



**Kenani v Britam Life Assurance Company (Kenya) Limited (Cause E839 of 2023) [2025] KEELRC 1743 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1743 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E839 OF 2023**

**SC RUTTO, J**

**JUNE 13, 2025**

**BETWEEN**

**JOBENE OOGA KENANI ..... CLAIMANT**

**AND**

**BRITAM LIFE ASSURANCE COMPANY (KENYA) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Through a Statement of Claim which was amended on 7<sup>th</sup> February 2024, the Claimant avers that he was employed by the Respondent since 2009 up to 25<sup>th</sup> July 2023 when he was unfairly and unlawfully terminated from employment. It is the Claimant's contention that he was condemned unheard and as such, has sought to be awarded the sum of Kshs. 2,861,580.66 being notice pay, leave earned but not taken, days worked but not paid and maximum compensation for unfair termination. In the alternative, the Claimant has prayed for an order of reinstatement with payment for the days worked and the days he was out of work.
2. The Respondent countered the Amended Statement of Claim through its Statement of Response dated 11<sup>th</sup> June 2024. According to the Respondent, the Claimant was dismissed from employment on grounds of gross negligence in carrying out his duties and for failing to adhere to set procedures. The Respondent further avers that the Claimant's dismissal was lawful and procedurally fair, hence the Claimant is not entitled to any of the prayers sought. Consequently, the Respondent prays that the Claimant's Claim be dismissed with costs.
3. The matter proceeded for hearing on 18<sup>th</sup> December 2024 and 13<sup>th</sup> March 2025, during which both parties called oral evidence.



## **Claimant's Case**

4. The Claimant who testified in support of his case, sought to adopt his witness statement and the list and bundle of documents filed on his behalf to constitute his evidence in chief.
5. It was the Claimant's evidence that he had never had any disciplinary issues throughout his employment with the Respondent since 2009, when he started working with them.
6. That in the year 2013, he moved to the Machakos Branch as the Branch Administrator and worked in that position up to 2016. From 2016-2018, he was the Branch's operations team leader and from the year 2018-2023, he was the Assistant Manager, Branch Operations.
7. The Claimant further averred that on or about the 13<sup>th</sup> June, 2023, the Respondent issued him with a show cause letter alleging that he had failed to adhere to the set procedures. He responded to the said letter through a response dated 17<sup>th</sup> March 2023. His response was in full view of the outcome of such allegation in the event push came to shove as per the Respondent's disciplinary code.
8. That unbeknownst to the Claimant, the Respondent went behind his back and changed the allegations against him. According to the Claimant, he did not know of the new allegations being levelled against him and he was equally not given any opportunity to respond to the same.
9. It was the Claimant's contention that he was subjected to a disciplinary hearing on the basis of the new allegations without his knowledge whatsoever and was not given any chance or opportunity to answer to them.
10. That the Respondent knew the outcome that would result in the event he was found to have failed to adhere to set procedure and procedure breach and with that in mind, went ahead to change the allegations levelled against him to gross negligence in carrying out duties without any notice and/or his awareness of the same in full knowledge that allegations of gross negligence in carrying out duties would have a different result from that of failure to adhere to set procedure and procedure breach.
11. The Claimant contended that the Respondent dismissed him from employment on the basis of gross negligence in carrying out duties when it had censured him on the basis of failure to adhere to set procedure and procedure breach.
12. That the issue of gross negligence in carrying out duties never arose at any given time during the whole process and he was also not made aware of the same. He brought this issue to the Respondent and was ignored.
13. According to the Claimant, the much the Respondent would have done according to the Respondent's disciplinary code was to give him a warning letter for the alleged infraction (upon proof) of failure to adhere to set procedure and procedure breach which was the basis and/or genesis of the show cause letter and the disciplinary hearing.

