

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E535 OF 2023

RAPHAEL KIBICHI.....CLAIMANT

VERSUS

BRITAM GENERAL INSURANCE COMPANY LTD.....
RESPONDENT

J U D G M E N T

1. It is not in dispute that the Claimant was initially employed by the Respondent as an Internal Motor Assessor with effect from 15th April 2013. It is equally uncontested that following a restructuring exercise undertaken by the Respondent in 2018, the Claimant was thereafter designated as a Motor Assessment Associate.

2. The Claimant states that as part of the 2018 restructuring, the Respondent relocated the Motor Vehicle Assessment Centre to Road A, Off Enterprise Road, Industrial Area, in August 2018, where he remained stationed until the termination of his employment. He maintains that he executed his duties diligently and faithfully until his employment was unfairly brought to an end.

3. The deterioration of the employment relationship, according to the Claimant, began with the issuance of two Notices to Show Cause. The resultant disciplinary process culminated in the termination of his employment on 9th July 2020.
4. The Claimant contends that the termination lacked reasonable cause or a valid basis and that the allegations contained in the show cause letters were fabricated by the Respondent as a pretext to dismiss him as a protective measure during the COVID-19 pandemic. To this end, he seeks the following reliefs against the Respondent:

- a) Notice pay Kshs. 200,000/-.*
- b) Compensation for Unlawful termination of employment Kshs. 2,400,000/-.*
- c) Costs of the suit.*
- d) Interest on (a) to (j) since filing of the suit.*
- e) Certificate of Service.*

5. In response to the Claim, the Respondent states that on 29th April 2020, it received a complaint from a customer alleging additional damage to the rear door and improper repair of motor vehicle KCH 266J, a Toyota Fielder, at the Industrial Area Assessment Centre, where the Claimant was stationed.
6. The Respondent avers that it commissioned a forensic team to investigate the complaint, and the findings revealed significant gaps in the Claimant's management of the Assessment Centre. As a result, the team recommended

disciplinary action against the Claimant for negligence in the performance of his duties.

7. The Respondent maintains that the decision to terminate the Claimant's employment was supported by valid grounds and was undertaken in compliance with the law and the provisions of its Human Resources Policies and Procedures Manual (HR Manual). Accordingly, the Respondent has urged the Court to dismiss the Claimant's claim with costs.
8. The matter proceeded for hearing on 10th July 2025 and 4th November 2025, during which both parties called oral evidence.

Claimant's Case

9. The Claimant testified in support of his case as CW1, and at the outset, he sought to adopt his witness statement to constitute his evidence in chief. He further produced the initial and supplementary lists and bundles of documents filed on his behalf as exhibits before the Court.
10. The Claimant testified that throughout his employment, he reported to the Team Leader–Motor, who in turn reported to the Claims Manager, his head of department.

11. He stated that upon relocation to the new Assessment Centre, he immediately identified several logistical challenges and accordingly notified the Respondent's management, including the Administrator and the Head of Security, requesting the supply of various materials, including padlocks, to enhance the centre's security.
12. The Claimant further testified that around March 2020, following the onset of the COVID-19 pandemic, the Respondent allowed some employees, himself included, to work from home. In late April 2020, while working remotely, he received a call from an insurance agent reporting that motor vehicle registration number KCH 266J had sustained damage while at the Assessment Centre.
13. He stated that the Respondent summoned him to the centre and instructed him to investigate the incident. During his inquiry, he requested CCTV footage from the Respondent's Security Department covering the period the vehicle was at the centre. Upon review of the footage in the presence of the Security Department, it was established that the damage had been caused by a security guard from Securex Security Company assigned to the facility.
14. The Claimant added that further review of the footage revealed that the said security guard, identified as Mr. Esau, accessed the centre using a master key and allowed unauthorized persons into the premises on Sundays and on national and

public holidays. He prepared a report on the incident and submitted it to the Security Department, which thereafter took up the matter with Securex.

15. The Claimant testified that while still working from home, he received two Show Cause Letters via email dated 11th June 2020 and 15th June 2020.

