



**Ayuka v Nova Pioneer, Kenya (Cause E525 of 2023)  
[2026] KEELRC 932 (KLR) (16 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 932 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E525 OF 2023  
CN BAARI, J  
APRIL 16, 2026**

**BETWEEN**

**NAFISA AYUKA ..... CLAIMANT**

**AND**

**NOVA PIONEER, KENYA ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before Court is the Claimant’s Statement of Claim dated 4<sup>th</sup> July, 2023, wherein the Claimant seeks the following reliefs as against the Respondent:-
  - a. A declaration that the Claimant’s employment was unfairly terminated;
  - b. The Respondent be ordered and directed to pay the Claimant:-
    - i. Compensation for wrongful and unfair termination ..... Kshs. 2,174,276.28
    - ii. One month’s salary in lieu of notice..... Kshs. 181,189.69

TOTAL = Kshs. 2,355,465.97
  - c. The Respondent be ordered and directed to pay the Claimant costs of this suit.
  - d. The Respondent be directed to pay the Claimant interest on b and c above at court rates from the date of filing of the suit until payment in full.
2. Conversely, the Respondent filed a Memorandum of Response dated 19<sup>th</sup> September 2023 in response to the Claim.



3. The Claimant's case was heard on 3<sup>rd</sup> October, 2024, when the Claimant (CW1) testified in support of her case. She adopted her witness statement and produced her list and bundle of documents, both of even dates, and a Supplementary list of documents dated 6th March, 2025, as exhibits in the matter, which were marked as Claimant's exhibits Nos. 1-15.
4. The Respondent's case was equally heard on 3<sup>rd</sup> October, 2024, when the Respondent's witness (RW1), Mr. Waturi Wamboye, testified in support of the Respondent's case. He adopted his witness statement dated 15<sup>th</sup> February, 2024, and produced the Respondent's list and bundle of documents of even date as exhibits in the matter and were marked as Respondent's exhibits Nos. 1-22.
5. The Claimant was recalled with leave of the court upon application on 24<sup>th</sup> November, 2025, when she produced her March 2023 pay slip as an exhibit in the matter. She was cross-examined on the said document and closed her case, paving the way for the filing of submissions.
6. Submissions were filed for both parties.

### **The Claimant's case**

7. The Claimant's case is that she was lawfully employed by the Respondent as a Dean of Students pursuant to a contract of service dated 17<sup>th</sup> June 2021, on full time basis, and that she reported to the School Principal one Dr. Nduati, who doubled up as her supervisor.
8. The Claimant avers that in February and March 2023, concerns were raised regarding discrepancies in fire drill reports, which she claims were not part of her core duties as a Dean of Students per se. She avers that subsequently, she received a verbal warning on the fire drill report on 22<sup>nd</sup> February 2023, which issue was amicably resolved after explaining herself and undertaking to correct the reporting process going forward.
9. It is her case that despite this resolution, the Respondent still issued her a show cause letter dated 16<sup>th</sup> March 2023, alleging gross misconduct, including falsification of fire drill reports, shifting blame to her supervisor, and authorizing a prohibited event.
10. It is her assertion that she was simultaneously invited to a disciplinary hearing scheduled for 23<sup>rd</sup> March 2023. The Claimant contends that although she submitted a comprehensive written response on 20<sup>th</sup> March 2023, the Respondent failed to properly consider it before proceeding with the disciplinary hearing.
11. The Claimant further avers that the disciplinary process was fundamentally flawed and procedurally unfair on the premise that the disciplinary panel, which included her supervisor, who was also the complainant and a witness for the Respondent, which she states, violated the rule against bias. She further avers that her subsequent termination was already predetermined by the panel.
12. It is her case that the Respondent's appeal process was also irregular and unfair, as the appeal committee introduced and relied on new evidence, specifically an investigative report, after her termination, without affording her an opportunity to respond to it.
13. She further contends that the Respondent continued investigating her even after terminating her employment, and used the outcome to justify a decision already made.
14. The Claimant therefore maintains that her termination, effected by a letter dated 11<sup>th</sup> April 2023 and upheld on appeal on 26<sup>th</sup> April 2023, was procedurally and substantively unfair within the meaning of Sections 41, 43, and 45 of the *Employment Act*, 2007. She asserts that the Respondent failed to follow



fair procedure, acted with malice, subjected her to double punishment for the same allegations, and violated her right to fair labour practices under Article 41 of *the Constitution*.

