



REPUBLIC OF KENYA



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**Cherono v Kenya Power & Lighting Co. Limited (Cause 284 of 2019)
[2025] KEELRC 351 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 351 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 284 OF 2019
DKN MARETE, J
JANUARY 29, 2025**

BETWEEN

IRENE CHERONO CLAIMANT

AND

THE KENYA POWER & LIGHTING CO. LIMITED RESPONDENT

JUDGMENT

- 1 This matter was instituted vide a Statement of Claim dated 26th April, 2019. It does not disclose any issue in dispute on its face.
- 2 The Respondent in a statement of Response dated 5th July, 2019 denies the claim and prays that the same be dismissed with costs.
- 3 The Claimant's case is that she was employed by the Respondent from 1st November, 2006 in the position of Accountant II (SSO6) in the Finance Division, Central office and earned a starting salary of Kshs. 3,181,058.95 per annum. This included a house allowance of Kshs.20,000.00 per month. Her job was upgraded to Accountant I with effect of 1st January, 2017.
- 4 The Claimant's further case is that her final salary of Kshs.220,352.81 as at 26th June, 2018 all this arising out of her diligent work and performance reviews over which she had been rated Good and very Good following performance appraisal as from 2008 to the period ending December, 2017. The Claimant states that it was an implied term of the contract and a requirement of the law that the Respondent was to maintain a conducive work environment free from any mistreatment and unwarranted harassment and interference with the Claimant's work at her workplace.
- 5 The Claimant's other case is that despite her dedication to work, she was on 28th June, 2018 terminated from employment without any justifiable cause or reason. Due process was not upheld in the purported termination from employment.



- 6 The Claimant further avers that from September 2008, she was subjected to multiple unexplained transfers, including one from the Central Office Costing Section to the Nairobi Region Electricity House Revenue Section, then to Nakuru's Management Accounting, Central Rift Sub-Region in November 2010, before being transferred again to the Central Office Budget Section on 31st May 2012. Again, on 1st September 2017, she was moved to the Financial Accounting Section, Central Office, Stima Plaza, where she worked until her termination.
- 7 Upon reporting to her new office in November 2017, the Chief Accountant Financial Accounting (CAFA), Mr. Stephen Kurgat, assigned her an additional duty of reviewing Projects & Development payments. She objected, arguing that this responsibility belonged to the Section Supervisor, one Mr. Kennedy Asimba, and that she would be unfairly evaluated on duties for which she had received no orientation or training. In November 2017, Njeri Mwaniki replaced Kennedy Asimba as Supervisor, and the Claimant asserts that these additional responsibilities were rightfully Mwaniki's. However, she was not trained on these duties, nor was any effort made to facilitate her smooth transition into them.
- 8 It is her case and further averment that her disagreement with Mr. Kurgat regarding these additional duties was wrongly categorized as a disciplinary issue, which ultimately led to her termination. In December 2017, Njeri Mwaniki proceeded on leave, making it impossible for her to receive guidance on the additional responsibilities. The Claimant herself proceeded on annual leave on 8th January 2018. Despite this, while on leave, she received multiple calls from the GM Secretary instructing her to return to sign performance targets, even though she had already signed them and handed them to her supervisor, Mr. Kurgat, who unreasonably refused to acknowledge them. On 21st March 2018, upon returning to work, she was served with an explanation letter dated 10th April 2018 concerning the disagreement over performance targets, to which she responded by a letter dated 12th April 2018. She maintains that it is not unusual for an employee to disagree with an appraiser regarding performance appraisals and that her supervisor's refusal to act on her duly signed performance target forms was malicious, discriminatory, and a deliberate effort to set her up for unfair termination.
- 9 The Claimant further states that as a result of these work-related frustrations, she suffered stress, persistent headaches, pulsatile tinnitus due to high blood pressure, and insomnia, leading her to seek medical attention from a cardiologist, who diagnosed her with high blood pressure. She was given a one-week sick off and duly informed the Respondent of her medical condition, which she attributes directly to a hostile work environment. Consequently, she requested a three-month unpaid leave from Dr. Kangure to allow her to recuperate and manage her blood pressure, which had been exacerbated by the work environment. In May and June 2018, she was scheduled for an In Vitro Fertilization (IVF) cycle at Mediheal Hospital due to infertility issues. She was also scheduled to attend a disciplinary hearing, which she could not attend due to the ongoing IVF hormonal injections. She communicated this to the Respondent and submitted supporting medical documentation.
- 10 The Claimant avers that despite this, she was rescheduled for another disciplinary hearing on 14th June 2018 while undergoing the egg retrieval process, suffering severe hormonal side effects. She emailed the participants explaining her inability to attend due to her medical condition, yet she received no response from the Respondent. She claims that the Respondent failed in its duty of care by ignoring her deteriorating medical condition, despite her long and dedicated service from 2006 to 2018. On 2nd July 2018, she was handed a termination of service letter without being awarded an opportunity to defend herself at the disciplinary hearing.
- 11 She denies the allegations that she threatened fellow employees at the Costing Office or was uncooperative. She had consistently received successful performance appraisals from 2008 to 2017, without any complaints from colleagues. She asserts that the allegations leading to her termination