16. The Show Cause Letter dated 11th June 2020 required him to respond to allegations relating to security lapses at the centre, including the incident involving the damaged motor vehicle. He provided a detailed response to each allegation through his letter dated 18th June 2020.

17. In his response, he reiterated that as early as August 2018, he had requisitioned padlocks to enhance the centre's security, as the existing padlock provided by the landlord was inadequate. He asserted that the Respondent failed to act on this requisition.

18. The Show Cause Letter dated 15th June 2020 concerned allegations of failure to update certain files. In his response dated 18th June 2020, the Claimant explained that the Respondent had recently adopted a new system, expaq, which was still undergoing streamlining by the vendor.

19.He stated that in the interim, he ensured all data was captured daily through a spreadsheet accessible to the Head Office and the Claims Department. He clarified that this spreadsheet was his own innovation to provide real-time updates during the system transition.

20.The Claimant testified that on 19th June 2020, he was invited to attend a disciplinary hearing scheduled for 25th June 2020.

21.He asserted that the Respondent failed to provide him with the materials and evidence relied upon during the disciplinary process and did not call witnesses, thus denying him an opportunity to examine the evidence underpinning the charges.

22.He further stated that despite raising concerns about the Respondent's Security Department, particularly the Head of Security, Mr. Jairus, for failing to supply the requested padlocks and for not reviewing CCTV footage when staff were off-duty, the said Head of Security sat on the disciplinary panel instead of being called as a witness.

23.In the Claimant's view, he could not receive a fair hearing before a panel that included an individual he had adversely implicated in his responses to the show cause letters.

24.He further testified that following the disciplinary hearing, the Respondent made several attempts to pressure him into resigning, but he declined to do so in the absence of any valid grounds.

25.The Claimant stated that on 9th July 2020, he was called to a meeting with the Respondent's Human Resource Manager, accompanied by his department head, the Claims Manager, Mr. Jerioth Gitanga. During the meeting, he was asked to either resign or face termination. He again refused to resign without cause.

26.He averred that later that same day, 9th July 2020, he was issued with a termination letter. He contended that the Respondent introduced new and unfounded allegations, including a claim relating to loss of car keys, which had not been cited in any of the show cause letters.

Respondent's case

27.The Respondent called oral evidence through **Jerioth Gitanga**, who testified as RW1. Mr. Gitanga identified himself as the Head of Claims and Legal at the Respondent company, and equally, he adopted his witness statement to constitute his evidence in chief. He further produced the initial and supplementary lists and bundle of documents filed on behalf of the Respondent, as exhibits before the Court.

28.RW1 outlined the Claimant's duties to include: *supervising and managing the assessment centre; updating, managing and overseeing assessment data for all vehicles received, assessed and released; and supervising both internal and external motor assessors.*

29.He stated that following a customer complaint regarding additional damage to the rear door and repair of motor vehicle KCH 266J at the Industrial Area Assessment Centre, where the Claimant was stationed, the Respondent engaged its internal forensics team, the security department, and Securex Security Company to investigate possible irregularities at the Centre and to ascertain the status of the vehicle.

30.RW1 testified that investigations by the Respondent's internal forensics team revealed significant lapses in the Claimant's management of the Assessment Centre, including: *reinstating one Mr. Essau Kavaya as a security guard without authorization from the Security Office; failing to report unauthorized access to the premises by Mr. Essau and theft of motor vehicle parts by unknown persons; failing to detect and report security breaches such as malfunctioning alarms and doors that could not be locked; and failing to detect and report the damage and subsequent repairs carried out on motor vehicle KCH 266J while at the centre.*

31.He added that the investigative team recommended disciplinary action against the Claimant for negligence in the performance of his duties.

32.RW1 testified that on 11th June 2020, the Claimant was issued with a Show Cause Letter requiring him to respond to the alleged irregularities and security breaches.

33.He further stated that during the course of the Claimant's employment, he persistently failed to update the assessment register despite several reminders from his supervisors. As a result, on 15th June 2020, the Claimant was issued with a second Show Cause Letter requiring him to explain why 101 files containing assessment data for vehicles at the centre had not been updated between 1st January 2020 and 12th June 2020. He was required to respond by the close of business on 18th June 2020.

