



REPUBLIC OF KENYA



KENYA LAW
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**Kimani v Rosslyn Academy (Cause E251 of 2022)
[2025] KEELRC 1892 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1892 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E251 OF 2022**

SC RUTTO, J

JUNE 27, 2025

BETWEEN

FRANCIS KIMANI CLAIMANT

AND

ROSSLYN ACADEMY RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim dated 28th March 2022, the Claimant avers that he worked for the Respondent cumulatively for 21 years, with his last role being the Transport Supervisor.
2. All seemed well in the employment relationship until, sometime in September 2021 when the Claimant was alleged to have engaged in sexual misconduct. Subsequently, a disciplinary process ensued, culminating in the Claimant's termination from employment with effect from 22nd October 2021.
3. It is the Claimant's contention that the reasons advanced for his termination from employment are not valid and justified. The Claimant further avers that the Respondent did not act in accordance with the rules of natural justice, fundamental human rights principles and equity in terminating his employment by failing to give him a fair administrative action.
4. On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondent:
 - a. A declaration that the Claimant's employment services with the Respondent were terminated wrongfully, maliciously, unfairly and unlawful.
 - b. Award for damages for unlawful and unfair termination which is equivalent to 12 months' salary.
 - c. General Damages for slander.



- d. Costs of the Suit.
- e. Any other or further relief that this Honourable Court may deem fit and just to grant
5. Opposing the Claim, the Respondent avers in its Response to the Memorandum of Claim dated 16th June 2022, that the disciplinary proceedings against the Claimant were carried out impartially and in strict compliance with the school's disciplinary manual and the *Employment Act*.
6. The Respondent further avers that the reasons for the dismissal of the Claimant were completely valid and justified as the information received was validated and corroborated by the complainants.
7. According to the Respondent, it acted in accordance with the rules of natural justice and the termination of the Claimant from employment was lawful, procedural and fair. Consequently, the Respondent has asked the Court to dismiss the Claim with costs.
8. The matter proceeded for hearing on 12th February 2025, during which both sides called oral evidence.

Claimant's Case

9. The Claimant testified in support of his case and for starters, he adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed on his behalf as his exhibits before Court.
10. It was the Claimant's evidence that sometime in the month of September 2021, a complaint was raised against him alleging sexual misconduct. He was invited to the disciplinary hearing on 15th October 2021, but the complainant did not appear before the disciplinary hearing as he (Claimant) neither saw her nor did she testify in his presence.
11. The Claimant further averred that in the disciplinary hearing, it was revealed that the panel had interviewed other witnesses/complainants who corroborated the complainant's account of events. It was his contention that the identities and testimonies of these witnesses were never revealed to him.
12. In the Claimant's view, the whole disciplinary process was a sham since the Respondent failed to summon the complainant and the witnesses in his presence. He added that he was never served with the complainant's testimony or statements and that he was condemned by people unknown to him.
13. The Claimant believes the disciplinary panel relied on hearsay evidence to dismiss him without according him a chance to test the veracity of the said allegations.
14. The Claimant further stated that he filed an appeal challenging the disciplinary process but no one was ready to hear his appeal. That he appealed to the school superintendent, who casually dismissed his appeal in his letter dated 22nd November 2021.
15. Subsequently, he appealed to the School Board as advised by the school superintendent but the same was dismissed by Anthony Rivers, stating that appealing to the Board is only in the case where the complaint is against the superintendent.
16. The Claimant believes the disciplinary process was a cover-up as the school had advertised the position he was holding in early November 2021, even before the conclusion of his case.
17. The Claimant further stated that despite the allegations against him alleging that he had a pattern of sexual harassment complaints which are criminal in nature, the Respondent has never reported the same.



