



**Kenya Union of Domestic Hotels Educational Institutions & Hospital Workers (KUDHEIHA) v Board of Management (BOM) Kalulini Boys Secondary School (Cause E788 of 2023) [2025] KEELRC 1920 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1920 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E788 OF 2023**

**SC RUTTO, J**

**JUNE 27, 2025**

**BETWEEN**

**KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTIONS & HOSPITAL WORKERS (KUDHEIHA) ..... CLAIMANT**

**AND**

**BOARD OF MANAGEMENT (BOM) KALULINI BOYS SECONDARY SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant Union instituted the suit herein on behalf of the grievant, Mr. Raphael Mutua Mumo, who it avers has been its member since 2012.
2. The Claimant avers that the grievant was employed by the Respondent on 11<sup>th</sup> February 1991 as a UT “A” level and that his duties entailed teaching. On 23<sup>rd</sup> October 1991, the grievant was appointed as a teacher under the terms of the Agreement between the Claimant and the Ministry of Education and on 30<sup>th</sup> October 2023, he was promoted to the position of bursar. The Claimant has attributed this promotion to the grievant’s hard work and exemplary performance of duties, having attended training lessons and acquired a Certified Public Accountant 1 Certificate.
3. The Claimant avers that the grievant rendered 31 years of service to the Respondent with a very clean record, as he never received any warning letter from the management in spite of having worked under different Principals and Boards of Management.
4. According to the Claimant, the grievant’s predicaments started when a new Principal, Mr. Muthui Michael, was posted to the school on 14<sup>th</sup> January 2021.
5. The Claimant avers that when the school bus was due for the annual inspection by the NTSA in October 2021, the Principal instructed the grievant to send some money through Mpesa to an official



- at the NTSA so as to give the school a certificate for inspection. The grievant declined to do so since that was not the usual procedure.
6. The grievant reported the matter to the Board of Management (BOM) and the Executive Board, who ruled that the inspection should be done as per the regulations and requirements of the NTSA.
  7. The Claimant further avers that when the Principal saw that the grievant had failed to cooperate with him by taking the shortcut, he was not happy and, since then developed a negative attitude towards the grievant.
  8. The Claimant further states that on 1<sup>st</sup> February 2022, the grievant was hijacked by armed robbers at gunpoint while he was about to arrive at the school from KCB Bank, Kibwezi. The robbers stole from the grievant money in cash amounting to Kshs 385,000/= and he was dumped in Mbui Nzau forest. He reported the incident to the police and recorded a statement.
  9. That on 4<sup>th</sup> February 2022, the grievant was compelled to sign an agreement to repay the money stolen from him in monthly installments of Kshs 77,000/= when the case was under investigation. He did not manage to repay the money at the time as he had two children in school and his mother was ailing.
  10. The Claimant further avers that on 27<sup>th</sup> July 2022, the grievant received a show cause letter on several allegations of duty performance, which he responded to, although not comprehensively, due to the short notice given.
  11. It is evident from the record that in the ensuing disciplinary proceedings, the grievant was summarily dismissed from employment. According to the Claimant, the decision to dismiss the grievant was unlawful, unfair, inhumane and against the principles of natural justice as he had worked for 31 years with dedication, honesty and diligence with a clean record.
  12. In light of the foregoing, the Claim against the Respondent is for the sum of Kshs 1,918,640.00 being notice pay, service gratuity, compensation for unlawful dismissal and reimbursement of Kshs 385,000.00, the sum the grievant was compelled to repay after the robbery.
  13. The Respondent opposed the Memorandum of Claim through a Statement of Response dated 16<sup>th</sup> November 2023.
  14. The Respondent avers that as the school bursar, the grievant's job description/duties/responsibilities were as outlined in the handbook for Schools and Colleges Accounting Instruction Manual.
  15. The Respondent further avers that during the taking over of the school by Mr. Michael Muthui on 14<sup>th</sup> January 2021, the Principal requested the grievant to provide the school's trial balance for the month of December 2020. When the grievant failed to honour the request, the Principal wrote to him a letter dated 21<sup>st</sup> January, 2021, requesting for the said trial balance. The grievant still failed to submit the said documents as requested in the said letter.
  16. The Respondent further states that by a letter dated 18<sup>th</sup> April, 2021, the Principal requested the grievant to prepare the trial balance for March 2021. The grievant deliberately prepared an incomplete trial balance for March 2021 without bank reconciliation columns.
  17. As a result of the incomplete trial balance, the principal issued a Show Cause letter to the grievant dated 28<sup>th</sup> April, 2021. The grievant responded to the Show Cause letter through his response dated 4<sup>th</sup> May, 2021 and apologized for the inconvenience caused in preparing the incomplete trial balance.