were false and aimed at tarnishing her reputation. She states that the Respondent refused to consider her explanations before terminating her and that her termination was therefore unfair.

- 12 The Claimant denies owing the Respondent any money and contests the alleged deduction of Kshs. 28,539.40 from her terminal dues, arguing that the amount is unjustified. Any alleged overpayment should have been recovered from her working days, and she was not at fault. She had duly communicated her entitlement to sick leave, annual leave, and study leave to the Respondent in advance. The Claimant further asserts that the Respondent unfairly commenced a second disciplinary process over the same issue and scheduled a hearing on 14th June 2018 despite her medical situation. She claims this second disciplinary process was discriminatory, hostile, and unjust, occurring at a time when she was receiving intensive medical attention at the hospital. The Respondent failed to send any Welfare or Human Resource officers to inquire about her condition but instead proceeded with a rushed disciplinary hearing, culminating in her termination.
- 13 Her other case is that the 14th June 2018 disciplinary hearing was a mere formality designed to justify her predetermined termination. The decision to terminate her was overly severe, disproportionate to the alleged wrongdoing, and inequitable. She had sufficiently explained and justified the issues raised, but the Respondent failed to consider them fairly. She also disputes the claim that she refused to sign performance targets, asserting that she signed them and handed them to her supervisor, who deliberately ignored them. The allegations that she persistently threatened colleagues lack any supporting evidence, as no specific employees, dates, or details of alleged threats were ever disclosed to her.
- 14 The Claimant denies sending any abusive or demeaning messages to her supervisor, arguing that her messages were a result of workplace frustrations caused by her supervisor's deliberate efforts to frustrate her. The Respondent failed to investigate the dispute, and no evidence was presented of bad relations with her previous supervisors. She states that the Respondent acted on baseless rumours, ill will, and hearsay, leading to an unlawful and unfair termination. The Respondent further denied her access to disciplinary proceedings, minutes, and supporting documents, making it impossible for her to appeal the termination as provided in the Staff Manual.
- 15 Again, the Claimant avers that her termination was a cover-up for the unfair labour practices she endured and that it severely impacted her professional career. The Respondent failed in its statutory and contractual duty to protect her from a hostile work environment. The purported justification for her termination was pretextual and malicious. As a result, she has suffered financial and professional losses. The Respondent failed to adhere to legal disciplinary procedures and provided no valid reason for her dismissal.
- 16 She claims that at the time of her unfair termination, she was owed by the Respondent a balance of 20 leave days, leave allowance from 2009, performance bonus of 60% from 2016/2017, and 75% for 2018, this is as follows:
 - (a) Leave days balance - Kshs. 90,000
 - (b) Leave allowance 2009 - Kshs. 30,000
 - (c) 75% leave allowance 2018 - Kshs. 32,500
 - (d) 60% performance bonus from 2016/2017 - Kshs. 132,211She prays thus;
 - a. Compensation for loss of employment of 12 months' pay *220,352.81 – Kshs.2,644,233.72



- b. Damages for discrimination, harassment and unfair labour practices – Kshs.5,000,000/=.
- c. Untaken leave days and leave allowance for financial year 2009 and 75% of financial year 2018 and bonus for the year 2016/2017 – Kshs.284,711.00/=
- d. Cost of the suit.
- e. Interest on (a) to (d) above at court rates of 14% from the date of filing suit till payment in full.
- f. Any other and/or further relief that this court may deem fit and just to grant in the circumstances.