34.The Claimant submitted a response to the Show Cause Letter dated 11th June 2020 through his letter of 18th June 2020.

35.According to RW1, the Claimant did not respond to the Show Cause Letter dated 15th June 2020, and his letter of 18th June 2020 did not address the issue of the 101 unupdated files.

36.He asserted that the Claimant's responses were reviewed and found unsatisfactory, as they failed to adequately address the lapses and breaches attributed to him.

37.Consequently, a disciplinary committee was convened, and a disciplinary hearing was held on 9th July 2020, at which the Claimant was present and fully participated.

38.RW1 testified that the Claimant was given an opportunity to respond to all the allegations and was also accorded the option to be accompanied by a witness, though he elected not to bring one.

39.He stated that although the Claimant presented his responses during the hearing, the committee found them inadequate. The committee further concluded that the allegations contained in the Show Cause Letters had been substantiated.

40.On this basis, the committee recommended the Claimant's summary dismissal for gross negligence.

41.Accordingly, through a letter dated 9th July 2020, the Respondent terminated the Claimant's employment on grounds of negligence in executing his duties as a Motor Assessment Associate in the areas established during the hearing.

42.RW1 added that apart from a single email sent to the Administrator in 2018, the Claimant made no follow-up on the requisition for padlocks, which would have been expected of a diligent staff member in charge of the Assessment Centre.

43.He further stated that the Respondent maintained a functional system for updating assessment data and that the Claimant's claim of maintaining data through a personal spreadsheet was irregular and contrary to the Respondent's procedures and policies.

44.RW1 asserted that the Claimant was provided with all relevant materials and evidence necessary to enable him to adequately respond to the allegations during the disciplinary process.

45.He added that the Respondent had no obligation to call witnesses during the disciplinary hearing, particularly where documentary evidence sufficiently supported the allegations.

46.RW1 denied the Claimant's assertion that he had adversely mentioned Mr. Jairus Okacha. He maintained that the Claimant's email requesting padlocks was addressed to the Administrator, Ms. Christine Arandi, and not to Mr. Okacha. He further stated that the Claimant did not raise any objection during the hearing regarding Mr. Okacha's presence on the disciplinary panel.

47.He testified that the issue of loss of car keys was not introduced in the termination letter but was instead raised by the Claimant in his response dated 18th June 2020 and was adequately addressed during the disciplinary hearing.

48.RW1 maintained that investigations and the disciplinary process conclusively established that the Claimant was negligent in performing his duties as a Motor Assessment Associate.

49.In his view, the Respondent had valid grounds to terminate the Claimant's employment on account of gross negligence.

Submissions

50.The Claimant submitted that any security lapses at the Respondent's Assessment Centre, if they occurred, were attributable solely to the Respondent and its Security Department, not to him.

51.Referring to the case of *Mabatuk v Safaricom Plc (Employment and Labour Relations Cause E047 of 2023) [2025] KEELRC 2628 (KLR)*, the Claimant argued that the first show cause letter addressed security issues which fell

squarely within the mandate of the Respondent's Security Department, rather than his role as a Motor Assessment Associate.

52. The Claimant further submitted that the Investigation Report did not recommend any action against him in relation to motor vehicle KCH 266J, which formed the basis of the first show cause letter.

53. The Claimant further contended that the decision to terminate his employment on the grounds of failure to update assessment data was excessively harsh. In his view, under the Respondent's disciplinary framework, such an omission should attract a warning in the first instance, a second warning for a repeated offence, and dismissal only thereafter.

54. The Claimant further submitted that the allegation relating to the loss of car keys was not substantiated by the Respondent.

55. In the Claimant's view, the Respondent failed to discharge its legal burden of proving that the reasons advanced for terminating his employment were valid.

56. The Claimant further submitted that by issuing vague show cause letters, the Respondent deprived him of the right to a fair hearing.

57. Citing the case of *David Wanjau Muhoro v Ol Pejeta Ranching Limited [2014] KEELRC 296 (KLR)*, the Claimant argued that the Respondent's failure to provide him with the Investigation Report rendered the entire disciplinary process procedurally unfair.