18. The Respondent further contends that the grievant had a history of not updating school books of accounts, not preparing payment vouchers, trial balances and cashbooks. As such, he was issued with a warning letter dated 11<sup>th</sup> June, 2007.
19. The Respondent further states that the grievant frustrated the school in getting the school bus inspected by the NTSA as he had opened the school bus NTSA account using his personal phone number. After many verbal requests to no avail, the Principal issued him a letter dated 21<sup>st</sup> October, 2021, upon which he requested the grievant to produce the school bus NTSA TIMS Account Password. To date, the grievant has never provided the NTSA TIMS Account password.
20. The Respondent further avers that although the grievant alleged that on 1<sup>st</sup> February, 2022 he was attacked by armed robbers upon which he lost school money that he had gone to withdraw from the bank and that he reported the incident at Kibwezi Police Station, he never furnished the school with any OB Number or a statement he made to the police.
21. The Respondent denies forcing the grievant to sign an agreement to repay the stolen cash at all.
22. According to the Respondent, the grievant on his own volition wrote to the BOM explaining the circumstances in which he lost the school cash through a letter dated 3<sup>rd</sup> February, 2022 and gave an undertaking to repay the stolen cash and on even date, executed a repayment agreement without coercion or duress.
23. It is the Respondent's contention that the grievant is estopped from alleging he was forced to enter into a repayment agreement after he has repaid the stolen cash.
24. That the grievant requested for more time to repay the stolen cash through his letter dated 27<sup>th</sup> June, 2022, and was informed that his request had been referred to the BOM executive committee through letter dated 29<sup>th</sup> July, 2022 and on 1<sup>st</sup> August, 2022 on his own volition, he repaid the entire cash that was stolen.
25. It is the Respondent's further assertion that the grievant partially issued official school fees receipts to students, making it impossible for sponsors and parents to account for their school fees payments.
26. The Respondent further avers that on 10<sup>th</sup> July 2022, the new BOM Chairman, as part of orientation, wrote to the Principal a letter requesting for final audited accounts, trial balances, commitment register, updated list of creditors, fee balances and school budget.
27. On 15<sup>th</sup> July 2022, the Principal responded, citing that the requested documents were not available because the school bursar had not prepared them.
28. The grievant was issued with a show cause letter dated 27<sup>th</sup> July 2022. The letter enumerated clear charges and the grievant was given an opportunity to respond, but failed to respond to the show cause letter.
29. That on 29<sup>th</sup> July, 2022 the Full BOM assigned the BOM Finance Committee to summon the grievant to find out why he was not performing his duties as required, since the school was experiencing financial difficulties.
30. When the grievant appeared before the Finance Committee on 1<sup>st</sup> August, 2022, he did not present any copies of the requested documents but instead made general statements without producing evidence to prove his general comments.
31. The Finance Committee therefore resolved to send the grievant on compulsory leave of one month at half pay with effect from 8<sup>th</sup> August, 2022.



32. The Respondent further avers that the grievant responded to the show cause letter dated 27<sup>th</sup> July, 2022 and suspension letter dated 4<sup>th</sup> August, 2022 through his response dated 23<sup>rd</sup> August, 2022.
33. The grievant was invited to a disciplinary hearing on 9<sup>th</sup> September 2022 and consequently, the BOM made a decision to summarily dismiss him for gross misconduct.
34. According to the Respondent, the dismissal was procedurally fair and for valid reasons. As such, the Respondent has asked the Court to dismiss the suit herein with costs.
35. The matter proceeded for hearing on 3<sup>rd</sup> February 2025 and 11<sup>th</sup> March 2025, during which both sides called oral evidence.