- 17 The Respondent's case is a denial of the claim.
- 18 In her statement of Response dated 5th July 2019, denying each and every allegation contained in the Claimant's Statement of Claim dated 26th April 2019, except where expressly admitted.
- 19 The Respondent admitted the descriptions of the parties. The Respondent further admitted that the Claimant was employed as an Accountant II in the Finance Division on 1st November 2006 and was later upgraded to Accountant I on 1st January 2017. It was further admitted that the Claimant was transferred on 25th September 2008 from the Central Office Costing Section to Nairobi Region, Electricity House – Revenue Section, and later on 15th November 2010 to Nakuru, Management Accounting, Central Rift Sub-Region, before being transferred to the Central Office, Budget Section, on 31st May 2012.
- 20 The Respondent's further case is that the Claimant had a history of disciplinary issues, including being issued with a show-cause letter on 27th July 2009 regarding an Internal Audit Report No. 15-2000/2009, which revealed that she had instructed cashiers to receipt a non-existent cheque. Her explanation was unsatisfactory, and she was issued with a caution. On 23rd January 2012, she was again issued with a show-cause letter for non-submission of income, assets, and liabilities. On 24th December 2013, she was issued another show-cause letter for absenteeism on multiple dates and for failing to prepare the monthly report for November 2013 within the agreed timelines, which resulted in a warning letter dated 13th April 2014 and a surcharge for the days not worked. Further, on 13th March 2017, she was issued with another show-cause letter for declining to perform her duties as assigned by her supervisor, reporting late on several occasions, and failing to meet her performance targets, leading to a warning letter dated 21st March 2017.
- 21 The Respondent's other case is that the Claimant's strained relationship with the company worsened when she refused to conclude and sign her performance targets despite multiple requests, consistently threatened fellow employees, sent abusive and demeaning SMS messages to her supervisor, and openly stated that all her previous supervisors had failed to control her, and her current supervisor would also fail. The Claimant was issued with a show-cause letter on 10th April 2018, to which she responded on 12th April 2018. A disciplinary hearing was scheduled for 29th May 2018 but was adjourned at the Claimant's request and rescheduled for 14th June 2018. The Claimant failed to attend without providing any communication or explanation.
- 22 The Respondent denies the Claimant's allegations that she was subjected to an unconducive work environment, stating that she was treated equally with other employees and afforded all due respect. The Respondent further stated that the Claimant was indisciplined, insubordinate, and had a history of disciplinary hearings, warnings, and surcharges affecting the years 2009, 2012, 2013, and 2017. The Respondent asserted that the Claimant's termination was lawful, conducted in accordance with due



process, and based on valid reasons. The Claimant was required to perform duties assigned to her, but she refused and defied her supervisors, particularly by declining to sign her performance targets, which amounted to gross insubordination.

