upon being notified by the JKUAT that the degree certificate bearing the Claimant's name was not genuine, the Respondent had a valid and fair reason to terminate the Claimant's employment on grounds of his conduct.
85. Under this head, the Court is satisfied that the Respondent has discharged its evidential burden under Sections 43 and 45(2)(a) and (b) of the *Employment Act*, demonstrating that the termination of the Claimant's employment was fair, valid, and based on his conduct.

#### **Fair process?**

86. Section 45(2)(c) of the *Employment Act* requires an employer to demonstrate that the termination of an employee's employment was carried out through a fair process. The elements of a fair process are set out in Section 41, which requires that the employee be notified of the allegations against them and be afforded an opportunity to respond, in the presence of a colleague or a shop-floor union representative of their choice.
87. The Claimant's primary contention is that he was never given an opportunity to appear for a disciplinary hearing prior to his dismissal from employment.
88. From the record, the Claimant was served with a Notice to Show Cause dated 23<sup>rd</sup> November 2023, to which he responded on 4<sup>th</sup> December 2023. Subsequently, he was interdicted by a letter dated 15<sup>th</sup> February 2024, with effect from 26<sup>th</sup> January 2024.
89. By a letter dated 19<sup>th</sup> February 2024, the Claimant was invited to a disciplinary hearing scheduled for 26<sup>th</sup> February 2024. The Respondent produced a printout of the email forwarding the hearing notice to the Claimant and a screenshot of call logs from 26<sup>th</sup> February 2024 showing attempts to reach him.



90. Evidently, the Claimant did not attend the hearing of 26<sup>th</sup> February 2024, prompting the HRMAC to reschedule the hearing and provide him another opportunity to appear.
91. Accordingly, by a letter dated 7<sup>th</sup> March 2024, the Claimant was invited to attend a disciplinary hearing scheduled for 14<sup>th</sup> March 2024.
92. The Respondent exhibited the minutes of the HRMAC meeting held on 14<sup>th</sup> March 2024, which recorded that the Claimant again failed to attend and did not respond to phone calls. Following this, the HRMAC recommended that the Claimant be dismissed from employment, having concluded that he had been afforded a fair opportunity to be heard.
93. It is notable, however, that unlike the hearing notice dated 19<sup>th</sup> February 2024, there is no evidence indicating how the 7<sup>th</sup> March 2024 hearing notice was dispatched, nor are there call logs demonstrating attempts to reach the Claimant regarding the 14<sup>th</sup> March 2024 hearing.
94. The Claimant asserted that he was out of the country during this period and produced copies of his passport to substantiate this claim.
95. In the absence of evidence showing how the hearing notice dated 7<sup>th</sup> March 2024 was served upon the Claimant, the Court finds it highly doubtful that he was effectively made aware that the disciplinary hearing was scheduled for 14<sup>th</sup> March 2024.
96. Taking all factors into account, the Court finds that there is no evidence that the Claimant was given an opportunity to be heard in person, as required under Section 41 of the *Employment Act*. Consequently, the Claimant's dismissal from employment was procedurally flawed.

### **Reliefs**

97. Having found that the Respondent had a fair and valid reason to terminate the Claimant's employment based on his conduct, but failed to follow the proper procedural requirements, the Court awards the Claimant compensatory damages equivalent to two (2) months' gross salary. In determining this award, the Court has taken into account the Claimant's contribution to the termination of his employment.

### **Orders**

98. In the final analysis, Judgment is entered against the Respondent in the following manner:
  - a. The Respondent's preliminary objection dated 20<sup>th</sup> June 2025 is hereby overruled;
  - b. The Claimant is awarded compensatory damages of Kshs 194,520.00, representing two (2) months of his last gross salary;
  - c. Interest shall apply on the amount in (b) at the court rates from the date of judgment until full payment; and
  - d. The Respondent shall bear the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 17<sup>TH</sup> DAY OF FEBRUARY 2026.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:



For the Claimant Mr. Ondieki instructed by Mr. Mageto

For the Respondent Ms. Onyango instructed by Mr. Mukele

Court Assistant Ndati

## **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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

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