### **Claimant's Case**

36. Mr. Raphael Mutua Mumo, the grievant herein, testified as CW1. Mr. Mumo adopted his witness statement as well as the list and bundle of documents filed by the Claimant on his behalf to constitute his evidence in chief.
37. It was CW1's evidence that on 4<sup>th</sup> August 2022, he was suspended from employment on seven (7) allegations, which were more than the three (3) allegations that were levelled against him in the show Cause letter.
38. On 23<sup>rd</sup> August, 2022, he comprehensively replied to the allegations made on the performance of his duties.
39. According to CW1, the allegations levelled against him in the suspension letter were merely fabricated to dispense with his services as he clearly explained himself in his letters dated 27<sup>th</sup> July, 2022 and 23<sup>rd</sup> August, 2022.
40. CW1 further averred that he informed the Respondent that the 2022/2023 school budget was not complete because of the format change as per the (IPSAS) International Public Sector Accounting Standards which require the previous year's income and expenditure to be incorporated in the budget for comparison purposes.
41. He went ahead to point out that the income and expenditure had to be extracted from the 2022 June trial balance, which was not ready. He informed the Respondent that the budget would be available by 29<sup>th</sup> July, 2022 and that the monthly trial balance for May, 2022 was ready except for the boarding and operations Accounts but the Principal ignored that.
42. He pointed out that all the trial balances up to 2022 July would be prepared by 15<sup>th</sup> August, 2022, but that was not taken into consideration.
43. CW1 further testified that he clearly informed the Respondent that he had worked hard to his level best to manage the school accounts whose volume should have required even three (3) persons as per the directions of the Ministry of Education and circular ref: MOE HQS/3/13/3 dated 19<sup>th</sup> October, 2017 but that had fallen on deaf ears.
44. That he was on compassionate leave from 27<sup>th</sup> June, 2022 to 8<sup>th</sup> July, 2022 and resumed duties on 12<sup>th</sup> July, 2022 during which period the office was not manned, causing the backlog but the Respondent ignored that.
45. He further stated that he gave the BOM a solution of considering automating the fees register for efficiency and real-time information to the parents but the Respondent ignored the same.



46. According to CW1, he was very remorseful as he assured the Respondent to work the extra mile to make sure that all the records were updated but the same was not considered.
47. CW1 further stated that on 23<sup>rd</sup> August, 2022, he defended himself on all the levelled allegations made by the Respondent on the show cause letter dated 27<sup>th</sup> July, 2022 and on the suspension letter dated 4<sup>th</sup> August, 2022, as he comprehensively replied to all the allegations.
48. He was summoned to appear before the Board of Management on 1<sup>st</sup> August, 2022, but he was not accompanied by any union official to defend himself at the disciplinary meeting.
49. On 1<sup>st</sup> September, 2022, after suspension, he was invited to appear before the BOM for the disciplinary meeting on 9<sup>th</sup> September, 2022.
50. On 9<sup>th</sup> September, 2022, he was accompanied by the Union Representatives but the Union officials were chased out as the BOM Chairman told them that they were not needed in the Board meeting as the BOM wanted to deal with their employee alone.
51. CW1 further avers that on 22<sup>nd</sup> September, 2022, he was unlawfully dismissed from employment on the fabricated allegations levelled in the suspension letter of 4<sup>th</sup> August, 2022.
52. On 11<sup>th</sup> October, 2022, he appealed against the decision and the Respondent invited him to a Board meeting. On 14<sup>th</sup> October, 2022, the Respondent informed him that he did not submit any new evidence against the decision of summary dismissal.
53. CW1 contended that in spite of the case being of a criminal nature and the investigation being incomplete, under the influence of the Principal and through threats of jail, intimidation, and coercion, he was on 1<sup>st</sup> August, 2022, compelled to repay Kshs. 385,000/- within 30 minutes.