## **Respondent's Case.**

14. The Respondent called oral evidence through Ms. Rina Wachira, who testified as RW1. She identified herself as the Respondent's Head of Employee Relations, Ex & Culture. Equally, RW1 adopted her witness statement as well as the list and bundle of documents filed on behalf of the Respondent to constitute her evidence in chief.
15. RW1 testified that the Claimant's job description particularized his responsibilities to include: overseeing day to day running of the branch operations; playing a key role in liaising with other



- departments in Life and nonlife divisions, other branches and third parties like banks, brokers and other sources of premiums etc. to conclusively resolve customer inquiries; ensuring compliance with all company procedures e.g. on premium processing, banking, underwriting, compliance review of unit trust application forms, life business applications etc; and ensuring timely delivery of policy documents (newly issued and endorsements); contract notes, receipts, certificates etc to customers directly or by liaising with the selling intermediaries.
16. RW1 further averred that on 26<sup>th</sup> August 2022, the Claimant issued a one-month comprehensive cover for motor vehicle registration no. KDC 2X6X.
  17. According to RW1, the said cover had a number of anomalies in that:
    - a. There was no valuation done for the said motor vehicle which was to be covered comprehensively. This was contrary to Clause 9(a) of the Underwriting Manual.
    - b. On 28<sup>th</sup> September, 2022, the Claimant extended the cover for an additional two weeks without a valuation report and did not seek approval or downgrade the cover to Third Party (TPO).
    - c. On 4<sup>th</sup> October, 2022, the Claimant issued an annual cover for the said motor vehicle but the valuation report used which was shared by the Corporate Sales Executive was neither signed nor uploaded in the valuer's portal.
    - d. Further, the report was done for Mayfair Insurance and not the Respondent. For external valuations, guidance needs to be sought from the Respondent's valuers. However, this was not done since the Claimant did not confirm if the report was done on the Respondent's request.
  18. RW1 further averred that the Claimant did not perform his duties diligently as per his job description and as required under the Respondent's rules and procedures. That the said breaches exposed the Respondent to a financial loss of Kshs. 6,400,000/= being the sum assured.
  19. Consequently, the Claimant was issued with a show cause letter dated 13<sup>th</sup> March, 2023, requiring him to show cause why disciplinary action should not be taken against him for failure to adhere to the set procedure/procedure breach.
  20. The Claimant responded to the Notice to Show Cause on 17<sup>th</sup> March 2023, in which he admitted wrongdoing. He therefore undertook to "adhere to and agree with any disciplinary measures that may follow as a result".
  21. The Claimant's response was examined and was found to be unsatisfactory. Consequently, he was invited to a disciplinary hearing and informed of his right to be accompanied to the hearing by a witness vide the email communication dated 29<sup>th</sup> March 2023.
  22. A disciplinary hearing was held on 12<sup>th</sup> April 2023, where the Claimant was personally present and fully participated. He had the opportunity to respond and indeed responded to all the allegations levelled against him. The Claimant was equally given the option to have a witness present at the hearing but chose not to come with one.
  23. In his responses at the hearing, the Claimant admitted to procedure breaches and lack of due diligence in carrying out his duties as follows:
    - a. He admitted that he did not check and confirm that the valuation report was not done in the Respondent's favour but in favour of Mayfair Insurance;
    - b. He admitted that he did not check the valuer or whether the valuation report was signed.



- c. He stated that he had no explanation as to why he failed to confirm if all the details of the cover were valid despite having had nine days to do so.
  - d. He stated that he did not want to make excuses for himself and accepted that he did not follow procedure.
  - e. He admitted to knowing that the cover had a claim which was reported in March 2023 for an insured sum of Kshs. 6,400.000/=; and
  - f. He expressed his remorse and apologised for the breaches and negligence on his part.
24. RW1 further averred that the Claimant did not raise any complaint at the disciplinary hearing or after the hearing, that he had any difficulty responding to any of the allegations against him or that new allegations had been made against him.
  25. The disciplinary committee deliberated on the Claimant's responses on 3<sup>rd</sup> May, 2023 and concluded that the charges of procedure breach and gross negligence had been sustained against him. The Claimant was found to be guilty of gross negligence in carrying out his duties based on self-admission.
  26. According to RW1, Clause 20.4 of the Respondent's Human Resource Policies and Procedures Manual, the Respondent is allowed to consider termination and dismissal where offences of serious nature are committed.
  27. The committee therefore recommended that the Claimant be dismissed from employment due to proven gross negligence.
  28. Consequently, by a letter dated 12<sup>th</sup> June, 2023, the Respondent dismissed the Claimant from employment on the grounds of gross negligence in carrying out his duties and for failing to adhere to set procedures.
  29. The Claimant appealed against said dismissal vide his letter dated 23<sup>rd</sup> June, 2023.
  30. The appeal was considered by the Respondent and dismissed. The Appeal's Committee upheld the decision of the disciplinary committee on the ground that the Claimant had not established any substantial additional or new information or evidence to warrant a review of the decision to dismiss him. The outcome of the appeal was communicated to the Claimant vide the letter dated 25<sup>th</sup> July, 2023.

