



REPUBLIC OF KENYA



**Okinda v Faulu Micro-Finance Bank (Petition E137 of 2025)  
[2026] KEELRC 1154 (KLR) (27 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1154 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E137 OF 2025**

**MN NDUMA, J  
APRIL 27, 2026**

**BETWEEN**

**MICHAEL OKINDA ..... PETITIONER**

**AND**

**FAULU MICRO-FINANCE BANK ..... RESPONDENT**

**JUDGMENT**

1. The petition dated 30/7/2025 was filed by the Petitioner against the Respondents seeking an order in the following terms: -
  - a. A declaration be and is hereby issued that the termination of employment of the Petitioner was un-procedural, unlawful, unjustified and or unfair and in violation of Articles 10, 27, 28, 41 and 47 of *the Constitution* of Kenya 2010 and sections 5, 41, 45 and 46 of the *Employment Act*, 2007.
  - b. A declaration that the Petitioner's rights to fair labour practices under Article 41 of *the Constitution* were violated.
  - c. A declaration that the Petitioner's fair trial rights under Article 50 of *the Constitution* were violated.
  - d. A declaration that the Petitioner's rights to fair administrative action secured under Article 47 of *the Constitution* and sections 4 of the *Fair Administrative Action Act* were violated.
  - e. Damages for violation of the Petitioner's constitutional right to fair labour practice under Article 41 of *the Constitution* of Kenya.
  - f. Damages for violation of the Petitioner's right to fair administrative action under Article 47 of *the Constitution* of Kenya.



- g. Damages for violation of the Petitioner’s right to fair trial under Article 50 of *the Constitution* of Kenya
- h. Damages for emotional distress and psychological harm
- i. Notice pay for termination in lieu of one month’s notice
- j. Compensation for unfair termination at the rate of 12 months’ salary for the total sum of Kshs. 2,219,061.24.
- k. Compensation for loss of opportunity
- l. Pension payments
- m. The costs of this suit
- n. Interest thereon
- o. Any other relief the court deems fit to grant in the circumstances.

### **Facts of the petition**

2. The Petitioner was employed by the Respondent as a Business Growth and Development Manager vide a contract of employment dated 1/10/2020 earning Kshs. 150,000.00 monthly salary. The Petitioner was placed on 6-month probation and the contract was supplemented by Employee Handbook with additional terms of employment including medical insurance and other benefits to the Petitioner.
3. The Petitioner completed probation on 1/8/2021 and continued to serve well while based at Migori Branch which was rated during his tenure as the best performing branch in Western Region.
4. On 20/4/2023, the Petitioner was transferred to head office and his salary was increased to Kshs. 184,921.00. He served as Relationship Manager.
5. On 11/5/2023, the Petitioner received a notice to show cause in which the Petitioner was accused of sexual harassment while he was Branch Manager at Migori. That the complainant and affected staff were not disclosed in the notice to show cause.
6. The charge read:
 

“On various occasions you made advances towards the complainant via several text messages and it was also established that you had sexually harassed female staff members especially juniors.”
7. The Petitioner responded to the notice to show cause by a letter dated 15/5/2023 denying the charge and seeking particulars of the charge and identity of the complainants to enable him defend himself.
8. In particular he sought:
  - a. Identity of complaint
  - b. Context of the alleged actions
  - c. unwelcomeness of the referenced texts; and
  - d. The timing and recipient reactions to the alleged advances.



9. The Petitioner was invited to attend a disciplinary hearing on 19/5/2023 by a letter dated 17/5/2023. At the hearing the Petitioner stated that the process was unfair since he had not been given the information he requested and had no knowledge of the evidence against him.
10. On 26/5/2023, the Petitioner was issued with a 2<sup>nd</sup> notice to show cause. This notice provided details of the complainants including screenshot messages but the complainant identity was not revealed. Reference was also made to a Forensic Investigation Report which was not provided to him.
11. The Petitioner was invited to attend a disciplinary hearing on 9/6/2023 which proceeded and he was summarily dismissed on 13/6/2025.
12. The Petitioner alleges violation of his constitutional rights protected under Article 27, 41, 47(1) and (2) and 50(1). The Petitioner further alleges violation of section 5, 41, 43 and 45 of the *Employment Act*, 2007, and section 3 (a) of the *Fair Administrative Action Act*, 2015 which mandates the Respondent employer to provide the Petitioner with information, materials and evidence relied upon in making the decision or taking the administrative action against him and section 4(4)(c) which obliges the Respondent to give the Petitioner an opportunity to cross-examine any person who gives evidence against him and section 4(6) which mandates the Respondent to follow a procedure which conforms to the principles set out in Article 47 of *the Constitution* read with other provisions set out herein before in the judgement.
13. The Petitioner states that he was subjected to two separate disciplinary processes on the same charge; given inadequate notice and the panel was biased against him and denied him opportunity to adduce evidence.
14. The Petitioner noted an appeal upon being summarily dismissed which appeal was not considered and alleges this violated his right to equality before the law under Article 27 and the right to a fair hearing under Article 50(1) of *the Constitution*. That the process constituted unfair labour practice in violation of Article 41 of *the Constitution* and the summary dismissal was not for a valid reason following a fair process mandated under section 41, 43 and 45 of the *Employment Act* 2007.