15. The Claimant states that as a result of the unlawful termination, she suffered loss and damage, including loss of employment and income, which she hereby seeks relief under Section 49 of the *Employment Act*, including compensation for unfair termination equivalent to twelve months' salary and one month's salary in lieu of notice in the sum of Kshs.2,174,276.28/= and Kshs.181,189.69/= respectively.
16. In conclusion, the Claimant maintains that her dismissal was unlawful, unfair, and in breach of constitutional, statutory, and contractual protections, and urges the Court to grant the remedies sought in the claim.
17. On cross-examination, the Claimant stated that the job of fire drill was the role of the Dean of residential life, which she had since taken up after the departure of the said designated individual by the Respondent.
18. She states that she was required, in the very least, to fill in accurate information in the report regarding the fire drill conducted at the Respondent's school, which was also a requirement by the Ministry of Education for the well being and safety of students.
19. It is her further testimony that although taking up the duty required training, she did not request training and affirmed that she did not have challenges in filling out accurate records. She confirmed that she attended a disciplinary hearing and was given an opportunity to appeal against the termination.
20. The Claimant further confirmed payment of her terminal dues when she cleared with the Respondent.
21. On re-examination, the Claimant reiterated that both the warning letter and subsequently the Notice to show cause letter related to the same issue on the fire drill report, which had been amicably resolved earlier.

### **The Respondent's case**

22. The Respondent states that it lawfully employed the Claimant as a Dean of Students effective 14th June 2021 and confirmed in employment after successful completion of her probationary period, with her terms governed by her contract, the institution's policies, and the applicable law.
23. It is the Respondent's position that the Claimant was tasked to perform her functions diligently, adhere to institutional policies, and uphold the highest standards of integrity, particularly given the Respondent's obligation as a learning institution responsible for the safety and welfare of minors.
24. The Respondent avers that its policies expressly prohibited falsification of records and required proper documentation at all times, obligations which extended to the Claimant.
25. The Respondent states that following the departure of the Dean of Residential Life, the Claimant assumed responsibility for conducting and documenting fire drills in compliance with the Ministry of Education Safety Standards. It further states that concerns arose regarding her performance, culminating in a performance review meeting held on 22<sup>nd</sup> February 2023, where she was issued with a verbal warning regarding the documentation and integrity of fire drill conduct in the school, and was consequently cautioned against a recurrence of similar issues.
26. It is the Respondent's position that upon review of fire drill records for 2022, the Claimant's supervisor, who was also the school's principal, discovered material discrepancies in the reported dates



- of the drills, and that the Claimant admitted that she had approximated the dates and was unable to provide supporting documentation to confirm that the drills had indeed taken place.
27. The Respondent avers that, in light of this occurrence, it issued the Claimant a notice to show cause letter dated 16<sup>th</sup> March 2023, citing falsification of records and failure to account for the same.
  28. The Respondent avers that the Claimant was accorded due process, having been invited to a disciplinary hearing scheduled for 23<sup>rd</sup> March 2023, with full disclosure of her rights, including the right to representation.
  29. It avers further that the Claimant attended the hearing, was given an opportunity to respond to the allegations, and presented documents in her defence. The Respondent states that these documents were subsequently investigated to verify their authenticity.
  30. It is the Respondent's case that upon consideration of the Claimant's written and oral representations and the outcome of the investigations, the Respondent resolved to terminate her employment by a letter dated 11th April 2023 on grounds of gross misconduct, falsification of fire drill records, and failure to substantiate the occurrence of the material fire drills.
  31. The Respondent further avers that the Claimant exercised her right of appeal, raising concerns on alleged bias, procedural unfairness, and lack of evidence, and that an appeal hearing was convened on 18<sup>th</sup> April 2023 before a different panel, during which the Claimant was furnished with the investigative report and afforded an opportunity to respond to it. It states that after considering her representations, the appeal committee upheld the decision to terminate her employment.
  32. It is the Respondent's case that the disciplinary process complied with the requirements of the [Employment Act](#), as the Claimant was accorded a fair hearing, her representations were considered, and any procedural gaps, including the prior non-disclosure of the investigative report, were dealt with at the appeal stage.
  33. The Respondent denies allegations of procedural impropriety and bias, maintaining that the presence of the Claimant's supervisor at the disciplinary hearing was standard practice and did not render the proceedings unfair. It further contends that the rule against bias was not violated and that the Claimant was not prejudiced.
  34. The Respondent also denies allegations of malice, asserting that the earlier warning issued to the Claimant did not relate to falsification of fire drill records, and that the misconduct leading to her dismissal was a distinct and serious matter affecting the students' safety and regulatory compliance.
  35. It maintains that the investigations conducted post hearing were limited to verifying documents produced by the Claimant and that she was given an opportunity to address the findings.
  36. The Respondent concludes that the Claimant's termination was justified, lawful, and based on valid reasons amounting to gross misconduct and urges the Court to dismiss the Claim with costs.
  37. On cross-examination, RW1 stated that the Notice to Show Cause and Notice of Invitation to the disciplinary hearing were both issued on the same date and on the same email correspondence to the Claimant.
  38. Further, he stated that the warning letter issued to the Claimant related to failing to keep proper documentation, which included the fire drill report.