### **Respondent's Case**

54. The Respondent called oral evidence through Mr. Francis Ndimu who testified as RW1. Equally, RW1 adopted his witness statement to constitute his evidence in chief. He proceeded to produce the documents filed on behalf of the Respondent as exhibits before Court.
55. It was RW1's evidence that he was transferred to Kalulini Boys High School in the month of August 2024 upon the demise of the former principal.
56. RW1 contends that contrary to the grievant's allegations that he was not accompanied by the union officials, he was invited on 1<sup>st</sup> September, 2022, to attend the disciplinary hearing of his case on 9<sup>th</sup> September, 2022 and was accompanied by KUDHEIHA officials.
57. That the grievant was heard by the BOM in the presence of KUDHEIHA's officials and consequent to the hearing and consideration of his verbal and written representations, the BOM made a decision to summarily dismiss him for gross misconduct pursuant to provision of section 44 of the [Employment Act](#).
58. The dismissal was communicated through a letter dated 22<sup>nd</sup> September, 2022, to take effect from 23<sup>rd</sup> September, 2022.
59. RW1 further averred that the grievant was granted an opportunity to appeal the decision to dismiss him with new evidence within 14 days. The grievant lodged his appeal through a letter dated 3<sup>rd</sup> October, 2022.
60. The grievant and the union were invited to attend the hearing of his appeal on 11<sup>th</sup> October, 2022.



61. RW1 added that the grievant, accompanied by a union representative, attended the BOM for the hearing of his appeal on the said date.
62. The BOM determined the appeal on even date, upon which it upheld its earlier decision to dismiss the grievant for failing to raise new evidence and failing to deny or oppose the reasons for his dismissal in his appeal.
63. RW1 further stated that the school was/is not able to provide the information required by the Office of the Auditor General on the audited school accounts for 2020 due to the grievant's failure to do his duties as expected. The auditors found that there were no financial statements, inadequate documentation, invoice amounts exceeded the amounts paid and a lack of a procurement plan.
64. In RW1's view, the audit findings indict the grievant as he did not perform his duties at all.
65. RW1 added that the grievant's failure to perform his duties continues to financially cripple the school as it had not received capitation disbursements in 2023 due to his failure to acknowledge funds received in the previous years.
66. RW1 further stated that the grievant never prepared any trial balance, updated fees balance, list of creditors' commitment register, or financial accounts for any period before 30<sup>th</sup> May, 2022, when the Accounts Clerk proceeded on maternity leave.
67. In RW1's view, the grievant is using the Account Clerk's maternity leave as a scapegoat to cover for non-performance of his duties.

### **Submissions**

68. It was submitted by the Claimant that the grievant's suspension from employment was procedurally wrong and unfair, as he was not represented by the Claimant's representatives at the BOM meeting before the decision to suspend him was made.
69. The Claimant further argued that the BOM Executive and Finance Committee has no legal mandate to suspend an employee from service, as it is the responsibility of the full BOM of the School to do so.
70. Citing the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR the Claimant further submitted that the grievant's dismissal was wrongful as he was not given a fair hearing and was not allowed union representation at the Board meeting. Further reliance in support of this position was placed on the case of *Donald Odeke v Fidelity Security Limited* [2012] eKLR.
71. Placing reliance on the case of *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* [2014] eKLR, it was further submitted by the Claimant that there was no valid and fair reason for the Respondent to have terminated the grievant's employment.
72. On the other hand, the Respondent submitted that the grievant was in default of his duties and responsibilities.
73. It was the Respondent's position that the grievant was not unfairly and/or wrongly dismissed from employment and that he was subjected to both procedural and substantive fairness prior to his dismissal. In support of the Respondent's arguments, reliance was placed on the case of *Alomba v Green Park Golf & Country Complex t/a the Great Rift Valley Lodge & Golf Resort* (Civil Appeal 46 of 2019) [2025] KECA 378 (KLR).
74. The Respondent further submitted that the grievant was accorded an opportunity to defend himself. To this end, the Court was urged not to interfere with the Respondent's verdict.



## Analysis and Determination

75. Having considered the pleadings filed by both parties, the evidentiary material before the Court and the opposing submissions, the issues falling for the Court's determination can be distilled as follows:
- a. Whether the Respondent has proved that there was a valid and fair reason to terminate the employment of the grievant;
  - b. Whether the grievant was accorded procedural fairness prior to termination;
  - c. Is the grievant entitled to the reliefs sought?

