



**Stubbs v Fourth Generation Capital Ltd (Cause E272 of 2023)  
[2025] KEELRC 1123 (KLR) (9 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1123 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E272 OF 2023**

**S RADIDO, J  
APRIL 9, 2025**

**BETWEEN**

**ALEXANDER JOHN FRANK STUBBS ..... CLAIMANT**

**AND**

**FOURTH GENERATION CAPITAL LTD ..... RESPONDENT**

**JUDGMENT**

1. Alexander John Frank Stubbs (the Claimant) was engaged as a Consultant by Fourth Generation Capital Ltd (the Respondent) on 2 March 2022.
2. On 1 September 2022, the Respondent employed the Claimant as Head of Product-Kuza. The relationship did not last long, for on 3 November 2022, the Respondent notified the Claimant of the termination of the employment contract.
3. The Claimant sued, alleging unfair termination of employment and breach of contract.
4. The Respondent filed a Response on 2 June 2023, and this prompted the Claimant to file a Reply to Response on 24 October 2023.
5. The hearing commenced on 14 October 2024, when the Claimant testified and closed his case. The Respondent's case was then fixed for 5 November 2024.
6. When the Cause was called out on 5 November 2024, the Claimant requested an adjournment because the advocate handling the brief was bereaved. The Court granted the adjournment and directed that the Respondent's case be taken on 29 January 2025.
7. However, on 29 January 2025, an advocate holding brief for Mr Kimathi for the Respondent applied for an adjournment, and the reason given was that the Respondent's witness had a prior engagement and the Claimant had been informed.



8. The Claimant acknowledged receipt of a letter from the Respondent on 16 January 2025 indicating that it would be requesting an adjournment. The Claimant opposed the application for adjournment and stated that the witness could testify virtually from wherever she was.
9. At this juncture, the Respondent's advocate indicated that the witness was attending to a private matter.
10. The Court declined to grant the adjournment because the Respondent's advocate had not made full disclosure of why the witness could not attend Court. The Court set the hearing for 1115 hours.
11. When the Court called out the Cause after the call over, the advocate on record renewed the application for adjournment but stated that he had no instructions to reveal where the witness was, save to state that she was in an extremely private engagement.
12. The Court declined to reconsider its Ruling declining to grant an adjournment, and the Respondent sought leave to appeal against the Rulings declining adjournment and to reconsider the review application thereof. The Court granted the Respondent leave to appeal, and ordered the Respondent's case closed.
13. The Claimant filed his submissions on 12 February 2025.
14. The Respondent did not file its submissions by the agreed timeline of 26 February 2025. However, on 7 April 2025, the Court granted the Respondent leave to file its submissions and it filed the submissions.
15. The Claimant set out the Issues for adjudication as:
  - i. Whether the Claimant's termination was unfair?
  - ii. Whether the Claimant has proven his case?
  - iii. Whether the Claimant is deserving of the reliefs sought?
  - iv. Cost of the suit.
16. The Respondent set out the Issues for the Court's determination as:
  - i. Whether the Claimant's Statement of Claim dated 28<sup>th</sup> March 2023 is unchallenged?
  - ii. Whether the Claimant gave contradictory evidence during his testimony?
  - iii. Whether the Respondent followed due process before terminating the Claimant's employment?
17. The Court has considered the pleadings, evidence, and submissions.

#### **Whether Claimant's case was challenged?**

18. The Respondent did not lead evidence. Pleadings are not evidence and the facts stated therein must be tested and proved through oral testimony and production of evidence in the form of documents if available.
19. The Respondent cross-examined the Claimant with a view to discredit his evidence and or demonstrating that it should not be given any evidential weight and therefore, it cannot be said that the Claimant's case was one of formal proof. Neither can it be surmised that the Claimant's case was not challenged.



