



**Namu v Naivas Supermarket Limited (Cause E633 of 2024)  
[2026] KEELRC 565 (KLR) (17 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 565 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E633 OF 2024  
SC RUTTO, J  
FEBRUARY 17, 2026**

**BETWEEN**

**JULIUS NJIRU NAMU ..... CLAIMANT**

**AND**

**NAIVAS SUPERMARKET LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant avers that he was employed by the Respondent as a Section Head-Vegetables, and that he rose through the ranks with corresponding salary increments. He states that he served the Respondent diligently and faithfully until 27<sup>th</sup> November 2023, when his employment was terminated without any lawful justification, contrary to the principles of natural justice and the provisions of Section 41 of the *Employment Act*. The Claimant further asserts that the Respondent failed to pay his terminal dues.
2. Arising from the foregoing, the Claimant seeks a sum of Kshs. 3,190,000/= from the Respondent, being notice pay, compensatory damages for wrongful termination, severance pay, and leave allowance. He also seeks a declaration that his termination was unlawful, an order directing the issuance of his certificate of service, as well as costs of the suit and interest.
3. The Respondent opposes the Claim through its Memorandum of Response dated 14<sup>th</sup> December 2024, in which it asserts that the Claimant performed his duties poorly and failed to meet key performance indicators. The Respondent contends that it therefore had reasonable and valid grounds to terminate the Claimant's employment. It maintains that the Claim is unsubstantiated and to this end, has urged the Court to dismiss it with costs.
4. At the trial held on 16<sup>th</sup> October 2025, both parties adduced oral evidence in support of their respective cases.



## **Claimant's Case**

5. The Claimant testified in support of his case and, to begin with, he adopted his witness statement as his evidence in chief. He further produced the list and bundle of documents filed together with his Statement of Claim as exhibits before the Court.
6. The Claimant testified that on 10<sup>th</sup> September 2023, he received a letter of secondment appointing him as a trained Regional Coordinator in the Fruits and Vegetables Section. He was to undergo a three-month training programme commencing immediately and ending on 9<sup>th</sup> December 2023.
7. He further stated that he was issued with a job description for the Regional Coordinator position dated 10<sup>th</sup> September 2023. In the course of his duties, he observed challenges involving new suppliers, including issues of quality, inadequate product supply, and delays in delivery. He reported these concerns to Dorcas Muthoni, who worked in the Commercial Section and handled procurement matters.
8. The Claimant added that a departmental performance presentation was conducted on 17<sup>th</sup> July 2023, after which he was given three months to improve in certain areas, a period expected to lapse on 17<sup>th</sup> October 2023.
9. He further testified that an interview for the Regional Coordinator position was conducted on 15<sup>th</sup> September 2023, before the expiry of the three-month improvement period, and that on 20<sup>th</sup> November 2023, he was issued with a show-cause letter alleging rudeness and incompetence.
10. The Claimant stated that he was also suspended for two days with immediate effect from the same date and was required to remain available for any meetings and to fully cooperate with the investigators and other officers involved in the matter.
11. On 20<sup>th</sup> November 2023, he responded to the show-cause letter by submitting a written rebuttal in which he denied the allegations.
12. On 22<sup>nd</sup> November 2023, his suspension was extended to 24<sup>th</sup> November 2023, when he was scheduled to appear before the disciplinary committee.
13. The Claimant testified that on 24<sup>th</sup> November 2023, he appeared before the disciplinary committee and denied the allegations contained in the show-cause letter, explaining that he had neither been rude nor acted in any manner that could be construed as insubordination.
14. He stated that on 27<sup>th</sup> November 2023, he received a summary dismissal letter on grounds of gross misconduct and insubordination.
15. He appealed against the dismissal, and on 12<sup>th</sup> December 2023, he received a letter communicating that his appeal had been dismissed.
16. In the Claimant's view, his dismissal was unfair.

