



REPUBLIC OF KENYA



KENYA LAW
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**Gakenia v Lion Landscapes (Cause E030 of 2024)
[2025] KEELRC 2264 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2264 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E030 OF 2024
ON MAKAU, J
JULY 30, 2025**

BETWEEN

DARWIN KANAI GAKENIA CLAIMANT

AND

LION LANDSCAPES RESPONDENT

JUDGMENT

Introduction

1. By a statement of claim dated 11th July 2024, the claimant alleged that his constitutional rights had been violated by the respondent. He further alleged that his employment was unfairly terminated by the respondent on 17th August 2023. Therefore, he prayed for the following reliefs: -
 - a. A declaration that he was unfairly and unlawfully terminated and compensation amounting to 12 monthly salary as damages totalling to Kshs.1,287,984.
 - b. A declaration that the respondent engaged in unfair labour practices contrary to section 43 of the *Employment Act*, Article 41 and 50 of *the Constitution* of Kenya and payment of General damages as a consequence thereof.
 - c. A declaration that the respondent violated his right to privacy as protected under Article 31 of *the Constitution* and general damages.
 - d. Issuance of a proper certificate of service.
 - e. Costs for the claim.
2. The respondent filed a Memorandum of Response dated 30th October 2024 admitting that it had employed the claimant until 17th August 2023 when his services were terminated fairly for misconduct



and after being accorded a fair hearing. It further averred that all his dues were paid and a certificate of service issued to him. Therefore, it denied liability and prayed for suit to be dismissed with costs.

Facts of the case

3. The claimant testified as CW1 and adopted his written statement dated 11th July 2024 and produced 31 documents plus two Audio recorded CSs as exhibits. In brief, his case was that he served the respondent as an intern from December 2020 to March 2021 and due to his diligence, he was employed as Community Enterprise Officer from April 2021. His starting monthly salary was Kshs.80,548 which was later increased to Kshs.107,332. He worked until 17th August 2023 when his services were terminated without valid reason and without following due process.
4. He stated that the reason cited for the termination was not fair and he was not accorded a fair hearing. He contended that the Internal HR Manager who was to hear his case was conflicted since he had complaint against her and she was also the wife of his Supervisor (Operations Manager). He contended that the respondent had promised to grant his request to have his case heard by an external HR consultant but that promise was never honoured.
5. He further stated that before too long the respondent's CEO returned to the Country and she held a meeting with him where he explained his challenges with other managers. He also forwarded to her some information but then he was shocked to receive a show cause letter on 3rd August 2023 signed by the CEO and he responded. He contended that the show cause letter was prematurely given because it was issued after receiving 2 warning letters instead of three as required under the Staff Handbook.
6. Thereafter, he was accorded a virtual disciplinary hearing on 14th August 2023 before a panel of three people including Benjee Casio, Glen Behr and Gabriel Nyausi. He contended that Glen Behr was conflicted because he was the husband of the HR Manager Michelle Behr against whom he had laid a complaint of accessing confidential information.
7. He confirmed that he had been given the right to call a fellow employee to accompany him during the hearing but he declined due to bad blood with his colleagues. He was given the charges but the answers required were yes or no, and when he requested for evidence to back up the charges none was availed and therefore he was not able to answer the questions.
8. After the hearing, he received a termination letter dated 17th August 2023 and he appealed immediately to the CEO. The appeal was heard by the CEO Alayne Cotterill and Anna Grau, wife to Benjee Casio who sat in the disciplinary hearing. The CEO was the author of the show cause letter and therefore in the claimant's view the two levels of the panels that heard his case were conflicted. He contended that the respondent violated its staff handbook by failing to protect him as a whistle blower and instead dismissed him without a fair hearing.
9. He further stated that his rights to privacy under Article 31 of [the Constitution](#) was violated by the respondent when confidential information he shared with supervisor (Operational Manager) Mr. Glen Behr was further shared by him to his wife, Michelle Behr (HR Manager) who in turn released it to other employees. As a result, a toxic work environment was created for him.
10. He further stated that the CEO told him that his relationship with the Operations Manager had deteriorated and one of them had to go. He contended that he was coerced to resign but when he declined he was sent away for no valid reason. As a result, he suffered financially and therefore prayed for damages.