58. He further submitted that the systemic security failures at the Assessment Centre were attributable to the Security Department headed by Mr. Okacha, who was part of the disciplinary panel. According to the Claimant, this placed him in a conflicted position, as he was required to make decisions that could shield his department from scrutiny.

59. The Claimant argued that by introducing a new reason in the termination letter, the Respondent denied him an opportunity to defend himself against that specific allegation.

60. On its part, the Respondent contended that it was disingenuous for the Claimant to claim he was not responsible for the management of the centre when his conduct demonstrated that he was the operational lead. Still on this issue, the Respondent maintained that the Claimant abdicated his responsibilities, resulting in the security lapses and data management failures that led to his dismissal.

61. The Respondent further submitted that the Claimant fundamentally abandoned his core duties by delegating technical responsibilities to unqualified personnel,

amounting to a breach of trust. Citing **Clause 20.3 of the HR Manual**, the Respondent argued that such “gross negligence in carrying out duties” constituted gross misconduct warranting summary dismissal.

62. The Respondent further submitted that by failing to report known security lapses, the Claimant created an accountability gap that exposed the Respondent’s assets to theft and damage.

63. It was further submitted that the Claimant’s failure to report the loss of car keys to his supervisor constituted a serious dereliction of duty. The Respondent argued that this issue was not introduced in the termination letter, but had been raised by the Claimant himself in his letter dated 18th June 2020 and addressed during the disciplinary hearing.

64. In further submissions, the Respondent argued that the Claimant’s dismissal was substantively justified, as he acted outside his authority by unilaterally managing security personnel deployments. According to the Respondent, this unauthorized conduct bypassed both the Security Department and the Claimant’s supervisors, creating a security vacuum that resulted in theft of company property and damage to customer vehicles.

65. The Respondent further submitted that the Claimant's persistent failure to update the assessment register constituted a serious dereliction of duty that undermined effective management decision-making.
66. The Respondent urged the Court to find that it had a valid and lawful reason to terminate the Claimant's employment in accordance with Section 43 of the Employment Act, having found him negligent in carrying out his duties.
67. The Respondent further submitted that the disciplinary panel was properly constituted, impartial, and free of conflict of interest. On this score, the Respondent argued that the Claimant's allegation of bias on the part of Mr. Jairus Okacha was an unsupported afterthought, noting that the Claimant did not object to the panel's composition at the material time. To support this position, the Respondent relied on *Kiplagat v Family Bank Limited (Cause E058 of 2024) [2026] KEELRC 87 (KLR)*.
68. Relying on the decision in *South African Sports Confederation and Olympic Committee (SASCOC) v Commission for Conciliation, Mediation and Arbitration & Others (JR 2642/2019) [2021] ZALCJHB 23*, the Respondent submitted that the Investigation Report was not used as evidence during the disciplinary hearing and that its authors were not required to attend the hearing to produce it. The Respondent argued that the material findings of the Forensic

Report were adequately captured in the Show Cause Letter dated 11th June 2020, enabling the Claimant to fully respond to the allegations.

69.Regarding the Claimant's complaint that the show cause letters lacked specificity, the Respondent submitted that this issue was raised for the first time in submissions. To this end, the Respondent urged the Court to disregard the argument on the basis that parties are bound by their pleadings and that submissions cannot substitute pleadings or evidence.

Analysis and Determination

70.Upon review of the record, the Court has distilled the following issues for determination:

- i. Whether the Respondent has established that there was a valid and fair reason for terminating the Claimant's employment;*
- ii. Whether the Claimant was accorded procedural fairness prior to the termination of his employment; and*
- iii. Whether the Claimant is entitled to the remedies sought.*

Valid and fair reason for termination of employment?

71.The record bears that the Claimant's employment was terminated on allegations of negligence in performing duties within his remit as a Motor Assessment Associate. In this regard, it was alleged that the Claimant failed to take charge of

the motor assessment processes at the Assessment Centre as the lead, resulting in lapses in the execution of work at the Centre.

72. It was further alleged that the Claimant abdicated his responsibilities by allowing a security guard at the Assessment Centre to perform motor assessor duties, thereby exposing the company to risk, as the guard lacked the requisite technical expertise.