### Valid and fair reason for termination?

76. As can be discerned from the letter of summary dismissal dated 22<sup>nd</sup> September 2022, the grievant was dismissed from employment on grounds that he failed to discharge his duties as the School Bursar, Kalulini Boys High School. The grievant was further cited for insubordination and suspicion of having committed a criminal offence against his employer.
77. Pursuant to Section 43(1) of the *Employment Act*, an employer is required to prove the reason or reasons for the employee's termination, and where it fails to do so, such termination shall be deemed to have been unfair within the meaning of Section 45.
78. According to Section 45 (2) (a) and (b) of the *Employment Act*, an employee's termination from employment is deemed unfair where the employer fails to prove that the reason for the termination of employment is valid, fair, and related to the employee's conduct, capacity or compatibility; or based on its operational requirements.
79. Flowing from the aforementioned statutory provisions, the Respondent in this case was required to prove that it had a fair and valid reason to terminate the employment of the grievant based on his conduct.
80. As stated herein, the grievant was summarily dismissed from employment based on three (3) broad grounds, to wit, failure to discharge his duties as the School Bursar Kalulini Boys High School, insubordination and suspicion of having committed a criminal offence against his employer.
81. With respect to the allegation of insubordination for failure to respond to the show cause letter written on 27<sup>th</sup> July 2022, the Court finds that the same did not constitute a fair and valid ground for termination seeing that the record bears the grievant's response dated 27<sup>th</sup> July 2022 which was in answer to the show cause letter in question. Notably, the said letter was exhibited in Court by the grievant and the Respondent did not dispute having received the same.
82. The grievant was further accused of failing to honour the agreement made in February over repayment of lost school money. Once again, the Court finds that this was not a fair and valid reason for termination, seeing that vide a letter dated 27<sup>th</sup> June 2022, the grievant requested the Respondent's Chairman to allow him more time to reorganise himself as he had school-going children and was taking care of his ailing mother. In response, the Respondent's School Principal, Mr. Muthui, vide a letter dated 29<sup>th</sup> July 2022, acknowledged receipt of the grievant's letter and advised him that he had referred the issue to the BOM.
83. What's more, the grievant exhibited a copy of a receipt dated 1<sup>st</sup> August 2022, in which the Respondent School confirmed receipt of the sum of Kshs 385,000/= from him. Again, the Respondent did not deny receiving the said amount of money from the grievant.



84. Accordingly, the Court is led to conclude that this was not a fair and valid ground for termination of the grievant's employment.
85. The grievant was further accused of stage managing the loss of money belonging to the school, worth Kshs 385,000/=. Aside from the assertion that the grievant had accepted that he had lost the money and agreed to repay the same, there was no evidence that the grievant was complicit in the theft leading to the loss of the said funds.
86. Consequently, this ground did not meet the threshold of fairness and validity as contemplated under Section 45(2) (a) and (b) of the *Employment Act*.
87. The grievant was also accused of failing to discharge his duties as the School Bursar, Kalulini Boys High School. In this regard, the specific allegations made against the grievant were as follows:
- i. Failure to write to official school receipts, making it impossible for sponsored students to account for their sponsorship;
  - ii. Failure to provide school fees balances since term 1 2022, making it hard since May 2022 to collect fees as well as inform parents of their balances;
  - iii. Failure to update school cashbooks and prepare school monthly trial balances since May 2022;
  - iv. Failure to prepare school final accounts as expected. The last accounts allegedly prepared were in 2020 and whose records were not available in the school;
  - v. Preparing trial balances for the month of March 2022, deliberately wrong by not using bank statements to reconcile the accounts among other wrongly written school accounts among other wrongly written school accounts records.
  - vi. Failure to prepare the draft school budget for 2022/2023 in time, making the school to spend money without an approved budget.
88. In support of its case, the Respondent exhibited the grievant's duties and responsibilities, which were enumerated as follows;
- a. Collect and receipt school funds;
  - b. Write payment vouchers;
  - c. Write cheques and bank reconciliation;
  - d. Post cashbook daily and balance monthly;
  - e. Post ledgers monthly and extra monthly trial balances;
  - f. Prepare school annual financial statements and budget;
  - g. Ensuring that all payments are compliant with the handbook of financial institutions for secondary schools, colleges and polytechnics in Kenya.
  - h. Provide adhoc reporting as and when requested by school management.
89. In his response to the Notice to Show Cause, the grievant stated that the preparation of the cash book and writing of official receipts were tasks performed by the Accounts Clerk who was at the time on maternity leave. To this end, the grievant stated that he could not prepare the trial balance as the same was prepared from the cash book. In the same breath, the grievant stated that the school fees balances



are extracted from the school fees register, which is ordinarily prepared by the Accounts Clerk who was on maternity leave.