18. It was the Claimant's further evidence that the Respondent, through its agents/current employees, disparaged his name. That on 23rd March 2022, he was informed by his neighbour, Grace Wahu, who had heard from his former colleagues that: "Watu wanasema ulishikwa na camera ukishika msichana breasts na unaenda kushikwa".
19. The Claimant further stated that in response to his demand letter dated 31st January 2022, the Respondent's lawyers, vide the letter dated 10th March 2022, reiterate the allegations of sexual harassment without any proof.
20. According to the Claimant, the above words and conduct being attributed to him maliciously portrayed him as: a person who lacks integrity; a sexual predator with multiple cases of sexual harassment; a dishonest and deceitful person; and is not professional and cannot be trusted.
21. In the Claimant's view, the Respondent's statements are false and are actuated by malice, reckless and not based on any factual considerations but are meant to disparage his reputation.
22. He further stated that the statements by the Respondent through their lawyer and other agents amount to serious slander and have caused him damage, distress and embarrassment among family, peers and colleagues, considering that he is a church elder.
23. According to the Claimant, his record of unparalleled good and exemplary performance of work urges one to wonder on what basis the Respondent could have dismissed him.

Respondent's Case

24. The Respondent called oral evidence through Ms. Mbesa Karaimu, who testified as RW1. She identified herself as the Director, Human Resources at the Respondent institution. Equally, she adopted her witness statement to constitute her evidence in chief. She further produced the list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
25. In her evidence, RW1 stated that the Claimant breached the terms of his employment contract, as well as the Respondent's sexual harassment policy, by engaging in acts that the Respondent genuinely believed amounted to gross misconduct, thereby resulting in his dismissal on 22nd October 2021.
26. According to RW1, the Claimant's dismissal was justified in the circumstances and was carried out in accordance with the Respondent's rules and policies, as well as the relevant provisions of the law.
27. RW1 added that during the tenure of his employment with the Respondent, the Claimant was required at all times and agreed to adhere to all the terms outlined in the employment contract, as well as the Respondent's Staff Employment Manual, particularly the Respondent's Sexual Harassment Policy.
28. It was RW1's evidence that on 10th September 2021, one of the Respondent's employees filed both a verbal and written sexual harassment complaint with the Respondent's Human Resource department against the Claimant.
29. Upon receipt of the complaint, the Respondent's Human Resources Director met with the Claimant on 17th September 2021. During the meeting, the Claimant was informed of the sexual harassment allegations made against him and the Respondent's decision to place him on administrative leave for six days, effective from 17th September 2021 to 24th September 2021, to facilitate an objective investigation into the allegations.



30. The Respondent followed up the meeting with a letter of even date in which the Claimant was informed that the matter would be kept confidential and reminded him of the Respondent's anti-retaliation policy, given the nature of the case.
31. On 20th September 2024, the Respondent commissioned an internal inquiry/ investigation into the allegations raised against the Claimant. During the process, the Respondent interviewed various employees of both genders, including the Claimant.
32. Following the outcome of the investigation, the Respondent resolved that there were sufficient grounds to believe that the Claimant had breached its sexual harassment policy.
33. Consequently, the Respondent issued the Claimant with a Notice to Show Cause dated 28th September 2021 to show cause in writing why disciplinary action should not be taken against him. The Respondent through the letter, requested the Claimant to respond by 1st October 2021.
34. In his response letter, the Claimant admitted to touching/patting others on the shoulders or knee areas when sharing stories. The Claimant apologized profusely for having made others uncomfortable through his jokes or by touching. However, the Claimant stated that it was done innocently with no ill intention. The Claimant further apologized to the complainant if he ever touched her, and she felt offended. According to RW1, the Claimant did not deny touching the complainant, corroborating the complainant's complaint.
35. Consequently, the Claimant was invited to attend a disciplinary hearing on 15th October 2024 at the Respondent's office.
36. The Respondent, through the said notice, again informed the Claimant of the allegations of sexual harassment and the findings of the investigations in detail. The Claimant was further informed of his right to have a fellow employee of his choice accompany him during the disciplinary hearing and to call witnesses to testify in his defence.
37. The Claimant attended the disciplinary hearing as scheduled, accompanied by two witnesses.
38. During the disciplinary hearing, the Respondent further informed the Claimant of the particulars of the allegations against him and the findings of the inquiry. The Claimant was thereafter given an opportunity to respond to the charges levelled against him and provide evidence in support of his defence.
39. Upon considering both the Claimant and his witnesses' representations during the hearing, the Respondent determined that the Claimant did not deny the charges brought against him.
40. As a result, the Respondent, through a letter dated 22nd October 2021, resolved to terminate the Claimant's employment for breach of its sexual harassment policy. He was further informed of his terminal dues.
41. Subsequently, the Claimant appealed against the decision to terminate his employment. The Respondent carefully considered the Claimant's grounds of appeal and responded to each ground raised.
42. However, upon consideration, the Respondent resolved that there were genuine grounds for termination of his employment and the decision to terminate his employment was fair and reasonable in view of the weight of the evidence against the Claimant.
43. Consequently, the Respondent through an appeal outcome letter dated 22nd November 2021, informed the Claimant of its decision to uphold the termination.