73. Additional allegations were that the Claimant failed to escalate critical issues necessary to safeguard the company's assets from loss exposure, including reporting security gaps at the Assessment Centre and the loss of car keys, which exposed the company to actual and potential losses.

74. The Claimant was also accused of failing to update, in a timely manner, the assessment register under his docket, despite follow-ups from his supervisors, yet such updates were required for management decision-making.

75. It was further alleged that the Claimant exceeded his mandate by engaging in or effecting changes to the security guards at the Assessment Centre without involving his supervisor or the relevant department, leading to loss of company property.

76.The Claimant's position is that he was not in charge of the Assessment Centre, which is the focal point of the allegations underpinning his termination from employment. It is therefore necessary to evaluate the record to determine the accuracy of this claim.

77.It is noteworthy that the Claimant's job description did not expressly designate him as being in charge of the Respondent's Motor Assessment Centre.

78.It is also notable that an email dated 6th August 2018, authored by the Claimant, reported an interruption of service delivery at the Assessment Centre following its relocation from Chepkorio Road to Road A off Enterprise Road.

79.A subsequent email dated 13th August 2018 highlighted the challenges the Centre was experiencing after relocation.

80.Further, in his response to the Notice to Show Cause, the Claimant stated that he had raised concerns regarding the laxity of the security guard (Esau) with Securex, the contracted security company. He also reported challenges posed by the newly deployed security guard who replaced Esau.

81.The Claimant further pleaded that in late April 2020, while working from home, he was informed by an insurance agent that motor vehicle KCH 266J had been

damaged at the Centre. He stated that the Respondent contacted him and instructed him to investigate the matter, which he did.

82. From the foregoing circumstances, it becomes evident that the Claimant was in fact responsible for the Assessment Centre. Otherwise, there would be no basis for him to report operational challenges at the Centre, address issues relating to deployed security personnel at the Centre, be notified of a security lapse involving motor vehicle KCH 266J, which was at the Centre, or be tasked with the corresponding investigation.

83. With the above finding, the Court therefore proceeds to determine whether the Respondent has proved, on a balance of probabilities, that the Claimant was negligent in executing his duties at the Assessment Centre.

84. Regarding the allegation of security lapses, the Claimant's position is that any such lapses were solely attributable to the Respondent's security department.

85. To support this position, the Claimant produced an email dated 13th August 2018 addressed to one ***Christine Arandi*** and copied to others, in which he highlighted the challenges at the Centre following relocation. Specifically, he requested nine padlocks to secure the yard. Christine Arandi responded by asking **Jairus** to

advise on the request. It is worth pointing out that Jairus had been copied on the same email.

86.The record does not show how the issue was resolved until the incident involving motor vehicle KCH 266J.

87.The Respondent argued that apart from the 13th August 2018 email, the Claimant did not follow up on the padlock request. However, the Respondent did not indicate what action, if any, it took upon receiving the request. This is noting that Jairus had been asked to “*advise,*” but no evidence of either approval or rejection was provided.

88.In an employment context, the employer bears the responsibility of providing necessary tools and facilitating the performance of an employee’s duties. Having made the request, the duty shifted to the Respondent to provide the padlocks or establish alternative security measures.

89.It is therefore unreasonable for the Respondent to attribute blame to the Claimant for lack of “follow-up” when it has not demonstrated what measures it took to address the issue.

90.The Respondent also alleged that the Claimant abdicated his responsibilities by allowing the security guard to perform motor assessor duties. Notably, the

Respondent did not dispute the Claimant's averment that CCTV footage showed the security guard only accessed the centre on Sundays and public holidays when neither he nor other assessors were present.

91. The Claimant also produced an email dated 29th April 2020, sent after the incident, in which he sought CCTV playback from one **Anthony Wangombe** to establish the status of motor vehicle KCH 266J and review activities between the date the vehicle was received and when it left the centre. This suggests that the Claimant did not have direct access to the CCTV footage at the Centre and therefore could not have known that the guard had gained unauthorized access or performed motor assessor duties at the Centre.

92. Ordinarily, the Respondent's security team would be expected to monitor the CCTV system. Any security lapse captured through the CCTV should therefore have been detected primarily by the Respondent's security team.