## Unfair termination of employment

### Procedural fairness

20. On 28 October 2023, the Respondent emailed the Claimant, raising certain concerns about how he had handled two clients, Harleys and EABL. The email invited the Claimant to attend a disciplinary hearing on 31 October 2023.
21. The Claimant attended the hearing and made representations, and the hearing was adjourned to 2 November 2023. The Claimant was present. The Disciplinary Committee resolved to terminate the contract, and a termination letter was issued on 3 November 2023.
22. The Claimant challenged the disciplinary process on the grounds that he was not given a show cause notice, was not supplied with complaints from the two partner clients, Harleys and EABL, and that the Respondent declined to allow his employee of choice to accompany him to the hearing.
23. In its submissions, the Respondent urged that the Claimant had failed to disclose a material fact, that is, that he attended a second disciplinary hearing on 2 November 2023.
24. It is correct that the Claimant did not make a reference in his pleadings and written witness statement to the second disciplinary hearing held on 2 November 2023.
25. The Court is, however, of the view that failure to make the disclosure would not be the only decisive element of whether there was procedural fairness or not.
26. The Court must examine all the surrounding circumstances leading to the termination of employment.
27. Sections 35(1) and 41 of the *Employment Act*, 2007, set the pace in procedural fairness in cases where an employer wants to bring the relationship to an end.
28. The provisions require the employer to inform the employee in writing of contemplated disciplinary action and the allegations and allow the employee an opportunity to make representations. If the employee is a member of a trade union, the trade union should be allowed to participate in the process, and if not, the employee should be informed of the right to be accompanied to a hearing, if it is an oral hearing.
29. The Respondent's Chief Operating Officer sent an email to the Claimant on 28 October 2023. At the time, the Claimant was on leave in the United Kingdom. The Respondent intimated to the Claimant that it was considering disciplinary action.
30. The email informed the Claimant that complaints had been received from two partners, Harleys and EABL:

Reference is made to the emails received from Harley's and EABL this week, copies of which you can have sight of upon your return to Nairobi.
31. The email from the Chief Operating Officer advised the Claimant that a hearing would be held on 31 October 2023 and that he could attend with a colleague.
32. At the time he was summoned for the disciplinary hearing, the Claimant was out of the country on leave, and he was barely given 3 days to plan to travel back and prepare for the hearing. The Respondent informed him that he would access the complaint emails upon return to Kenya.



33. Perhaps the Claimant was privy to the complaints from the two partners (a copy of the email from EABL was not produced in Court), but fair process demanded that the Respondent set out clearly the allegations it had against the Claimant and give him sufficient time and facilities to defend himself.
34. The Claimant further asserted that the Respondent declined to allow an employee of his choice to participate in the disciplinary hearing.
35. The record of the disciplinary process placed before the Court shows that the Respondent informed the Claimant of the right to be accompanied during the hearing. The Claimant's employee of choice was the Respondent's General Counsel, who doubled up as the Secretary of the Disciplinary Committee.
36. The Respondent declined to allow the employee to be part of the Claimant's defence because of an apparent conflict of interest and the role she was expected to play in the hearing.
37. The minutes of the disciplinary hearing indicate that an employee called Harriet Cara accompanied the Claimant, and the Claimant did not assert that Cara was not chosen by him.
38. The Court finds that the process leading to the termination of the Claimant's employment was tainted on account of failure to allow him adequate time and facilities to defend himself.

#### **Substantive fairness**

39. Sections 43 and 45 of the *Employment Act* demand that an employer prove the validity and fairness of the reasons for terminating an employment contract.
40. The Respondent failed to lead evidence to discharge the burden placed on it by the above provisions of the law, and the Court concludes that the termination was not for valid or fair reasons.
41. It is also noteworthy that the Claimant was on leave when the emails, it is alleged, he failed to respond to were sent.

#### **Pay in lieu of notice.**

42. The Claimant's contract provided for 3-months' notice or pay in lieu of notice. With the findings above, the Court will allow the head of claim for 3 -months' pay in lieu of notice.

#### **Compensation**

43. The Claimant served the Respondent for about a year, and the Court has allowed the claim for pay in lieu of notice.
44. In consideration of the length of service, the Court is of the view that the equivalent of 1-month gross salary as compensation would be appropriate (gross monthly salary was Kshs 700,000/-).

#### **Conclusion and Orders**

45. The Court finds and declares that the termination of the Claimant's employment was unfair and he is awarded:
  - i. Pay in lieu of notice Kshs 2,100,000/-
  - ii. (ii) Compensation Kshs 700,000/-Total Kshs 2,800,000/-



46. The award to attract interest at court rates from the date of judgment.

47. The Claimant to have costs

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAKURU ON THIS 9<sup>TH</sup> DAY OF APRIL 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Murage Juma & Co. Advocates

For Respondent Andrew & Steve Advocates

Court Assistant Wangu