39. On taking up the role and duties of a Dean of Residential Life, RWI claimed that the Claimant held the position of the Dean of Residential Life for only 2 months before another individual was rightfully appointed for the role.
40. It was further indicated that from the dates between 7/6/2022-7/8/2022, 27/8/2022-11/10/2022, when the fire drill report had discrepancies, the Claimant had ceased taking up the roles of the Dean of Residential Life as the Respondent had already filled the said position.

### **The Claimant's Submissions**

41. The Claimant submitted that the burden of proving the reasons for termination rests upon the employer pursuant to Sections 43 and 47 (5) of the *Employment Act*, 2007, and that such reasons must be valid, fair, and genuinely believed to exist at the time of termination. Reliance was placed on *Rotich v Metkei Multi-Purpose Company Limited* (Civil Appeal No. 94 of 2017) [2021] KECA 161 (KLR), where the Court of Appeal emphasized that an employer must consult an employee and formally revise the contract before assigning new duties.
42. It is her submission that the allegations leading to her dismissal arose from duties relating to fire drills, which were not part of her job description as Dean of Students. In this regard, reliance was placed on *Imbali v Kenya Hospital Association t/a Nairobi Hospital* (Cause No. E899 of 2021) [2024] KEELRC 678 (KLR), where the Court held that an employee cannot be held negligent for duties not assigned to them.
43. The Claimant argued that although she temporarily undertook fire drill responsibilities due to the absence of a Dean of Residential Life, she was neither formally assigned those duties nor trained. She argued that no reasonable employer would terminate an employee for failing to perform duties belonging to another role.
44. The Claimant further submitted that the Respondent acted in bad faith by subjecting her to double punishment for the same allegations. She relied on *David Opondo Omutelema v Registered Trustees of Scott Christian University* (Cause No. 1215 of 2015) [2022] KEELRC 13001 (KLR) and *Dr. Joseph Maingi Maitha v Permanent Secretary, Ministry of Medical Services & another* [2015] eKLR, to buttress this position.
45. The Claimant submitted that malice was also evident in the Respondent's conduct of inviting her to a disciplinary hearing before considering her response, continuing investigations after termination, and relying on an investigative report that was not made available to her prior to the disciplinary hearing.
46. On procedural fairness, the Claimant submitted that the termination contravened Sections 41 and 45(2)(c) of the *Employment Act*, 2007, which require adherence to fair procedure. She relied on *Judicial Service Commission v Gladys Boss Shollei & another* (Civil Appeal No. 50 of 2014) [2014] KECA 334 (KLR) as affirmed by the Supreme Court in *Shollei v Judicial Service Commission & another* (Petition No. 34 of 2014) [2022] KESC 5 (KLR), to submit that Article 50(1) of *the Constitution* applies to disciplinary proceedings and guarantees the right to a fair hearing before an independent and impartial body.
47. On remedies, the Claimant submitted that upon a finding of unfair termination, she is entitled to compensation under Section 49 of the *Employment Act*, 2007. She relied on *Angela Wokabi Muoki v Tribe Hotel Limited* [2016] eKLR, where the Court awarded 12 months' salary as compensation.



48. The Claimant finally submitted that the Respondent failed to establish valid and fair reasons for termination, acted with malice, and violated mandatory procedural requirements. She therefore urged the Court to find the termination unfair and allow the claim in its entirety with costs.