93. In view of the foregoing, the Court finds that these allegations did not constitute a fair and valid reason for terminating the Claimant's employment.

94. The Respondent further alleged that the Claimant failed to update the assessment register in a timely manner. In his defence against this allegation, the Claimant explained that the expaq platform sourced by the Respondent, through which

updates were to be recorded, was still under refinement by the vendor. In the meantime, he was recording daily updates on a spreadsheet he had personally created.

95.To support its position, the Respondent relied on an email dated 6th August 2019 from **Theuri Jackson** addressed to the Claimant, as follows;

“I have reviewed the assessment center register as at today and identified the exceptions in the attached spreadsheet (about 80 of them). Can you please review these exceptions and update the joint assessment register immediately? These mainly relate to either missing report submission dates or missing appointed garage details.”

96.In its Response to the Claim, the Respondent rejected the Claimant’s assertions regarding the system and maintained that it had a functional platform for updating assessment data.

97.The Claimant, on the other hand, produced an email dated 11th November 2019 raising concerns about complaints at the Assessment Centre. In that email to Theuri Jackson, he identified “expaq challenges” as one of the issues affecting operations, stating: *“Florence of expaq was here today and witnessed the massive challenges we do experience and will provide a report tomorrow.”*

98. During cross-examination, RW1 stated that he could not recall whether the system the Claimant was using had challenges, nor whether the Claimant's email had been responded to.

99. It is also worth noting that the Respondent failed to provide evidence showing that the expaq system used for updating assessment data was indeed operational.

100. Further, it is notable that RW1 testified under cross-examination that the Respondent used both the expaq system and an Excel sheet. This undermines the Respondent's claim that the Claimant's use of an Excel spreadsheet was irregular or contrary to policy.

101. It is also notable that the Claimant produced a copy of the spreadsheet he created containing assessment data. Notably, the Respondent did not allege that the spreadsheet was incomplete or not updated.

102. In view of the foregoing, the Court finds that the Respondent did not prove, to the required standard, that it had a valid and fair reason to discipline the Claimant on this issue.

103. The Claimant was also accused of acting outside his mandate by engaging or effecting changes to the security guards at the Assessment Centre without involving his supervisor or the relevant department.

104. In his response to the Notice to Show Cause, the Claimant explained how the changes in the security personnel occurred. He stated that Securex personnel routinely visited the Centre, asked whether there were any issues with their guards, and expressly authorised them to report any concerns regarding the guards assigned to the Centre. He added that reporting issues to Securex and allowing them to take action was, in their understanding, the proper procedure. The Claimant further noted that they had never been guided on protocols for engaging subcontracted services, such as security guards, especially given that supervisors relied on branch feedback during their visits.

105. Notably, the Respondent did not rebut the Claimant's account with evidence, particularly regarding the proper procedure for engaging the contracted security company, despite the Claimant being the end user of the security services at the Centre. Logically, it was expected that any concerns regarding contracted personnel at the Assessment Centre would be raised by the Claimant as the head of the Centre with the service provider firsthand.

106. Consequently, the Court is not persuaded that this constituted a valid or fair reason for taking disciplinary action against the Claimant.

107. The Claimant was further faulted for failing to escalate critical issues necessary to safeguard the company's assets, specifically by not reporting the loss of car keys to his supervisor. Evidently, this matter emerged from the Claimant's own response to the Notice to Show Cause, in which he explained how the security personnel changes occurred.

108. The Claimant stated that the replacement guard had encountered significant challenges, including an instance where he lost a key belonging to a Toyota Hilux. He maintained that he reported the matter to the Handler and to Securex.

109. While the Claimant argued that this issue was not raised in the Notice to Show Cause, he did not dispute the Respondent's claim that he failed to escalate the matter to his supervisor, nor did he provide an explanation for this omission. This is particularly significant given that the loss of keys in the Respondent's custody posed both a financial and reputational risk. It was therefore incumbent upon the Claimant to escalate the issue to his supervisor, rather than merely reporting it to the security company and leaving out his supervisor. Indeed, escalating the matter would have enabled the Respondent to properly assess its security risks at the Assessment Centre.