## **Respondent's Case**

17. The Respondent called oral evidence through Bernard Kibaru, who testified as RW1. He identified himself as the Retail Manager, Fruits and Vegetables Section, at the Respondent supermarket. Similarly, he adopted his witness statement as his evidence in chief and proceeded to produce the list and bundle of documents filed on behalf of the Respondent as exhibits before the Court.



18. RW1 testified that the Respondent regularly conducts performance reviews for all staff to assess overall productivity, and that on 5<sup>th</sup> July 2023, the Claimant's supervisor carried out a performance review on him.
19. According to RW1, the review revealed that the Claimant's performance was unsatisfactory, as he had failed to meet key deliverables in his job description. Following this outcome, the Respondent recommended that the Claimant be given three months to demonstrate improvement.
20. These recommendations were formally communicated to the Claimant, and he acknowledged receipt by signing the relevant forms on 17<sup>th</sup> July 2023. He was also reissued with his job description to further clarify his responsibilities.
21. RW1 further stated that, in the course of normal operations, several complaints were raised regarding the Claimant's rude and unethical conduct toward his immediate supervisors and other staff members. These complaints were documented and formed part of his employment record.
22. RW1 testified that on 31<sup>st</sup> October 2023, he attended a sectional meeting convened to address concerns regarding the Claimant's insubordination and poor performance. During the meeting, the Claimant alleged that his immediate supervisor was attempting to take away his job, but he was unable to substantiate these claims when asked to do so.
23. As a result of the continued concerns over poor performance and insubordination, the Claimant was issued with a Notice to Show Cause on 20<sup>th</sup> November 2023, setting out specific instances of misconduct, poor performance, and breaches of company protocol.
24. In accordance with the Respondent's internal procedures, the Claimant was suspended from duty through a letter dated 22<sup>nd</sup> November 2023 to allow for a thorough investigation into the issues raised.
25. RW1 further stated that the Claimant was invited to attend a disciplinary hearing scheduled for 24<sup>th</sup> November 2023 and was informed of his right to be accompanied by a representative. He added that on the material day, the Claimant had to be called to confirm his attendance and he arrived significantly late.
26. RW1 further stated that during the disciplinary hearing, it emerged that the Claimant hesitantly admitted to having addressed his supervisor in a rude and unethical manner; remained silent when confronted with uncontroverted evidence about his conduct; acknowledged that the selling price discrepancies he had previously raised were not within his mandate; and failed to justify his actions satisfactorily.
27. RW1 stated that, based on the evidence presented and the Claimant's responses, the disciplinary committee of which he was a member unanimously recommended summary dismissal on grounds of insubordination and poor performance.
28. When the Claimant later appealed the dismissal, RW1 reviewed the appeal as part of his HR responsibilities. After careful consideration, he found no reasonable grounds to overturn the initial decision.
29. RW1 maintained that the Respondent adhered to all procedural requirements under the [Employment Act](#), as well as its internal policies. He asserted that the Claimant had been accorded several opportunities to improve his performance and conduct and was afforded due process before the final decision was reached.