### **The Respondent's submissions**

49. On the lawfulness of the termination, the Respondent submits that the applicable legal threshold is set out under Sections 41 and 43 of the *Employment Act*, which require proof of a valid and fair reason, as well as adherence to due process. Reliance is placed on *George Musamali v G4S Security Services Kenya Limited* [2016] KEELRC 1665 (KLR), where the Court affirmed that a lawful termination must be grounded on a valid reason and effected through a fair procedure.
50. The Respondent submits that the Claimant was dismissed by a letter dated 11th April 2023 on account of gross misconduct, specifically careless and negligent performance of duty arising from falsification of fire drill records and failure to verify that the drills occurred on the stated dates. This conduct was said to contravene Clauses 8.1.3.3 and 5.1.4.3 of the Employee Handbook, which relate to falsification of records and negligent performance of duties.
51. It is the Respondent's case that the misconduct is not disputed, as the Claimant admitted on several occasions that she approximated dates in the fire drill reports due to lapse of time and lack of primary records. These admissions were made during internal inquiries, in response to the notice to show cause dated 20<sup>th</sup> March 2023, at the disciplinary hearing, in her witness statement, and in her appeal letter dated 17<sup>th</sup> April 2023, where she conceded that some information may have been false.
52. The Respondent argues that these admissions conclusively establish gross misconduct. Reliance is placed on *Mukenya v Texas Alarms (K) Limited* [2023] KEELRC 2482 (KLR), where the Court held that once an employee admits misconduct, summary dismissal may follow, and a disciplinary hearing may even be rendered unnecessary since the facts are already admitted.
53. The Respondent further denies the Claimant's assertion that recording fire drills was not part of her duties. On the contrary, the Respondent asserts that the Claimant admitted during the appeal hearing that the responsibility fell within her role and she had consistently performed it without objection. In addition, Clause 1.3 of her contract provided that her duties were not exhaustive and could be varied by the employer.
54. On the allegation of double jeopardy, the Respondent submits that the warning issued on 22nd February 2023 related to general documentation concerns and not the specific issue of falsified fire drill reports, which was discovered later. Accordingly, the Respondent submits that there was no duplication of disciplinary action.
55. Similarly, the Respondent dismisses the Claimant's argument that the matter had been resolved through correspondence with Dr. Nduati, submitting that the email of 3<sup>rd</sup> March 2023 merely sought further documentation and did not constitute a finding or closure of the issue.
56. On procedural fairness, the Respondent submits that the requirements of Section 41 of the *Employment Act* were fully complied with. The Claimant was issued with a notice to show cause dated 16<sup>th</sup> March 2023, detailing the allegations, and was invited on the same date to a disciplinary hearing scheduled for 23<sup>rd</sup> March 2023.
57. The Respondent argues that despite both letters being issued on the same date, the Claimant had 7 days to prepare, after which she submitted a detailed written response on 20<sup>th</sup> March 2023. It submits that



the Claimant attended the hearing, made oral representations, presented evidence, and subsequently lodged an appeal, thus was afforded adequate opportunity to be heard.

58. The Respondent further submits that the Claimant was informed of all her rights, including the right to be accompanied, to call witnesses, to challenge evidence, and to appeal. It is contended that the Claimant exercised these rights fully and did not raise any complaint regarding the lack of time or procedural justice during the process.
59. It is the Respondent's submission that, consequent to the disciplinary process, the Claimant's employment was terminated with notice by letter dated 11<sup>th</sup> April 2023.
60. On the allegation of bias, the Respondent submits that no evidence was presented to demonstrate partiality. It is argued that the disciplinary and appeal processes were conducted fairly and independently. Reliance was placed on *Korir v Boresha Sacco Society Ltd* [2024] KEELRC 1606 (KLR), where the Court held that employees in positions of trust who engage in misconduct breach that trust.
61. On the issue of remedies, the Respondent opposes the claim for compensation for unfair termination amounting to Kshs.2,174,276.28. It is submitted that the Claimant's gross salary was Kshs.118,800 at the time of termination, as per her contract and supporting documents, and not Kshs.181,189.69 as alleged.
62. The Respondent argues that the higher figure improperly includes non-cash benefits such as housing and school fee benefits, which are not part of gross salary. Reliance is placed on *Postal Corporation of Kenya v Tanui* [2019] KECA 489 (KLR), where the Court of Appeal defined gross salary as basic salary plus contractual allowances, and *Grain Pro Kenya Inc. Ltd v Andrew Waithaka Kiragu* [2019] KECA 563 (KLR), where the Court held that the employment contract, not payslips, determines remuneration.
63. It is further submitted that compensation is not payable in any event, as the termination was lawful and based on admitted misconduct. She sought to rely in *Musyoka t/a Jana Pestcon v Mnyika* [2025] KEELRC 376 (KLR) and *Kamundai v National Cement Company Limited* [2025] KEELRC 1927 (KLR), where the Court declined to award compensation in cases involving employee misconduct.
64. On notice pay, the Respondent submits that the Claimant is not entitled to the same, as she was issued with one month's notice from 11<sup>th</sup> April 2023 to 19<sup>th</sup> May 2023, which she acknowledged in her appeal letter.
65. Finally, on costs, the Respondent submits that costs follow the event and, as the Claim lacks merit, it should be dismissed with costs.
66. In conclusion, the Respondent submits that the termination was lawful, grounded on valid reasons, and carried out in accordance with due process, and prays that the entire claim be dismissed with costs.