- 23 The Respondent further stated that the Claimant had a history of abusive behaviour towards colleagues and supervisors, frequently sent threatening messages, and was generally uncooperative. The disciplinary hearing was postponed at her request, but she still failed to attend on 14th June 2018 without an explanation. The Respondent maintained that her termination was a necessary action to enforce discipline, ensure a conducive work environment, and safeguard other employees from unwarranted hostility and aggression perpetrated by the Claimant. Additionally, the Respondent denied the Claimant's allegations that she was unfairly denied leave, asserting that she owed the company Kshs. 28,539.40, being an outstanding salary advance and an excess on her staff medical loan.
- 24 The Respondent again relied on the Claimant's previous disciplinary record, citing specific instances where she was found culpable of misconduct, including the fraudulent crediting of cheques in 2009, failure to submit income, assets, and liabilities in 2012, absenteeism and failure to prepare reports in 2013, and refusal to perform duties as assigned in 2017. The Respondent stated that despite her disciplinary record, she had been given multiple opportunities to reform but had repeatedly failed. The Respondent denied all allegations of unfair treatment, discrimination, and wrongful termination, insisting that the Claimant was accorded a fair process, including a disciplinary hearing and an appeal hearing on 24th August 2018, where she failed to provide a satisfactory explanation for her conduct, leading to the upholding of her termination.
- 25 The Respondent in the penultimate denies all claims of unfair labour practices, stating that the Claimant's contract was validly terminated due to her repeated acts of insubordination, misconduct, and defiance. The Respondent denied that the Claimant was entitled to any of the reliefs sought and prayed that the suit be dismissed with costs.
- 26 The issues for determination therefore are;
1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Claimant is entitled to the relief sought.
 3. Who bears the costs of the claim.
- 27 The 1st issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant in her written submission dated 28th March, 2024 reiterates a case for unlawful termination of employment. She again filed her witness statement dated 26h April, 2019, in further reiteration of her case as set out and pleaded.
- 28 Her submissions is that the Respondent failed to comply with Section 41(1) of the *Employment Act*, 2007, which requires an employer to explain to an employee, in a language they understand, the reasons for termination and to allow them to have a representative present during the explanation. She also cited Section 45 of the *Employment Act*, 2007, which prohibits unfair termination and mandates employers to provide valid and fair reasons for dismissal while following due process. She contended that the Respondent failed to adhere to these provisions and unprocedurally terminated her employment. She referred to *Naima Khamis v Oxford University Press (E.A.) Ltd* [2017] eKLR, where the Court of Appeal held that termination is deemed unfair if the employer fails to give valid reasons or follow due process. She further relied on *Kamau v Tusker Mattresses Limited* (Cause 1217 of 2017) [2022] KEELRC 12788 (KLR), where the court found that conducting a disciplinary hearing after an employee had already been dismissed was a procedural impropriety.



- 29 Again, the Claimant argued that her numerous unexplained transfers from September 2008, November 2010, and May 2012 were discriminatory, as other employees were not subjected to such abrupt and unexplained relocations. She cited Section 5(3)(b) of the *Employment Act*, 2007, which prohibits discrimination in recruitment, training, promotion, terms of employment, and termination. She relied on *Barclays Bank of Kenya Ltd & Another v Gladys Muthoni & 20 Others* [2018] eKLR, where the Court of Appeal upheld that discrimination entails treating individuals differently without justification. She contended that her transfers and dismissal amounted to unfair labour practices in violation of Article 41 of *the Constitution* of Kenya, 2010. She urged the court to find that the Respondent had not only discriminated against her but also subjected her to unfair labour practices.
- 30 Additionally, the Claimant submitted that the Respondent engaged in discrimination, unfair labour practices, and harassment, repeatedly transferring her without explanation, denying her the right to fair labour practices under Article 41 of *the Constitution* of Kenya, 2010, and violating her right to a fair hearing under Article 50 of *the Constitution* and Section 41 of the *Employment Act*, 2007. She urged the court to award damages of Kshs. 5,000,000 for these violations. She further stated that at the time of her termination, she was owed a balance of 20 leave days, leave allowance from 2009, and performance bonuses amounting to 60% for 2016/2017 and 75% for 2018. She relied on her leave balance records contained in pages 99 to 102 of her Bundle of Documents. She concluded by beseeching the court to exercise its discretion and grant the reliefs sought in her Statement of Claim, together with interest at the court rate from the date of filing until full payment, and to award costs against the Respondent.
- 31 In the penultimate, the Claimant submitted that she was entitled to the reliefs sought in her Statement of Claim dated 26th April 2019. She prayed for compensation for loss of employment amounting to Kshs. 2,644,233.72, damages for discrimination, harassment, and unfair labour practices totaling Kshs. 5,000,000, payment of Kshs. 284,711 for untaken leave days, leave allowance for the financial year 2009, and performance bonuses for 2016/2017 and 75% of 2018, as well as costs of the suit, interest at the court rate of 14% from the date of filing until payment in full, and any further relief the court deemed just. She relied on Section 49(1)(c) of the *Employment Act*, 2007, which provides that where termination or summary dismissal is found to be unjustified, a labour officer may recommend compensation of up to twelve months' salary based on the employee's gross pay at the time of dismissal. She urged the court to consider the Respondent's unjust and unfair treatment, arguing that despite being aware of her deteriorating health due to high blood pressure and ongoing In Vitro Fertilization (IVF) treatment, the Respondent failed to provide welfare or human resource support but instead proceeded with a rushed disciplinary process in her absence, leading to her termination.
- 32 The Respondent in her written submission dated 15th May, 2024 also submitted in reiteration of a case of lawful termination of employment. She also filed a witness statement dated 9th July, 2019 signed by Elijah Kosgey, the Human Resource Manager who acknowledge that he was familiar with the facts of the case and was also competent to make the statement on behalf of the Respondent. This was followed by a supplementary witness statement dated 22nd February, 2023 signed by Kennedy Asimba on the same terms. These two continued a recitation of the Respondent's case.
- 33 The Respondent written submission highlighted the Claimant had along history of disciplinary cases as elicited in her case. This is as follows; The Respondent submitted that when the Claimant was transferred to the Financial Accounting Section, Central Office, she initially worked under Mr. Kennedy Asimba as her immediate supervisor. After her orientation to the new department, she was expected to sign an agreed list of performance targets in line with the Respondent's internal policies. In October 2017, after extensive discussions, the Claimant and her supervisor agreed on her performance targets for the period between 1st July 2017 and 30th June 2018. The targets were based on the Claimant's expertise and technical abilities as per her rank of Accountant I, and she was capable