44. In RW1's view, the Respondent had genuine and valid reasons to terminate the Claimant's employment.
45. According to RW1, the issue raised by the Claimant at this stage, regarding the complainant's absence at the disciplinary hearing, was not raised during the hearing and is an afterthought. She added that although the complaint was filed by the complainant, the charges of sexual harassment were brought by the Respondent, not the complainant.
46. RW1 further denied that the Respondent, through its agents or current employees, disparaged the Claimant's name.
47. She further stated that the allegations pertaining to the Claimant's neighbor, Grace Wahu, are unknown to the Respondent. According to RW1, the said neighbor is neither an agent of nor was she ever an employee of the Respondent. Regarding the response to the demand letter by the Respondent's lawyer, she is aware that such statements are true but are also privileged and cannot constitute defamation as alleged by the Claimant.

Submissions

48. It was submitted on behalf of the Claimant that for the minutes of the disciplinary hearing to be produced in Court, the maker must be unavailable, and the maker, being the writer, should have signed the said minutes. That in this case, the minutes are typed, thus the person who wrote cannot them cannot be deciphered.
49. It was further submitted that if the said minutes were printed out from an electronic record, then the Respondent ought to have produced a certificate of electronic record as per Section 106 B of the [*Evidence Act*](#).
50. To this end, it was urged on behalf of the Claimant that the authenticity of the minutes has not been proved, thus should be expunged from the record and are of no probative value.
51. It was further submitted on behalf of the Claimant that the alleged incidents were contested and there was no physical evidence of the alleged harassment.
52. Citing the case of *Kirui v Ekaterra Tea Kenya PLC [2024] KEELRC 1747 (KLR)*, it was submitted that since the identity of the complainants had already been revealed, it only dictated that the Claimant be given an opportunity to face his accusers to test the veracity of their claims. It was further posited that the Respondent had the chance to present the witnesses in camera or under protected cover.
53. In further submission, it was stated that the fact that the Respondent failed to supply the Claimant with the findings of the investigations, especially the complainant's complaint and witness statements, was a violation of his right to a fair trial and thus flawed the procedural fairness of the dismissal process. In support of this position, reliance was placed on the case of *Postal Corporation of Kenya v Andrew K. Tanui [2019] KECA 489 (KLR)*.
54. It was further submitted that the complaint by Juliet was unsubstantiated thus could not be held out as a valid reason for terminating the Claimant's employment.
55. In further support of the Claimant's case, it was submitted that the Respondent misrepresented to the Claimant that he had recourse in its appeal system, only for him to be informed after lodging such appeals that the Board was devoid of jurisdiction. To this end, the Court was urged to find that, to this extent, the process was unjust and unfair to the Claimant.



56. The Respondent did not file written submissions as the same were missing on the Court's physical record and were not traceable on the online portal.