### **Submissions.**

31. On his part, the Claimant argued that the mistake he committed and owned up to was the failure to adhere to the set procedure and procedure breach. That nowhere did he state that he was negligent in his duties or that he lacked due diligence.
32. The Claimant further submitted that having been found to have committed a failure to adhere to set procedure and procedure breach, the disciplinary action that would have followed was a written warning for a first offence and second offence -final warning and a third offence- dismissal.
33. According to the Claimant, the Respondent did not have a valid reason to terminate his employment, as this was the first offence where he had committed failure to adhere to set procedure and procedure breach.
34. It was the Claimant's further contention that gross negligence in carrying out his duties is a whole different offence in the Respondent's disciplinary code.



35. The Claimant further argued that he did not have prior notice that he was being accused of or charged with committing the offence of gross negligence in carrying out his duties and was never heard on the same issue. That as such, he was condemned unheard.
36. It was the Claimant's view that the Respondent had a final card which it did not lay on the table waiting to unleash it against him in the termination letter. That the difference in the outcome for failure to adhere to set procedure and gross negligence is worlds apart.
37. On the other hand, the Respondent submitted that the Claimant's allegation that he was not heard on the ground of gross negligence before the dismissal is an afterthought, misconceived and unsubstantiated as this was introduced and established through self-admission by the Claimant in his response to the show cause and during the disciplinary hearing. That having admitted to being negligent in carrying out his duties, no prejudice was suffered by the Claimant on the same ground and none has been shown whatsoever.
38. The Respondent further argued that the Claimant did not raise any complaint at the disciplinary hearing or after the hearing that he had any difficulty responding to any allegation against him or that new allegations had been made against him.
39. The Respondent further poured cold water on the Claimant's argument that he only admitted to the charges on the assumption that the applicable penalty was a warning letter. In the Respondent's view, this was disingenuous and misconceived as the Claimant ought to have known that breach of the Respondent's Code of Conduct as charged in the show cause letter could result in termination of employment.
40. The Respondent further posited that the Claimant knew or ought to have known that Section 44(4) of the *Employment Act* allowed the Respondent to summarily dismiss him if he neglected to perform any work which it was his duty to perform or if he carelessly and improperly performed any work which from its nature it was his duty under his contract to have properly performed.
41. In support of the Respondent's submissions, the Court was invited to consider the determinations in *Agnes Kavata Mbiti v Housing Finance Company Limited* (2017) eKLR, *Violet Kadala Shitsukane v Kenya Post Savings Bank* (2020) eKLR, and *Bonventure Asakwa Ofutso v Jubilee Insurance Co. Ltd* (2018) eKLR.
42. The Respondent urged the Court to be guided by the authorities cited above and find that it had a genuine and valid reason to dismiss the Claimant from employment.
43. With respect to procedure, the Respondent submitted that at the conclusion of the hearing, it became clear that the evidence disclosed that the Claimant was guilty of gross negligence and not just procedural breach. The Respondent further posited that the dismissal of the Claimant followed due process and any allegations to the contrary by the Claimant have not been proved.