of meeting them. However, in November 2017, her immediate supervisor, Mr. Kennedy Asimba, was replaced with Mrs. Njeri Mwaniki. Following this transition, the Claimant declined to perform her duties as per the agreed targets and arbitrarily revised them, significantly altering target No. 2 on General Ledger Reconciliations and removing target No. 6 on Verifying Project & Development. The Respondent contended that these changes were intended to drastically reduce her workload to a point where she would have little or no work to do, which was a calculated move to avoid her responsibilities under the performance contract. On 12th February 2018, the Claimant presented her altered list of targets and demanded that it be adopted. However, her new supervisor, Mrs. Njeri Mwaniki, refused to accept the revised targets and insisted that she reinstate and submit the original list for appraisal. The Claimant, however, refused to comply despite repeated requests.

- 34 The Respondent further stated that once the Claimant realized that her supervisor would not accept the altered targets, she became rude and used abusive and degrading language towards her supervisor and colleagues, both in person and through text messages. Additionally, she refused to perform tasks allocated to her by her supervisor, and this insubordination persisted until her termination. The Claimant also became uncooperative at her workstation, threatened her co-workers, and undermined her supervisor's authority, boasting that she was ungovernable and beyond control. As a result of the Claimant's indiscipline, insubordination, and disruptive behaviour, her supervisor lodged a formal complaint with the department head and the Human Resource Manager. Acting on the complaint, the Respondent initiated disciplinary proceedings against her. The Claimant was issued with a notice to show cause letter dated 10th April 2018, requiring her to explain her conduct to the Acting General Manager, Finance. Through a letter dated 12th April 2018, the Claimant responded to the show cause letter, but her explanations were deemed unsatisfactory, leading to the scheduling of a disciplinary hearing. The hearing was initially set for 8th May 2018, but the Claimant sought an adjournment, which was granted, and the hearing was rescheduled for 30th May 2018. On the eve of the hearing, the Claimant, through a letter dated 29th May 2018, requested another adjournment until mid-June 2018, citing that she was undergoing an IVF treatment. The disciplinary panel granted the request, postponing the hearing to 14th June 2018 to allow her time to complete her treatment, recover, and prepare for the hearing. However, the Claimant failed to appear before the disciplinary panel on 14th June 2018 and did not provide any notice or explanation for her absence. Due to her failure to attend the hearing and considering the nature of the allegations against her, the Respondent had no choice but to terminate her employment. The Claimant's contract of service was officially terminated through a letter dated 28th June 2018. Following her termination, the Claimant, through a letter dated 4th July 2018, requested to be heard on appeal to challenge the decision. The Respondent granted her request and scheduled an appeal hearing for 24th August 2018. However, during the hearing, the Claimant failed to provide a satisfactory explanation for her conduct, leading the appeal committee to uphold the disciplinary panel's decision. Following this, the Claimant proceeded to file the present suit against the Respondent. The Respondent submits that after the termination of her employment, the Claimant instituted this suit through a Statement of Claim dated 26th April 2019. In response, the Respondent filed its Statement of Response, witness statements, and list and bundle of documents, all dated 5th July 2019. The Claimant then filed her Reply to the Statement of Response on 17th July 2019. On 22nd February 2023, the Respondent filed two supplementary witness statements by Naomi Nasimiyu Mureithi and Kennedy Asimba. The matter came up for hearing on 8th February 2024, where the court directed that the parties proceed by way of written submissions in accordance with Section 20 of the Employment and [Labour Relations Act](#) and Rule 25 of the Employment and Labour Relations Court Rules. The Respondent submits that three key issues were up for determination: whether the Claimant's termination was unfair and/or unlawful, whether the Claimant had made a case for discrimination, and whether she was entitled to the reliefs sought. It was the Respondent's submission that the termination of the Claimant's employment was both fair