90. Notably, there is no evidence that the grievant had raised the issue with respect to the absence of the Accounts Clerk, hence sought support from the Respondent to ensure that the duties at the accounts office proceeded seamlessly despite the Accounts Clerk's absence. Indeed, it is apparent that the grievant only raised the issue upon being issued with the Notice to Show Cause.
91. Further, it is evident that the Accounts clerk was working closely with the grievant hence it was reasonably expected that the grievant ought to have anticipated her absence from work and put in necessary arrangements as to how her tasks were to be performed during her maternity leave period. This included seeking the necessary support from the Respondent. I say so bearing in mind that from the record, the grievant was the senior most officer in the accounting department, hence it follows that he was in charge of all the accounting functions within the school.
92. It is also not in doubt that the preparation of school fees balances and the issuance of school fees receipts are very crucial for accounting purposes within an educational institution. Similarly, it is not in doubt that accounting tasks like updating the cash book and preparing trial balances are fundamental to the proper maintenance of the books of accounts.
93. Indeed, without an updated school fees register, it is highly probable that the school could not tell which students owed fees and the extent of such indebtedness.
94. It was therefore not acceptable for the grievant to attribute failure to perform his own duties to the absence of the Accounts Clerk, an officer working under him. Notwithstanding the Accounts Clerk's absence from duty, the tasks she was undertaking still had to be performed one way or the other. In this case, the buck stopped with the grievant as the senior most officer in the school's accounts department.
95. What's more, the letter dated 24<sup>th</sup> February 2003, designating the grievant as the bursar, required him to work without much supervision and to give sound financial direction affecting the day-to-day running of the institution. As such, one wonders how he expected to deliver on this mandate without the basic accounting tasks in the school being performed efficiently and regularly.
96. In light of the circumstances of this case, it is evident that the grievant was not diligent and prudent in the performance of his duties as the Bursar, Kalulini Boys High School.
97. In this case, it is evident that the grievant exhibited laxity in the performance of his duties and ultimately, by his own actions and omissions, gave the Respondent fair and valid reasons to terminate his employment.
98. As such, it is this Court's finding that the Respondent has proved to the requisite standard that the termination of the grievant's employment was for a fair and valid reason related to his conduct hence was justified within the meaning of 45(2) (a) & (b) of the *Employment Act*.

### **Procedural fairness?**

99. Aside from proving the reasons for termination of employment, an employer is required to further prove that it accorded an employee procedural fairness prior to the termination of the employee's employment.
100. This position is aptly captured under Section 45(2) (c) of the *Employment Act* which stipulates that for termination to be fair, it ought to be in line with fair procedure. Section 41(1) of the *Employment Act* provides for notification and hearing. In this regard, the employer is required to notify the employee



of the reasons for which it is considering terminating the employment contract and to also grant the employee an opportunity to make representations in response to allegations levelled against him.