The Petitioner prays for the reliefs set out in the Petition.

## **Response**

15. The Respondent filed a Replying Affidavit by Fredrick Nyambuti a senior legal officer of the Respondent sworn to on 28/5/2025.
16. The deponent stated that the Respondent has a strong stance against sexual harassment in any form and has developed clear policies and procedures to prevent and address such misconduct and to ensure all employees are treated with dignity and respect.
17. That the Respondent in addition has a robust system for reporting, addressing, and resolving sexual harassment that ensures that victims are supported and protected throughout the process.
18. The deponent admits the particulars of employment of the Petitioner including his posting as Branch Manager Migori and subsequent transfer to Head Office.
19. That sometimes in October 2022, the Respondent received a complaint of sexual harassment by a Relationship Officer (RO) cash at the Migori Branch wherein the complainant alleged that she had been sexually assaulted by the Petitioner while he was the Branch Manager at Migori.
20. On 28/10/2022, the Respondent conducted investigation in which it was established that the Petitioner was a diligent worker who assisted all staff to realize their potential but at the same time the



Petitioner was fond of harassing his female colleagues who seemingly feared to expose him for fear of repercussions as he was their immediate boss.

21. Consequently, the Petitioner was issued with a notice to show cause to which the Petitioner responded on 15/5/2023 denying the charges of sexual harassment levelled against him and was subsequently invited to a disciplinary hearing on 19/5/2023 in which the Petitioner was granted opportunity to defend himself and he raised several irregularities in the process having not been given sufficient notice, information and evidence on matters he was alleged to have done.
22. The Respondent therefore decided to re-issue a 2<sup>nd</sup> notice to show cause to the Petitioner and provided him with all the materials, information and evidence he had requested. The 2<sup>nd</sup> notice to show cause was dated 26/5/2023 to which the Petitioner responded on 27/5/2023 denying the charge. The Petitioner was invited to a 2<sup>nd</sup> disciplinary hearing on 9/6/2023 by a notice dated 5/6/2023.
23. That at the hearing, the charges were read to the Petitioner and evidence against him provided by the complainant read out to the Petitioner.
24. The Petitioner denied having sexually assaulted the complainant and other members of staff at Migori Branch. The Petitioner denied having sent the text messages to the complainants as alleged. Petitioner said he was a champion of a safe working environment and that he had been falsely framed by the complainants.
25. That the Respondents disciplinary panel having carefully considered the evidence by the complainant, the denial by the Petitioner and having noted his demeanour during the proceedings, were satisfied that the Petitioner was guilty of the alleged harassment and that Petitioner's allegation that he had been verbally threatened prior to the charges being brought against him was not truthful.
26. The Managing Director of the Respondent summarily dismissed the Petitioner by a letter dated 14/6/2023.
27. That the Petitioner appealed the decision vide a letter dated 15/6/2023, which appeal was considered on the same day and the Respondent dismissed the Petitioner by a letter dated 15/6/2023.
28. That the disciplinary process was conducted in a fair manner and the Respondent had a valid reason to summarily dismiss the Petitioner from employment.
29. That the Respondent did not violate any regulatory, statutory or constitutional rights of the Petitioner set out in the Petition. That the Petition lack merit and it be dismissed with costs.
30. The Petitioner filed further affidavit joining issue with the Respondent, and traversing all the allegations stated by the Respondent in his replying affidavit and put the Respondent to strict proof thereof.

### **Determination**

31. The Petitioner and Respondent filed written submissions which the court has carefully considered together with the evidence adduced by the Petitioner and the Respondent and the court has delineated the following issues for determination: -
  - a. Whether the Respondent violated any of the rights of the Petitioner set out in the Petition.
  - b. Whether the Petitioner is entitled to the reliefs sought in the Petition.
32. In answer to issue one above, the court is satisfied that there was a complaint of sexual harassment done against the Petitioner by a female staff member stationed at Migori Branch of the Respondent. That



the Petitioner was the Branch Manager and therefore, the immediate supervisor of the complainant at the time of the alleged misconduct was done.