and lawful. As per Section 45 of the *Employment Act*, termination of an employee's contract is deemed unfair if the employer fails to prove that it was based on valid and fair reasons and that fair procedure was followed. The Respondent asserted that the Claimant was terminated for valid reasons and that due process was followed. The reasons for the Claimant's termination were outlined in the show cause letter dated 10th April 2018 and the termination letter dated 28th June 2018. The termination was based on the Claimant's refusal to conclude and sign performance targets despite several reminders, her continuous threats towards fellow staff in the Costing Office, her uncooperative behaviour, and her sending of abusive SMS messages to her supervisors that were demeaning and threatening. The Respondent emphasized that the Claimant blatantly refused to perform her duties as per the list of targets agreed upon on 24th November 2017, and this refusal was triggered by the replacement of her previous supervisor, Mr. Kennedy Asimba, with Mrs. Njeri Mwaniki in November 2017. The Respondent further submitted that due procedure was followed in the termination of the Claimant's employment, in compliance with the *Employment Act*. It was submitted that the

- 35 Claimant was issued with a notice of the grounds of misconduct and was accorded a fair hearing as required under Section 41 of the *Employment Act*. The Claimant was served with a notice to show cause letter dated 10th April 2018, which explicitly outlined the allegations against her and invited her to respond to the Acting General Manager, Finance. The Claimant acknowledged receipt of the notice and submitted a response through her letter dated 12th April 2018. The Respondent contended that this demonstrated that the Claimant was duly informed of the reasons for her potential termination in compliance with Section 41 of the *Employment Act*. The Respondent further submits that a fair hearing was conducted before her termination. The Claimant's response to the show cause letter was found unsatisfactory, and she was duly informed. Consequently, she was notified that her disciplinary hearing was scheduled for 8th May 2018 through personal service of the notice and an email dated 2nd May 2018, which she acknowledged. However, the Claimant sought an adjournment of the hearing, which was granted, and the hearing was rescheduled for 30th May 2018. On the eve of this hearing, the Claimant, through a letter dated 29th May 2018, requested a further postponement, citing that she was undergoing IVF treatment. The Respondent submitted that the disciplinary panel granted this request, and the hearing was deferred to 14th June 2018 to allow the Claimant time to complete her treatment, recover, and prepare. Despite this indulgence, the Claimant failed to appear before the disciplinary panel on 14th June 2018 and did not provide prior notice or any explanation for her non-attendance. The Respondent submitted that, given the gravity of the complaints against the Claimant and her refusal or failure to attend the disciplinary hearing, it had no alternative but to terminate her employment. The Claimant was officially dismissed through a termination letter dated 28th June 2018. The Respondent further submitted that after her termination, the Claimant, through a letter dated 4th July 2018, requested to be heard on appeal to challenge the decision. The Respondent granted her request and scheduled an appeal hearing for 24th August 2018. The appeal hearing proceeded as scheduled, but the Claimant failed to provide a satisfactory explanation for her conduct. The appeal committee upheld the disciplinary panel's decision to terminate her employment, as communicated in a letter dated 19th February 2019.
- 36 The Respondent submitted that these facts demonstrated that the proper procedure was followed, and the Claimant was accorded a fair hearing both before the disciplinary and appellate panels, as required under Section 41 of the *Employment Act*. The Respondent rejected the Claimant's allegation that she was denied a fair hearing due to her IVF treatment, asserting that she only raised this issue after the appeal panel confirmed her termination. It was submitted that at no point during her employment, the disciplinary proceedings, or the appeal process did the Claimant mention that she was undergoing IVF treatment. The Respondent contended that when the Claimant was served with the show cause letter dated 10th April 2018, she reached out to the Respondent's Human