#### **Analysis and Determination.**

44. Flowing from the pleadings, the evidentiary material on record, and the rival submissions, the following issues stand out for determination:
  - i. Whether the Respondent has proved that it had a valid and fair reason to commence termination of the Claimant's employment.
  - ii. Whether the Claimant's termination from employment was in accordance with fair procedure.
  - iii. Is the Claimant entitled to the reliefs sought?



## Valid and fair reason?

45. The grounds leading to the dismissal of the Claimant from employment as can be discerned from his letter of dismissal, were that:
- a. He did not handle his duties seriously and he knowingly unprocedurally breached the process and procedure as part of his duties while handling the cover for KDC 2X6X where he issued a comprehensive cover.
  - b. He failed to check the proper documentation and not only did he extend the cover for KDC 2X6X, he also approved an annual cover for the same vehicle without confirming from the portal that valuation was done.
  - c. He extended the cover for an additional two weeks pending IPF confirmation from 28<sup>th</sup> September 2022 to 12<sup>th</sup> October 2022.
  - d. He had a chance to cancel the cover due to the time between the issuance of the second renewal cover on 4<sup>th</sup> October 2022 and the effective date of the annual insurance on 13<sup>th</sup> October 2022 but he failed to follow due process hence his actions exposed the Respondent to a financial loss of Kshs 6.4 million.
46. It is worth noting that the Claimant did not deny issuing the annual insurance cover for motor vehicle registration number KDC 2X6X. He further admitted not paying attention to the valuation and the firm it was issued to. As it turned out, the valuation report shared by the Corporate Sales Executive was neither signed nor uploaded on the valuer's portal. Further, the report was for Mayfair Insurance and not the Respondent. Indeed, when cross-examined on this issue, the Claimant admitted that the valuation report was not in favour of the Respondent and was not signed.
47. Clause 9(a) of the Respondent's Underwriting Policies and Procedures Manual provides as follows:
- “All vehicles to be covered comprehensively must undergo valuation to determine value and assess mechanical condition.”
48. Further, Clause 9(e) of the Underwriting Manual provides that “an annual certificate shall be issued (an extension for remaining 11 months) after payment of full premium based on the valuation (strictly).”
49. Drawing from the undisputed facts of this case, it becomes evident that the Claimant did not adhere to the Respondent's Underwriting Policies and Procedures Manual in handling the insurance cover for motor vehicle registration number KDC 2X6X.
50. At the material time, the Claimant was the Branch Operations Team Leader with some of his key responsibilities being to oversee the day to day running of the branch operations, like underwriting and ensuring compliance with all company procedures.
51. Given his designation, the Claimant was reasonably expected to be diligent and keen in the performance of his duties. Indeed, the error that occurred would have been avoided had the Claimant ensured compliance with the Respondent's underwriting procedures.
52. In this case, the Claimant failed to observe what appears to be a fundamental procedure of the Respondent's Underwriting Manual in issuing the comprehensive cover for the motor vehicle in question.



53. If the letter dated 10<sup>th</sup> July 2023 declining the insurance claim is anything to go by, this was a case of a fraudulent insurance claim which would have cost the Respondent Kshs 6.4 million had it been honoured.
54. All things considered, the Claimant's actions and omissions were in direct breach of the Respondent's Underwriting Manual hence rendered him liable to disciplinary action by the Respondent. As to whether the sanction meted out by the Respondent was in consonance with the Human Resources Policies and Procedure Manual is a different question altogether.
55. To this end, the Court finds that the Respondent has proved on a balance of probabilities that there was a valid and fair reason to commence termination of the Claimant's employment on account of the manner in which he handled the insurance cover for motor vehicle registration no. KDC 2X6X.