33. That the Respondent conducted investigation following receipt of this particular complaint and the Respondent received information that though the Petitioner was a good and supportive Branch Manager he regularly sexually harassed his female subordinates. These allegations were levelled against the Petitioner in a notice to show cause by the Respondent to which notice the Petitioner responded by requesting for further and better particulars of the offence, including provision of all relevant materials and disclosure of the identity of the complainants.
34. The Petitioner was called to a disciplinary hearing in which he reiterated his demand for provision of all relevant information and disclosure of the complainant. The hearing was stopped and a new notice to show cause with better particulars in which provision of the relevant information was done. The Petitioner responded again to this 2<sup>nd</sup> notice to show cause and the Claimant was called to a 2<sup>nd</sup> disciplinary hearing which he attended.
35. The charges were read to the Petitioner and the evidence by the complainants was read out to him in their absence. The Petitioner defended himself denying the charges stating that there was no evidence that the text messages he had sent to the complainants had offended the recipients and that the complainants had objected to the contents of the text messages he had sent to them.
36. The Petitioner stated that in absence of any such evidence, the charge was false, not proved and was activated by malice as evidenced by earlier verbal threats made against him.
37. The Respondent found the Petitioner guilty of gross misconduct as charged and summarily dismissed him from employment.
38. The Petitioner relied on the case of Reed v Stedman (1999) KLR 289 for the holding that the words or conduct complained of must be unwelcome to the victim and it is for her or him to decide what is acceptable and offensive. That this is a subjective test and the victim must therefore personally testify at the hearing and the Petitioner be allowed to cross-examine the victim which did not happen in this case.
39. The Petitioner submitted that the complainant in this case did not make it clear what he or she found unacceptable or offensive to constitute sexual harassment.
40. The Petitioner further refers to the decision by Makan J. in E.D.K v KU [2014] KEELRC 479 (KLR in which the judge held: -

“I agree that in such a case it is the duty of the party who faces this form of harassment to make a report and give sufficient detail. Sexual harassment cannot be in rem.”

41. The Petitioner further relied on the decision by Stella Ruto J. in Manyane v Phoenix Aviation Limited (cause E1034 OF 2023) [2025] KEELRC 33 (KLR) (17 January 2025) where the Learned Judge held;

“In this case, the main elements of sexual harassment that needed to be proved against the Claimant were: that there were unwelcome requests for sexual favours, unwanted verbal, non-verbal or physical conduct of a sexual nature. Further, that there was a less favourable treatment or detriment that arose as a result of the rejection or submission to the unwanted conduct... (63) ...However, the allegations of sexual harassment still need to be proved and it is not sufficient for an employee to only allege that she was sexually harassed. In that case, the court underscored that the right to employment must be protected and should only be taken away for valid reasons consistent with sections 43 and 45(2) of the Employment Act.”



42. The Respondent on the other hand submitted that the standard of proof in employment matters is on a balance of probabilities and that by tendering a report containing the allegations by the victims without calling them to the disciplinary hearing, that constituted sufficient evidence to prove the case of misconduct against the Petitioner. The court was referred to the case of *Bett v Muranga University of Technology* (ELRC cause E841 of 2021) [2025] KEELRC 2131, for this proposition.
43. The Respondent submits that verified text communication from the Petitioner, corroboration vide witness statements obtained under whistle blower protection, the complaints which were consistent and credible accounts of harassment and the Petitioner's own shifting explanation was sufficient to discharge the burden of proof by the Respondent on a balance of probabilities. That the victim stated "office romance gives chills" a clear indication of her discomfort emanating from the textual messages from the Petitioner who was her immediate boss.
44. That the victim postponed a date requested by the Petitioner which implied a rejection of such advance and this refusal or rejection placed the complainant's employment at risk.
45. The Respondent emphasized that witness protection under the whistle blower policy did not make the written accounts by the victims and whistle blowers hearsay evidence.
46. This court relying on the test set out under the case of *Walter Ogel Anuro v Teachers Service Commission* [2013] eKLR finds that the Petitioner was presented with adequate evidence of sexual harassment perpetrated by him against subordinate staff under his supervision as the Branch Manager at Migori.
47. That the Petitioner was given a proper and fair opportunity to rebut the evidence contained in the two notices to show cause and at the two disciplinary hearing sessions held. The court finds that the Petitioner did not give sufficient evidence to rebut the credible evidence presented at the hearing but instead tried to justify and diminish his misconduct towards his subordinate staff.
48. The court finds therefore that the Respondent established on a balance of probability that the Petitioner had sexually harassed the particular complainant and others vide text messages followed by actual request for dates, which conduct constitute sexual harassment by a superior against a subordinate within the meaning given to the term in the Respondent's Sexual Harassment Policy. The defence advanced by the Petitioner is not credible, rings untrue and apologist.
49. Accordingly, the Respondent satisfied the requirement of section 41, 43 and 45 of the *Employment Act*, 2007 in proving that it had a valid reason to summarily dismiss the Petitioner and that the Respondent followed a fair procedure in summarily dismissing the Petitioner.
50. Accordingly, the petition lacks merit in that the Petitioner has not proved on a balance of probability that the Respondent violated his constitutional rights under Articles 27, 41, 47 and 50 of *the Constitution* of Kenya 2010.
51. The Petitioner did not also prove that any of the provisions of the *Employment Act*, 2007 and *Fair Administrative Action Act*, 2015 were violated by the Respondent.
52. The Petition is accordingly dismissed and no reliefs sought by the Petitioner are capable of grant.
53. The conduct by the Petitioner is gross and a stain on the conscience of all reasonable thinking supervisors at the work place. Accordingly, the Petitioner shall pay the costs of this petition.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL 2026**

**MATHEWS NDUMA**



**JUDGE**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 29<sup>TH</sup> DAY OF APRIL  
2026**

**Dr. Gakeri J.**

**JUDGE**

Appearances:

Ms. Wanjeri for Petitioner

Mr. Macharia for Respondent

Mr. Kemboi – Court Assistant