### **Analysis and Determination**

67. Upon careful consideration of the parties' pleadings, the witnesses' testimonies, the evidence adduced, and the rival submissions, the issues for determination are:-
  - i. Whether the Claimant's employment was fairly terminated.
  - ii. Whether she is entitled to the remedies sought.



## Whether the Claimant's employment was fairly terminated.

68. Section 43 of the *Employment Act* requires that an employer prove the reasons for termination, while Section 45 requires that such reasons must be valid and fair and related to the employee's conduct, capacity, or compatibility. This position was affirmed in *British American Tobacco (K) Ltd v Kenyan Union of Commercial Food and Allied Workers (Kucfaw)* [2019] eKLR, where the Court quoted with approval the decision in *Anthony Mulaki V Addax Kenya Limited*, Cause No. 822 of 2012, for the holding that:-

“In examining validity of reasons, the court was correctly directed by the Respondent to the case of *BRITISH HOME STORES LTD v BURCHELL* (1980) LC.R. 303 E.A.T. where it was held that for the court to uphold the decision by the employer as being fair, it must be shown that: -

- a. The employer must believe at the time of termination that the employee is guilty of the allegations against him/her
- b. The employer had reasonable grounds upon which to sustain that belief; and
- c. The employer carried out as much investigation as reasonable in the circumstances, the employer need only be satisfied on the balance of probability.”

69. The reason advanced by the Respondent for the termination of the Claimant's employment is that she falsified fire drill records and failed to keep proper documentation. RW1 told this court on cross-examination that the Claimant was warned on the reporting and proper documentation of the fire drill. She further confirmed that Dr. Nduati, who was the Claimant's line manager, had earlier accepted the Claimant's explanation on the fire drill, and that her concerns later were whether the fire drill had actually happened.

70. It is not disputed that the Claimant admitted to approximating dates in official records without supporting documentation. The Claimant could also not produce, on request, lists of attendance of the fire drill confirming the Respondent's assertion that the fire drill may not have been conducted.

71. The court record further shows various communications between the Claimant and her line manager on a string of mishaps said to have been occasioned by the Claimant's acts and omissions, which point to inefficiency on her part. In *Reuben Ikatwa & 17 Others v Commanding Officer British Army Training Unit Kenya & Another* [2017] eKLR, the court cited the following excerpt from Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 16(1B) para 642:-

“In adjudicating on the reasonableness of the employer's conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide whether it would have dismissed on those facts; it must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts.....”

72. In light of the foregoing, the Court is satisfied that the Respondent had a valid and fair reason to terminate the Claimant's employment.

73. On whether the Respondent accorded the Claimant fair process, Section 41 of the *Employment Act* requires that whenever an employer is considering termination or dismissal, an employee be informed of the charges, given an opportunity to respond, and be heard in the presence of a representative from their union or fellow employee of their choice.



74. It is not disputed that the Claimant was issued with a notice to show cause and invited to a disciplinary hearing in the company of a representative of her choice. Although both the show cause and the invitation for the hearing were issued on the same date, it is evident that she had several days to prepare and did, in fact, submit a written response to the show cause and attend the hearing.
75. The Court of Appeal in *Postal Corporation of Kenya v Andrew K. Tanui* [2019] KECA 489 (KLR), emphasized the mandatory nature of procedural fairness and proceeded to set the bare minimums of a fair hearing.
76. On the allegation of bias, the Court notes that the Claimant's supervisor participated in the disciplinary process, but no evidence was adduced to demonstrate actual prejudice. In my considered view, participation by one's supervisor in internal disciplinary proceedings does not automatically render the process unfair.
77. Further, although the Claimant complained about the introduction of an investigative report at the appeal stage, the evidence before court shows that she was furnished with the report and given an opportunity to respond. In *Kenya Revenue Authority v Menginya Salim Murgani* [2010] KECA 164 (KLR), the Court held that procedural defects may be cured on appeal where the employee is afforded a fair hearing.
78. In the premise, I find and hold that the Respondent substantially complied with the requirements of Section 41, which renders the Claimant's termination procedurally fair and lawful.
79. Overall, the termination of the Claimant's employment is found both substantively and procedurally fair.

#### **Whether the Claimant is entitled to the reliefs sought**

80. Having found the Claimant's termination fair and lawful, her claim for compensation for unfair termination fails.
81. The claim for notice pay also fails, as the Claimant was issued with notice.
82. In conclusion, the Claimant's claim fails and is dismissed in its entirety.
83. Costs of the suit are awarded to the Respondent.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Ong'ato present for the Claimant

Mr. Koganga present for the Respondent

Ms. Esther S- C/A