110. Accordingly, the Court finds that the Respondent has demonstrated the existence of a valid and fair reason to commence disciplinary action against the

Claimant on this specific ground. Whether this reason was included in the Notice to Show Cause is, however, a separate matter altogether.

Procedural fairness?

111. 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 or a union representative.

112. The Claimant raised several concerns regarding the procedure followed by the Respondent prior to terminating his employment.

113. One of the issues raised by the Claimant concerns the provision of documents or evidence relied upon by the Respondent during the disciplinary hearing. RW1 testified that the Claimant had been furnished with all relevant materials necessary to enable him respond to the allegations. RW1 further asserted that the Claimant failed to specify which documents had been used against him but not supplied to him.

114. In his submissions, however, the Claimant maintained that he only became aware of the existence of the investigation report upon receiving the Respondent's bundle of documents.

115. Notably, the termination letter stated as follows: “*an independent investigation of the assessment reports and operations of the assessment centre was conducted within your department that has credibly demonstrated your lack of care, gross negligence...*”

116. It is therefore apparent that the findings of the investigation significantly influenced the Respondent's decision to terminate the Claimant's employment. Consequently, this was a critical document that ought to have been made available to the Claimant prior to the disciplinary hearing. Contrary to RW1's assertions, there is no evidence that the investigation report was ever shared with the Claimant.

117. On this issue, the Court concurs with the decision in the case of ***Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR***, that the employee is entitled to documents in the possession of the employer which would assist them in preparing their defence.

118. The Court does not doubt that the Respondent's failure to furnish the Claimant with the necessary documentary evidence, specifically, the investigation report, hampered his ability to prepare an adequate defence and thereby infringed his right to a fair hearing.

119. The Claimant also challenged the introduction of a new allegation in the termination letter, specifically concerning the loss of car keys at the Assessment Centre.

120. It is undisputed that this allegation was not included in either of the two Notices to Show Cause issued to the Claimant.

121. The Respondent argued that the Claimant himself introduced this issue in his response to the Notice to Show Cause and that it was sufficiently addressed during the disciplinary hearing. However, the Respondent did not produce the minutes of the disciplinary hearing. In the absence of such evidence, the Court cannot confirm that the matter was discussed or that the Claimant was afforded an opportunity to respond to the said allegation. On this point, the Court draws an adverse inference against the Respondent.

122. Given that this allegation ultimately formed part of the reasons for the Claimant's termination from employment, he ought to have been afforded a proper opportunity to respond to it.

123. It remains unclear whether the issue was raised during the disciplinary hearing or only appeared for the first time in the termination letter. Under cross-examination, RW1 could not recall whether the Claimant had been heard on this allegation.

124. Granted, the Claimant may have brought up the issue in his written response. Nonetheless, the Respondent could and should have issued him with a fresh Notice to Show Cause specifically addressing it, just as it did when issuing the second Notice to Show Cause dated 15th June 2020.

125. Ultimately, the Court finds that the Claimant was terminated on the basis of an allegation for which he was never given a fair opportunity to defend himself. His right to be heard was therefore violated.

126. Considering the totality of the circumstances herein, the evidence presented, and the requirements of Section 41 of the Employment Act, the Court concludes that the Respondent failed to comply with the standards of procedural fairness. Consequently, the Claimant was not accorded a fair hearing.

Reliefs?

127. 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

manner, the Court awards the Claimant compensation equivalent to three (3) months' gross salary. In making this award, the Court has taken into account both the length of the employment relationship and the extent to which the Claimant contributed to the circumstances leading to his termination from employment.

Orders

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

- (a) The Claimant is awarded Kshs 600,000.00 as compensatory damages, equivalent to three (3) months' gross salary.
- (b) Interest on the amount in (a) shall accrue at court rates from the date of judgment until full payment.
- (c) The Respondent shall bear the costs of the suit.

DATED, SIGNED and DELIVERED at MERU this 13th day of March, 2026.

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STELLA RUTTO
JUDGE

In the presence of:

Mr. Ondigi for the Claimant

Mr. Opole for the Respondent

Qabale 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