## Submissions

30. The Claimant submitted that the Respondent, being a non-natural legal person, had not demonstrated that he was under the authority or control of any of the alleged email addresses used in the communication dated 25<sup>th</sup> October 2023. To support this argument, he relied on *CMC Aviation Ltd v Captain Mohammed Noor* (2015) eKLR.
31. Citing *George Ochieng v Crescent Tech Ltd*, Cause No. 643 of 2016, the Claimant further argued that the Respondent had not proved the allegation of poor performance on his part.
32. The Claimant further submitted that Dorcas, said to be the originator of the complaint regarding his alleged rudeness, participated in the disciplinary hearing and voted for his dismissal. He argued that this compromised the integrity of the process and to this end, he cited the case of *Joshua Rodney Marimba v Kenya Revenue Authority, Nairobi Cause No. 1739 of 2015*.
33. It was the Claimant's further submission that the rules of natural justice required that he be afforded adequate time to prepare a defence to any charges levelled against him. In this regard, he asserted that the 48 hours granted to him were insufficient to allow for proper preparation.
34. Relying on the case of *National Bank of Kenya v Samuel Nguru Mutonya* [2019] eKLR, the Respondent argued that an employer is entitled to rely on objective and documented performance assessments when disciplining an employee whose work consistently falls below expectations.
35. The Respondent further maintained that it had adopted a fair, well-documented, and supportive performance-management process, and that the Claimant's persistent underperformance was neither isolated nor attributable to any default on its part.
36. Citing *Wairioko v Mwalimu National Savings and Credit Co-operative Society Limited* [2025] KEELRC 1608 (KLR), the Respondent contended that the Claimant repeatedly failed to follow instructions, choosing instead to engage in lengthy back-and-forth email exchanges rather than complying with directives issued by his supervisor. In the Respondent's view, such conduct falls squarely within Section 44(4)(d) and (e) of the *Employment Act*, which recognizes insubordination and refusal to obey lawful and proper instructions as grounds for summary dismissal.
37. According to the Respondent, it had discharged its statutory burden under Sections 43 and 45 of the *Employment Act* and that the Claimant's dismissal was substantively justified.
38. The Respondent further argued that the disciplinary process was enhanced by making Dorcas available for questioning. The Respondent posited that the Claimant cross-examined Dorcas and made representations regarding the incident. In the Respondent's view, her presence did not taint the process but instead ensured compliance with constitutional and statutory requirements, allowing an employee to confront and challenge adverse evidence.
39. It was the Respondent's position that the disciplinary process fully complied with Section 41 of the *Employment Act* as well as all applicable principles of natural justice.

## Analysis and Determination

40. Upon considering the pleadings, the evidentiary material before me and the rival submissions, I have singled out the following issues for determination: -
  - i. Whether the Respondent has proved that it had a justifiable cause to terminate the Claimant's employment;



- ii. Whether the Claimant's termination was in accordance with fair procedure; and
- iii. Is the Claimant entitled to the reliefs sought?

### **Justifiable cause?**

41. In line with Sections 43 and 45(2)(a) and (b) of the *Employment Act*, an employer bears the burden of demonstrating that there existed a justifiable reason to terminate an employee's services. This requires proof of the specific grounds that led to the separation. In addition to this, such reasons must be valid, fair, and connected to the employee's conduct, capacity or compatibility, or arise from the employer's operational requirements.
42. In the present case, the Claimant's employment was terminated on grounds of insubordination and unsatisfactory performance. Concerning insubordination, it was alleged that the Claimant had, on multiple occasions, particularly on 25<sup>th</sup> October 2023, sent a rude email to his immediate supervisors, instructing them to stop onboarding vendors who did not have products.
43. The email of 25<sup>th</sup> October 2023, alleged to demonstrate rudeness, was produced as an exhibit by the Respondent. In this email, the Claimant addressed Dorcas Muthoni and Bernard Kibaru, copying Krystal Cherop, Samuel Kimani, and Richard Meli, as follows:

“Hello,

All vendor (sic) without contact have been shared to (sic) you by store (sic). Kindly share the items for country kid and which vendor he will replace. I have not been trained how to add vendor (sic) and when you are scheduling, kindly involve store (sic). We are thwarting our customer (sic) when they miss the items in season. Kindly stop coming up with new vendor (sic) like Wisden, Marigori, Mapeo etc who do not have items.”
44. Under Section 44(4)(d) of the *Employment Act*, an employer is entitled to summarily dismiss an employee for lawful cause where the employee uses abusive or insulting language, or behaves in a manner that is insulting to the employer or to a person placed in authority over the employee by the employer.
45. The Claimant's email of 25<sup>th</sup> October 2023, when considered objectively and in context against the provisions of Section 44(4)(d), cannot be regarded as abusive or insulting.
46. Although the language employed by the Claimant may be considered unprofessional, it does not meet the threshold of abusive or insulting language contemplated under Section 44(4)(d) aforementioned.
47. Accordingly, it is the Court's respectful view that, on its own, the Claimant's email sent on 25<sup>th</sup> October 2023 does not constitute a valid ground for summary dismissal, particularly in the absence of any other evidence showing that the Claimant used abusive or insulting language toward his supervisors on other occasions.
48. Regarding unsatisfactory performance, it was alleged that the Claimant's performance fell below expectations and that, despite being given three months with full support to improve, he failed to demonstrate any significant progress.
49. The record shows that the Claimant's performance was reviewed on 5<sup>th</sup> July 2023 by the Respondent's Commercial Manager, Benjamin Kimani Mungai, who noted as follows: “nothing to rate as he was not able to present his numbers and demonstrate proper KPI and impact on the department.”