Whether the Claimant's termination was in accordance with fair procedure

56. In terms of Section 45(2) (c) of the *Employment Act*, an employer is duty-bound to prove that it terminated an employee's employment in accordance with fair procedure. Under Section 41 of the *Employment Act*, an employer is required to notify the employee of the allegations he or she is required to respond to and thereafter grant him or her the opportunity to make representations in response to the said allegations, in the presence of a fellow employee or shop floor union representative of his own choice.
57. In the case herein, it is common cause that the Claimant was issued with a Notice to Show Cause dated 13<sup>th</sup> March 2023 detailing the allegations against him. It is also not in dispute that the Claimant responded to the Notice to Show Cause vide his response dated 17<sup>th</sup> March 2023 and that he appeared for a disciplinary hearing on 12<sup>th</sup> April 2023.
58. The Claimant's contention is that in the Notice to Show Cause, it was alleged that he had failed to adhere to set procedure and procedure breach and unbeknownst to him, the Respondent altered the allegations against him to gross negligence hence he was not given an opportunity to respond to the said new allegations. According to him, he was subjected to a disciplinary hearing on the basis of the new allegations.
59. From the record, it is evident that the details of the allegations against the Claimant correspond with the allegations that were addressed during the disciplinary hearing and the reasons for termination contained in the letter of dismissal. Indeed, the character and nature of the allegations leveled against the Claimant remained the same in that they concern the issuance of the comprehensive cover for motor vehicle registration number KDC 2X6X. Further, the anomalies highlighted in the Notice to Show Cause are similar to those that were covered during the disciplinary hearing.
60. Therefore, it is not accurate for the Claimant to allege that new allegations were introduced and that he had no opportunity to respond to the same.
61. The Claimant has further taken issue with respect to the nature of the sanction that was imposed against him by the Respondent. In this regard, the Claimant referenced Clause 20.3.16 of the Respondent's Human Resource Policies and Procedure Manual, which provides for the proposed action for failure to adhere to set procedures and procedure breach as follows: first offence -written warning; second offence- final warning and third offense-dismissal.
62. The Claimant has argued that since this was his first infraction, it called for a written warning.
63. On this issue, the Respondent has submitted that at the conclusion of the hearing, the evidence disclosed that the Claimant was actually guilty of gross negligence, not just procedural breach.



64. It is therefore apparent that after the disciplinary hearing, the Respondent escalated the nature of the offence the Claimant had been charged with from failure to adhere to set procedures and procedure breach to gross negligence.
65. This was rather odd, noting that at the time of leveling the charges against the Claimant, the Respondent had all the facts and evidence against the Claimant at its disposal, yet elected to cite the Claimant for failure to adhere to set procedures and procedure breach as opposed to gross negligence. It is therefore not clear why it escalated the nature of the offence to gross negligence after the conclusion of the hearing. As it is, this escalation of the offence to gross negligence had a significant impact on the Claimant's case, seeing that the two categories of offences attract different disciplinary sanctions in the Respondent's Human Resource Manual.
66. It is therefore highly probable that having been cited for failure to adhere to set procedures and procedure breach, the Claimant had a reasonable or legitimate expectation that the most severe sanction he would get was a written warning.
67. Therefore, the escalation of the offence by the Respondent was against the Claimant's reasonable or legitimate expectation that the Respondent would adhere to its own Human Resources Manual and mete out the prescribed sanction. This was not the case. In the end, the Respondent shifted goal posts to the detriment of the Claimant.
68. For the foregoing reasons, the Court finds that in as much as the Respondent issued the Claimant with a Notice to Show Cause and gave him an opportunity to be heard in a disciplinary hearing, the final outcome was not in accordance with the Respondent's own Human Resources Manual hence was unfair.

### **Reliefs?**

69. As the Court has found that the termination of the Claimant's employment, although for a fair and valid reason, was not in accordance with the Respondent's Human Resources Manual, the Court will award him compensatory damages equivalent to three (3) months of his last salary. This award has taken into account the length of the employment relationship, which spanned close to 13 years, as well as the Claimant's own contribution to the termination of his employment.

### **Orders**

70. The total sum of my consideration is that Judgment is entered in favour of the Claimant and he is awarded compensatory damages in the sum of Kshs 514,048.38 being equivalent to three (3) months of his last salary. Interest shall apply on the said award at court rates from the date of Judgment until payment in full.
71. The Claimant shall also have the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF JUNE 2025.**

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Olieti

For the Respondent Mr. Opele



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.

STELLA RUTTO

JUDGE