Resource Manager through various emails between 19th and 22nd April 2018, as well as a letter dated 23rd April 2018, seeking three months' unpaid leave for a health break, alleging that she was suffering from high blood pressure. The Respondent, through a letter dated 30th April 2018, indicated that it was not opposed to granting her three months' unpaid leave, subject to the production of a medical report from a company-appointed doctor justifying the request. However, the Claimant never submitted any medical report from such a doctor. The Respondent submitted that at no point did the Claimant furnish it with medical records indicating that she was undergoing any form of treatment, let alone IVF treatment. The Respondent contended that, since the Claimant deliberately failed to provide medical documentation or consult a company-appointed doctor, she could not later claim that she was denied an opportunity to be heard on medical grounds. The Respondent further submitted that it had already shown leniency by granting the Claimant's initial request to postpone the disciplinary hearing from 30th May 2018 to 14th June 2018 on medical grounds. It was noted that the Claimant did not seek any further adjournments beyond this, thus demonstrating that she was given a fair hearing. The Respondent urged the court to find that due process was followed in terminating the Claimant's employment. The Respondent further submitted that the Claimant had failed to make out a case for discrimination. The Claimant alleged that her transfers by the Respondent to various stations on 25th September 2008, 15th November 2010 and 31st May 2012 amounted to discrimination. The Respondent counters by stating that this allegation was baseless and frivolous, as the transfers were part of routine operational measures intended to improve efficiency and service delivery. The Respondent submitted that it had the right to transfer its employees, provided it gave sufficient reasons and reasonable notice. Reliance was placed on *Moses Kirui Toroitich v County Secretary, County Government of Baringo & 2 Others* [2021] eKLR, where the court held that the transfer or deployment of staff is a management prerogative, which the court would only interfere with in rare and exceptional circumstances. The Respondent further relied on *Henry Ochido v NGO Coordination Board* [2015] eKLR, where the court held that the transfer of an employee is within the employer's discretion, subject to the provision of reasonable notice. The Respondent submitted that at all material times, the Claimant was given reasons for her transfers and was issued with reasonable notice. Furthermore, it was noted that the Claimant had never raised any grievances regarding these transfers until she filed the present suit. Given that she had never complained about her transfers during her employment, the Respondent submitted that she was estopped from now claiming otherwise. The Respondent urged the court to find that the Claimant had not established a case for discrimination

- 37 A look at the respective cases of the parties tilts this one in favour of the Respondent. Her case paints a picture of a miscreant and belligerent employee who would not heed to good counsel even when she was out rightly wrong in her conduct at the work place.
- 38 The Respondent in the witness statement and bundle of documents brings out a case of fair termination of the employment of the Claimant by the Respondent which was compliant with sections 41, 43 and 45 of the *Employment Act*, 2007. Due process of law involving substantive and procedural fairness was applied in the termination of employment.
- 39 The Claimant was served with a show cause letter to which she responded. She was also invited to a disciplinary hearing which was in the first place postponed due to the explained unavailability of the Claimant. The second schedule of the meeting was held as the claimant had not offered any reason for non-attendance.
- 40 I agree with the claimant's case and submission that the claimant in toto failed to discharge her burden of proof as required of section 107 of the *Evidence Act* and also section 47(5) of the *Employment Act*, 2007. She was not able to establish a case of unlawful termination of employment, or at all. I therefore



find a case of lawful termination of employment and hold as such. And this answers the 1st issue for determination.

41 The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is not. Having lost on a case of unlawful termination of employment, she becomes disentitled to the relief sought.

42 I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 29TH DAY OF JANUARY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Miss Atieno instructed by Koceyo & Company Advocates for the Claimant.

Mr Dachi instructed by Nyaanga & Mugisha Advocates for the Respondent.