101. The Claimant has impugned the process the grievant was subjected to on a number of grounds. First, the Claimant contended that the charges contained in the show cause letter dated 27<sup>th</sup> July 2022 were three (3), while those appearing in the suspension letter dated 4<sup>th</sup> August 2022 are seven (7).
102. The Court finds that despite the variance in the number of charges, it is notable that through the suspension letter dated 4<sup>th</sup> August 2022, the grievant was notified that the Respondent was still interrogating the matter, hence his suspension from duty. Consequently, the grievant responded comprehensively to the letter of suspension through his letter dated 23<sup>rd</sup> August 2022. Therefore, he still had the opportunity to answer any charges he may have deemed fresh.
103. The Claimant further contended that the representatives from the Union were not given an opportunity to attend the grievant's disciplinary hearing. On the other hand, the Respondent maintained that the Union representatives were allowed into the grievant's disciplinary hearing session.
104. As can be discerned from the letter inviting the grievant to the hearing of his disciplinary case, he was advised of his right to be accompanied by officials of the trade union. Further to this, the minutes of the disciplinary hearing reflect the attendance of the trade union officials. It is also notable that the record of the disciplinary hearing indicates that although the grievant had not initiated a grievance through the Union, the union officials were allowed to attend the meeting if they so wished.
105. In light of the foregoing, the Court is unable to fault the Respondent based on the allegation that it rejected the attendance of the trade union officials.
106. In any event, the Claimant's assertion was not supported by evidence, such as that of the trade union representatives who were present during the disciplinary hearing but asked to leave the session prematurely.
107. What the Court finds to be a procedural flaw is the fact that the members who sat in the disciplinary hearing to hear the grievant's disciplinary case are the same members who sat in the appeal panel. These were Mr. Alidan Mbinda, Michael Muthui, Dr. Josephat Mwololo, and Priscah Mutindi Simon. In essence, these members who constituted the Appeal Committee sat on appeal against their own decision.
108. This scenario quickly brings to mind the determination in the oft-cited case of *Ridge vs Baldwin* 1964 A.C 40 in which Lord Hudson identified the principles of natural justice as being: -
  - i. The right to be heard by an unbiased Tribunal;
  - ii. The right to have notice of the charge of misconduct; and
  - iii. The right to be heard in answer to these charges.
109. The principle with regards to bias prohibits a person from deciding any case in which he or she may be, or may fairly be suspected to be, impartial.
110. In this case, it is apparent that there was a likelihood of impartiality from the Appeal Committee members. After all, it was their decision that was being challenged.



111. On this issue, I find it imperative to refer to Section 45(5) (a) of the *Employment Act*, which provides as follows:

“(5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for this section, a labour officer, or the Industrial Court shall consider—

(a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;” Underlined for emphasis

112. Subsequently, in as much as the Respondent appeared to have complied with the statutory requirements of Section 41 of the *Employment Act*, the likelihood of impartiality by the Appeal Committee marred the entire disciplinary process and when viewed in a holistic manner, the process did not seem just and equitable towards the grievant.

113. In the end, and taking all factors into consideration, I cannot help but find that the grievant’s dismissal was not just and equitable.

### Reliefs

114. Having found that the Respondent had a fair and valid reason to terminate the employment of the grievant based on his conduct but did not act justly and equitably in so doing, the Court awards him compensatory damages equivalent to three (3) months of his gross salary. In arriving at this award, the Court has considered the length of the employment relationship and most of all, the contribution of the grievant to the termination of his employment.

115. The Claimant has further sought notice pay equivalent to three (3) months of the grievant’s salary. In this regard, the Claimant has contended that the Respondent violated clause 6(a) (ii) of the CBA in dismissing the grievant without giving him the required notice, having worked for 30 years.

116. The said clause 6(a) (ii) of the said CBA is couched as follows:

“6. Termination of Employees

a. In the normal circumstances, it shall be a condition that employment shall be terminated by either party by giving written notice or pay in lieu of such notice as follows:

(i) For any employee who has completed his period of probation but with less than five years two months’ notice or two months’ pay in lieu of notice.

(ii) For any employee who has completed five years continuous service or more, three months or three months pay in lieu of notice.”

117. In my understanding, the aforementioned clause is only relevant in cases of normal termination of employment, which was not the case herein. As such, the grievant’s claim for notice pay is declined.



118. The claim for service pay equally collapses as it is evident from the grievant's pay slip that he was contributing to the National Social Security Fund. Therefore, this places him within the exclusions under Section 35(6) of the Employment Act.

### Orders

119. In the final analysis, Judgment is entered against the Respondent, and the grievant is awarded:
- a. Compensatory damages in the sum of Kshs 141,195.00 being equivalent to three (3) months of his last gross salary.
  - b. Interest on the amount in (a) at court rates from the date of Judgment until payment in full.
  - c. The Respondent shall also bear the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Kioko

For the Respondent Ms. Mochoge instructed by Ms. Karbolo

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