Analysis and determination

57. Having considered the pleadings by both parties, the evidentiary material on record as well as the rival submissions, the following issues stand out for determination:
- i. Admissibility of the minutes of the disciplinary hearing held on 15th October 2021;
 - ii. Whether the Respondent has proved that there was a justifiable reason to terminate the employment of the Claimant;
 - iii. Was the Claimant accorded procedural fairness prior to being terminated from the Respondent's employment?
 - iv. Is the Claimant entitled to the reliefs sought?

Admissibility of the minutes of the disciplinary hearing held on 15th October 2021

58. During the trial, the Claimant, through his Advocate, objected to the production of the minutes of the disciplinary hearing held on 15th October 2021 on the basis that the same are not signed and the maker of the said minutes would not be present in court to produce them. Upon hearing the submissions of both Counsels on the issue, the Court reserved the issue for determination at the time of writing the Judgment.
59. Section 35 of the *Evidence Act* provides for two conditions that require to be satisfied for documentary evidence to establish the facts in issue and therefore be of probative value:
- (a) The maker of the statement either—
 - i. has personal knowledge of the matters dealt with by the statement; or
 - ii. where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
 - (b) The maker of the statement is called as a witness in the proceedings.
60. The only exceptions provided under Section 35 aforementioned is if the person making the document is dead, cannot be found, has become incapable of giving evidence, their attendance cannot be procured, or even if it can be procured would actually occasion expense and delay which in view of the court is unreasonable. The onus is upon the person producing the document to establish that these exceptions apply.
61. In the present case, it is evident that the author of the minutes of the disciplinary hearing held on 15th October 2021 has not been identified in the said minutes. Indeed, it is not clear how the minutes were recorded.
62. Coupled with the foregoing, none of the persons who attended the disciplinary hearing signed the same to confirm their accuracy.



63. In her evidence during the trial, RW1 stated that she joined the Respondent's employment in September 2024, hence was not present at the time the facts leading to this dispute arose.
64. It thus follows that RW1 did not have personal knowledge of the matters dealt with in the minutes.
65. As RW1 was the only witness who testified in support of the Respondent's case, it is highly doubtful that she had knowledge as to who and how the minutes of the disciplinary hearing were recorded. As such, she could not speak to the authenticity, hence confirm the reliability of the said minutes.
66. Needless to say, the said minutes have not met the threshold set under Section 35 of the Evidence Act.
67. This being the case, this Court is not in a position to evaluate and apply its judicial mind to the probative value of the said minutes, including its reliability and credibility.
68. To this end, the minutes of the disciplinary hearing held on 15th October 2021 are not admissible and are hereby expunged from the record.

Justifiable reason?

69. It is evident from the record that the Claimant was terminated from employment on grounds that he engaged in acts of sexual harassment.
70. Under Sections 43(1) and 45 (2) (a) and (b) of the Employment Act, an employer is required to prove the reasons for an employee's termination and failure to do so, such termination is deemed to be unfair. In this regard, such reasons ought to be fair, valid and related to the employee's conduct, capacity or compatibility; or based on the operational requirements of the employer.
71. Applying the aforementioned statutory provisions to the case herein, it follows that the Respondent was required to prove on a balance of probabilities that the Claimant engaged in acts of sexual harassment, as alleged.
72. It is apparent that the reasons leading to the Claimant's termination from employment stemmed from a complaint by one of the Claimant's colleagues, Ms. Juliet Muli, whose undated statement I will reproduce:

“On Monday, 6th September 2021, Mr. Francis Kimani came to my desk and whispered “ulihama?” I said yes. Then he whispered, “nitakua napitia kwako nakuona before niende kwangu.” What he said and how he said it came out very sexually suggestive. I even wondered why is (sic) he whispering if at all all he's saying is genuine concerned not with ill intentions. That really puzzled me to the point that I immediately went to my supervisor madam Charis and I asked her” Should I be worried about Mr. Francis? He just spoke to me in a sexually suggestive manner and I feel uneasy.” Madam Charis assured me that probably he was just joking, he can't do anything sexual with me because to her, he has never done anything with her. So, I relaxed to the point (sic) even that evening I agreed to go home with him. He always has other staff members with him that he carries home.