50. On the same date, 5<sup>th</sup> July 2023, Richard Meli and RW1 recommended in the Claimant's performance review documents that he be granted three months to demonstrate improvement. The specific areas requiring improvement were identified as follows: focus on KPIs, teamwork, understand his role in more details and focus on impact in the stores.
51. In essence, the Claimant was placed on a performance improvement plan. However, it is unclear whether he was informed of the specific areas he was expected to address during the three-month improvement period, as referenced in the email of 31<sup>st</sup> July 2023 from Bernard Kibaru to Richard Meli.
52. The Respondent averred that it conducted a further performance review of all Fruits and Vegetables Regional Coordinators through interviews held on 15<sup>th</sup> September 2023, during which the Claimant's results were unsatisfactory and worrying. To support its case, the Respondent produced two sets of score sheets from the interview exercise, showing the Claimant's ratings in two key areas, operational competence and soft skills, with overall scores of 31% and 28%.
53. It is noteworthy that the interview exercise was conducted before the completion of the three-month period initially given to the Claimant on 5<sup>th</sup> July 2023 to improve his performance. I say so bearing in mind that there is no evidence of a subsequent performance review conducted by the Respondent after this date to align with the conclusion of the three-month period from 5<sup>th</sup> July 2023.
54. What's more, as noted above, although the 5<sup>th</sup> July 2023 performance review identified the areas in which the Claimant was expected to improve, it is not clear that he was subsequently assessed specifically on these areas.
55. Therefore, while the Claimant was ostensibly given an opportunity to improve, this period appears to have been cut short by the interview exercise of 15<sup>th</sup> September 2023, which was used to appraise his performance. This is further notwithstanding the uncertainty as to whether he was aware of the specific areas of improvement during the performance improvement process.
56. Overall, the Court is not satisfied that the Claimant's final performance assessment was conducted objectively and consequently finds that the Respondent has not demonstrated a justifiable reason to terminate the Claimant's employment on the basis of his performance.

### **Fair procedure?**

57. Pursuant to the *Employment Act*, an employer must demonstrate that an employee was subjected to a fair process before termination of employment. This general requirement is provided under Section 45(2)(c) of the Act.
58. The specific requirements of a fair process are set out in Section 41 of the Act. In this regard, an employer must notify the employee of the reasons for considering termination of the employment contract and must provide the employee with an opportunity to make representations in their defense. The employee is entitled to be accompanied by a fellow employee or a union representative of their choice.
59. The record bears that the Claimant was issued with a Notice to Show Cause on 20<sup>th</sup> November 2023, specifying the allegations to which he was required to respond within 48 hours. Simultaneously, he was suspended from duty for two days, which was later extended by three days.
60. On 22<sup>nd</sup> November 2023, the Claimant was invited to attend a disciplinary hearing scheduled for 24<sup>th</sup> November 2023 at 8:30 a.m.