On 9th September 2021, I was going home and he say (sic) me at the ES bus stop near the parking. He stopped and waited for me. I sat at the front sit (sic). After we left the school gate along Magnolia drive, he touched me and pulled my dress up.

I threw his hands off me and asked him what are we doing? He said “I wanted to see if your thighs are yellow in colour”. I thought he was just joking or probably he made a mistake doing that so I told him everyone has yellow thighs.



He again touched me and pulled my dress up. I told him to stop it as I threw his hands off me. He then got agitated and said “unaringa, unaringa nini? Nakwambia hii kitu unaringa ni wewe utanitolea nione. Na hata sio mbali, next week tu, ni wewe untanitolea nione. I promise you ni wewe utanitolea nione. I promise you! let’s bet nakuassure!” and immediately he stretched his hands to my face telling me to pinky promise him repeatedly but I didn’t. I was so mad. I couldn’t even speak right after.

In his attempts to touch me, he ended up moving the car gear from D to M (sic) without his knowledge because he was to(sic) concentrated on trying to pull my dress up instead of driving. The car had started moving unsteadily, he even said “why is the car moving this way?” that’s when he noticed that he has changed the gear why (sic) trying to touch me.

Soon after he stopped and picked one of his colleagues on the way. And we didn’t speak again. We reached ruaka town and we all alighted. Immediately I called Dr. Gikunda to find out why had she warned me about Francis, was it because he was a sexual predator or what did she mean. That’s when she told me what had happened to her with him before. And she encouraged me not to fear but to report it.

This is my formal complaint, I’m writing to report this incident because I feel my privacy has been violated, I don’t feel safe because he even knows where I live. And his statement with surety that next week I will undress before him willfully made me feel very insulated, and my dignity has been trashed.”

73. Following the complaint, the Respondent undertook an inquiry in which a number of employees, including the Claimant, were interviewed.
74. Upon conclusion of the inquiry, it was found that the Claimant had violated the Respondent’s sexual harassment policy, hence needed to go through a disciplinary hearing. Consequently, the Claimant was issued with a Notice to Show Cause dated 28th September 2021.
75. In his response to the Notice to Show Cause, the Claimant stated in part:

“Generally, I know am kind-hearted loving everyone in their own situations and someone who like to joke and cheer situations. When talking or sharing stories, am the person who animates to stress the point. In case I am telling something while standing, I can pat the shoulder and while we are seated, I can pat the knee areas.

From the Friday meeting, I learnt that some touches could be termed as sexual harassment but to me I always thought it was normal.

I regret and am sorry for all who appeared before the panel and confessed that at some point I made them uncomfortable through jokes or by touching them. I wish these people had come to me or send someone to warn me about it I would have been wise. I am sorry to all who felt I harassed them. Even to the complainant if at all during the days I gave her rides, if I ever touched her innocently as we talked stories and felt offended am sorry...

In the interview, I learnt that even touching someone’s shoulder can be termed as sexual harassment. As much as we have the school’s manual/policy book and it says about sexual harassment I believe most of my fellow workers are blind to this clause. I thought sexual harassment is only when you touch someone inappropriately and more so the private areas and even having carnal knowledge of them. I wish we have even had a seminar on this because



we would be informed...I again apologise to all those who felt were harassed because that was never my intention.”