61. It is evident that the Claimant was given only two days' notice to respond to the Notice to Show Cause and to prepare for the disciplinary hearing.
62. In the case of *Nebert Mandala Ombajo v Institute of Certified Public Accountants of Kenya (ICPAK)*, Nakuru Civil Appeal No. 62 of 2018, the Court of Appeal emphasized that disciplinary proceedings are a grave matter for an employee, given their potentially severe consequences. The Court held that where serious allegations are involved, an employee must be given sufficient time to prepare mentally and, if necessary, to seek advice or representation.
63. In the present case, the Court finds that the 48 hours provided to the Claimant to respond to the Notice to Show Cause were insufficient and likely impaired his ability to prepare an adequate defense.
64. The Court concurs with the reasoning in *Nebert Mandala Ombajo v Institute of Certified Public Accountants of Kenya (ICPAK)*, (*supra*) that the fact that the employee nonetheless responded to the allegations and attended the disciplinary hearing does not remedy the prejudice caused by the inadequate notice.
65. Similarly, although the Claimant responded to the Notice to Show Cause and attended the disciplinary hearing, this did not remedy the prejudice he suffered as a result of the insufficient notice period.
66. Another issue raised by the Claimant concerns the impartiality of the disciplinary panel.
67. From the record, the panel for the disciplinary hearing on 24<sup>th</sup> November 2023 comprised Richard Meli, John Kiragu, Bernard Kibaru, and Dorcas Muthoni.
68. As previously stated, the email of 25<sup>th</sup> October 2023, which formed the basis for the allegation of insubordination, was addressed to Dorcas Muthoni, Samuel Kimani, and Bernard Kibaru, and copied to other staff members. Accordingly, the three primary addressees of the email were both complainants and potential witnesses in the disciplinary hearing. Despite this, Dorcas Muthoni and Bernard Kibaru participated as both prosecutors and decision-makers in the Claimant's case.
69. This situation clearly created a perception of bias and a conflict of interest. Having been complainants regarding the Claimant's alleged rudeness in the email of 25<sup>th</sup> October 2023, it would have been fair and just for them to recuse themselves from the proceedings as decision-makers.
70. This scenario evokes the principles established in the landmark case of *Ridge v Baldwin* [1964] A.C. 40, in which the principles of natural justice were identified as follows:
  - i. The right to be heard by an un-biased Tribunal;
  - ii. The right to have notice of the charge of misconduct; and
  - iii. The right to be heard in answer to these charges.
71. In a nutshell, the principle against bias prohibits any person from deciding a case in which they may be, or could reasonably be perceived to be, biased. In the present case, there was a clear likelihood of bias given the role and level of participation of Dorcas Muthoni and Bernard Kibaru.
72. Therefore, viewed in its entirety, the disciplinary process does not appear to have been fair to the Claimant. The Court finds as much.

### **Reliefs?**

73. Having found that the Respondent neither demonstrated a justifiable reason for terminating the Claimant's employment nor followed a fair process in doing so, the Court awards the Claimant



one (1) month's salary in lieu of notice and compensatory damages equivalent to five (5) months' salary. In determining this award, the Court has taken into account the duration of the employment relationship.

74. The Claimant's claim for leave allowance for four years fails, as Section 28(4) of the Employment Act provides that accrued leave must be taken within 18 months after the end of the leave-earning period. Consequently, the Claimant cannot claim leave entitlement dating back four years.
75. The claim for severance pay is dismissed, as such payment is only relevant under Section 40(1)(g) of the Employment Act where termination arises from redundancy, which is not the case in the present matter.

### Orders

76. In the final analysis, the Court enters Judgment in favour of the Claimant against the Respondent in the following manner:
- a. A declaration that the termination of the Claimant's employment was unfair and unlawful.
  - b. The Claimant is awarded Kshs 110,000/- as one month's salary in lieu of notice.
  - c. The Claimant is awarded compensatory damages of Kshs 550,000/-, equivalent to five (5) months' gross salary.
  - d. The total award amounts to Kshs 660,000/-.
  - e. Interest shall accrue on the total award in (d) above at the applicable court rates from the date of judgment until full payment is made.
  - f. The Claimant is also entitled to 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. Mwaura

For the Respondent Mr. Masankwa

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.