76. In terms of Section 6(1) of the *Employment Act*, an employee is sexually harassed if the employer of that employee or a representative of that employer or a co-worker—
- (a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express—
 - (i) promise of preferential treatment in employment;
 - (ii) threat of detrimental treatment in employment; or
 - (iii) threat about the present or future employment status of the employee;
 - (b) uses language whether written or spoken of a sexual nature;
 - (c) uses visual material of a sexual nature; or
 - (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee’s employment, job performance, or job satisfaction.
77. And further, the Black’s Law Dictionary (10th Edition, p. 1584) defines Sexual harassment to mean “a type of employment discrimination consisting in verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks and unwelcome touching”.
78. What can be drawn from the foregoing is that the main elements of sexual harassment are; direct or indirect requests for sexual favours that contains an implied or express promise of preferential treatment in employment, threat of detrimental treatment in employment, or threat about the present or future employment status of the employee; unwelcome verbal, non-verbal or physical contact of a sexual nature.
79. In the present case, the inquiry report indicates that four of the female staff members who were interviewed stated that they had been touched by the Claimant and that they were not comfortable with the same. The report further states that three of them indicated that this happened when alone in the Claimant’s car going home.
80. The report further indicates that when interviewed, the Claimant admitted to the jokes but did not admit to the physical touch of the three women in his car.
81. One of the female staff members who alleged to have been touched by the Claimant was Dr. Gikunda.
82. As per the inquiry report, the Claimant admitted to touching Dr. Gikunda on the shoulder on one occasion. He defended himself on the basis that he had pulled Dr. Gikunda aside so that the kids around them would not listen in on their discussion.
83. Dr. Gikunda further stated that she was uncomfortable providing medical services to the Claimant without the presence of Michael Kamonde. According to the report, Michael Kamonde was able to support this assertion.
84. The report further stated that those interviewed felt that the Claimant’s jokes were inappropriate, demeaning and flirtatious.



85. In the Claimant's response to the Notice to Show Cause, he stated that it was his nature to pat a person's shoulder or knees during a conversation when he wants to stress a point. He further admitted in his response to the show cause letter that he likes to joke.
86. The Claimant went ahead to confess that he was not aware that he had made his colleagues uncomfortable through his jokes or by touching them. He wished he had been warned before about the same. He further apologized to all who felt he harassed them.
87. In light of the foregoing, it becomes apparent that in his interactions with his colleagues, the Claimant may have crossed the professional line with his jokes or physical touches. Whether he was unaware that the same constituted sexual harassment is another issue altogether.
88. Regardless of the Claimant's perception of sexual harassment, what is notable in this case is that his colleagues were uncomfortable with his jokes and physical touches, however innocent they were, hence ultimately, his conduct towards them was unwelcome.
89. The fact that the Claimant may have been unaware that there are some physical touches that amount to sexual harassment does not absolve him of the consequences thereof. His ignorance of what constituted sexual harassment was not a valid defence.
90. The Claimant was at all times expected to maintain professionalism in his interactions with his colleagues. Regardless of the nature of the Claimant's personality, the bottom line is that some type of behaviour in the workplace is just unacceptable.
91. Measuring the Claimant's conduct against the elements of sexual harassment, the Court finds that the Respondent in this case has established to the requisite standard that it had it had a justifiable reason to terminate the employment of the Claimant based on his conduct.
92. Indeed, the Respondent had a duty as an employer to investigate and take appropriate action, having received a complaint of sexual harassment against the Claimant from his colleague.
93. As a matter of fact, employers are required under the law to take reasonable steps to prevent sexual harassment in the workplace. This includes creating a safe environment and addressing sexual harassment complaints. Failure to do so can result in the employer being held vicariously liable for sexual harassment committed by their employees, particularly when it occurs within the scope of employment.
94. For instance, in South Africa, Section 60 of the Employment Equity [Act 55 of 1998](#) creates a form of statutory vicarious liability in respect of an employer whose employee sexually harasses a colleague while at work. In applying this statutory provision, the South African Labour Court in the case of *Piliso v Old Mutual Life Assurance Co (SA) Ltd and Others* (2007) 28 ILJ 897 (LC) found that an employee's right to fair labour practices had been violated where the employer failed to protect an employee who had been the victim of sexual harassment in the workplace. As such, the Court awarded the employee who had lodged the complaint constitutional damages.
95. All in all, the Court finds that the Respondent herein discharged its evidential burden under Sections 43(1) as read together with Section 45(2) (a) and (b) of the [Employment Act](#) by proving on a balance of probabilities that there was a justifiable reason to terminate the employment of the Claimant.

Procedural fairness?

96. In terms of Section 45 (2) (c) of the [Employment Act](#), an employer is required to prove that an employee's termination from employment was in accordance with fair procedure. Section 41 (1)



makes specific requirements with regards to the process to be complied with by an employer. This encompasses notifying the employee of the allegations levelled against him or her and thereafter granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.

97. The Claimant has impugned the process applied by the Respondent in terminating his employment based on a number of reasons.
98. One of the key issues raised by the Claimant in this regard is that the identities and testimonies of other witnesses who corroborated the complainant's account of events were not revealed to him. That further, he was not accorded an opportunity to face his accusers.
99. From the record of the disciplinary hearing, it is evident that the identities of two of the Claimant's colleagues who had raised allegations against him were not disclosed.
100. Granted, the Respondent may have intended to keep the identity of the complainants confidential. However, this should only have been limited to persons who were not relevant to the case, but certainly not the Claimant, who was the accused person in this case. He needed to know who his accusers were and to face them in the disciplinary hearing. How else would he know the kind of defence he needed to mount?
101. Further to this, none of the Claimant's colleagues who had complained about his behaviour during the inquiry were present during the disciplinary hearing. As such, the Claimant was not given an opportunity to cross-examine any of the complainants on the allegations they had levelled against him.
102. In addition, there is no evidence that the Claimant was supplied with the complainant's statement or the inquiry report, which evidently, were the primary documents relied on by the Respondent in holding the Claimant culpable.
103. On this issue, the Court echoes the sentiments of the learned Judge (Ndolo J) in the case of *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, that the employee is entitled to documents in the possession of the employer which would assist them in preparing their defence.
104. Accordingly, the Court finds that the Respondent did not act fairly by withholding crucial evidentiary material from the Claimant.
105. Ultimately, based on the foregoing reasons, this Court finds that the Respondent did not act in accordance with justice and equity in terminating the Claimant's employment hence did not comply with the spirit of a fair hearing as envisaged under Section 41 of the *Employment Act*.
106. It must be appreciated that a disciplinary process is not a mere formality for purposes of ticking boxes. It ought to embody the elements of a fair hearing, such as the right to cross-examine where applicable and the right to access information, materials, and evidence to be relied upon by the employer in arriving at its decision. As highlighted herein, these elements were lacking in the process applied by the Respondent in terminating the Claimant's employment.
107. Therefore, in as much as the Respondent had a justifiable reason to terminate the employment of the Claimant, it was bound to apply a fair process and act in accordance with justice and equity.

Reliefs?

108. As the Court has found that the Respondent has proved that there was a justifiable reason to terminate the Claimant's employment but failed to apply a fair process, the Court awards the Claimant



compensatory damages equivalent to three (3) months of his gross salary. This award further takes into account the length of the employment relationship between the parties as well as the circumstances attendant to the Claimant's termination from employment and the Claimant's own contribution to the termination of the employment relationship.

109. The claim for general damages for slander is declined as the Court has found that there was a justifiable reason to terminate the employment of the Claimant. What's more, the Claimant's assertion with respect to the disparaging statements made against him by his former colleagues and narrated to him by his neighbour, Grace Wahu, was not supported by any evidence.

Orders

110. Against this background, the Court enters Judgment in favour of the Claimant as follows:

- a. A declaration that the termination of the Claimant from employment was procedurally flawed.
- b. The Claimant is awarded compensatory damages in the sum of Kshs 496,500.00 being equivalent to three (3) months of his gross salary.
- c. Interest on the amount in (b) at court rates from the date of Judgment until payment in full.
- d. The Claimant shall also have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Karue instructed by Mr. Chimei

For the Respondent Ms. Kithinzi

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 15th March 2020 and subsequent directions of 21st 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.

STELLA RUTTO

JUDGE