11. On cross examination he confirmed that upon his appointment, he was taken through the Staff Handbook page by page and he signed it. However, the Handbook was taken back and he had no access of the same again despite consistent requests.
12. He further stated that he wrote an application for a grant and his CV was required together with those of others. He admitted that he saw the CV for the HR Manager and when he checked with the HR Board, he found that she was not registered.
13. He admitted that the Staff Handbook provides that social media posts be accompanied by a disclaimer. He contended that his linked account has a disclaimer in his Bio. He contended that his posts were positive and was even applauded with a clap by Paul Subi, the respondent's communication officer. He also admitted that he was given warning letter for late submission of weekly reports for 31st March 2023 and 28th April 2023 which he submitted a day after the scheduled time.
14. He further admitted that he recorded his colleagues in the office to collect evidence that the HR Manager had access to confidential letters he had sent to the CEO and Operation Manager. He contended that the HR Manager read the letters to Truphena Kariuki. He contended that he was compelled to record the colleagues after the CEO demanded that he produces evidence to support his grievances against the senior managers or else would face disciplinary action.
15. He contended that after sharing the evidence with the CEO, she asked him to resign because of his deteriorating relationship with his supervisor but he declined.
16. RW1 was Gabriel Nyausi, respondent's Community Project Manager. He adopted his written statement dated 29th November 2024 as his evidence and produced 10 documents as exhibits for the respondent. He admitted that the claimant was formerly employed by the respondent as Community Enterprise Officer earning monthly salary of Kshs.107,332.
17. He further stated that on 10th July 2023, the claimant wrote to the respondent's CEO raising a list of issues among them, his feeling that the respondent's Kenya Management team values did not reflect those of the organisation; that he was responsible for the respondent receiving the Darwin Initiative grant; and that he was being unfairly treated by the issuance of a second warning.
18. He contended that the CEO met with the claimant over the said issues where the claimant shared with the CEO recording of other staff which amounted to violation of privacy for the other staff. As a result, the CEO issued the claimant with a show cause letter requiring him to explain why disciplinary action should not be taken against him for the grave breach of privacy.
19. He further stated that the claimant did respond to the show cause letter denying the offence and feigning ignorance of the same. Thereafter, he was invited to a disciplinary hearing vide letter dated 8th August 2023 which informed him of the right to be accompanied by a colleague of his choice. The claimant attended and confirmed that he was comfortable proceeding without the company of another employee. He was presented with the same charges raised in the show cause letter and he was given opportunity to respond to the same.
20. After the hearing, the disciplinary committee deliberated on the claimant's responses and reached conclusion that the claimant had frustrated the employment and resolved that his employment be terminated. He then appealed against the decision but after hearing the appeal was dismissed and the termination upheld. His terminal dues were tabulated and paid, and a certificate of service issued.
21. RW1 stated that he sat as a committee member during the disciplinary hearing and averred that there was no bias against the claimant. He contended that the office has a small number of staff and the



committee which sat consisted of the only people who could hear the case. The chairperson of the committee was based in Tanzania.

22. He contended that the HR Manager was Data Administrator and also handling HR function. He further contended that the staff handbook is within the Base Camp in the intranet and hard copies are available upon request. He contended that the intranet is available to all the staff.
23. On cross-examination, he stated that he had been in the respondent for 2 years having joined in May 2023. He had served three months' probation before the appointment. He sat in the disciplinary panel for hearing of the claimant. The other members of the panel were Glen Behr (based in Kenya) and Benjee Casio who was in Tanzania. The hearing was virtual and the charges were read to the claimant. The first charge was about making false and misleading statements and the second charge was posting work related matters on social media without a disclaimer. The third charge was recording his colleagues in the office without their consent.
24. He admitted that he did not know the section of the Staff Book that required posting in the social media to be accompanied by a disclaimer. He further admitted that he did not have the offending recording that was taken by the claimant without the consent of the other staff.
25. He also admitted that three warning letters are required before disciplinary hearing is done and admitted knowing only two warning letters given to the claimant. He contended that there is a procedure for protecting whistle blowers, but clarified that in this case there was no whistle blowing.
26. He denied that the committee had a predetermined decision against the claimant and further denied knowing that the claimant was promised a hearing before an external HR Consultant. Finally, he stated that the reason for the termination was breach of standards and procedures in the Staff Handbook.
27. After the hearing, both sides filed written submissions to summarise their respective cases.

Issues for determination and analysis

28. Having carefully considered the pleadings, evidence and submissions, the following issues fell for determination:
 - a. Whether the respondent terminated the claimant's employment unfairly and unlawfully.
 - b. Whether the reliefs sought are merited.

Unfair and unlawful termination

29. Section 45(1) & (2) of the [Employment Act](#) provides that: -

- “(1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - i. related to the employee's conduct, capacity and compatibility; or
 - (ii) based on the operational requirements of the employer; and



(c) that the employment was terminated in accordance with fair procedure.”

30. The above provisions highlight two essential elements of a fair termination of employment contract, namely valid reason(s), and fair procedure. In this case, the claimant alleged that the two elements were missing in his dismissal and therefore the termination was unfair and unlawful.

Reasons for termination

31. The reasons for terminating claimant’s employment were set out in the termination letter dated 17th August 2023 which is copied hereunder: -

“Darwin Gakenia

ID Number XXXXXXXXX

Community Enterprise Officer

Laikipia, Kenya

Dear Darwin,

Re: Termination Of Service

Following the disciplinary hearing held on the 11th August 2023, the management found your explanation for the following points unsatisfactory:

1. On 10th July 2023, you wrote a letter to the CEO claiming that the company received a grant based on a presentation you shared. These claims are false and misleading. In the staff handbook under the Fair Dealing section: Statements regarding the Company’s activities and performance must not be untrue, misleading, deceptive, or fraudulent.
2. On 26th July 2023, you posted on your personal linkedIn page about the Lion Landscapes PPB programme failing to put a disclaimer on your post. The Staff Handbook states that: personal postings on social media that may be perceived a work-related should always include a disclaimer that the views expressed are of the writer and do not represent the position or values of Lion Landscapes.
3. There is a recording where you recorded other work colleagues in the office whilst you were out of the office and without their consent. Lion Landscapes view your behavior in this matter as a breach of confidentiality. Recording others without their consent within the workplace infringes on the privacy of their communications and is a violation of privacy under *the Constitution*; recording others without seeking their consent can expose you to a law suit as the aggrieved party may claim a violation of privacy under Article 31 of *the Constitution* of Kenya, 2010 and the Data Protection Act of 2019.

We have made the decision to terminate your employment contract with immediate effect.

The following payments shall be processed and paid to you upon clearance with Lion Landscapes and the return of all company property in your possession.



One month's salary in lieu of notice
Leave days unutilized
Overtime hours worked up to 17th August 2023
Salary up to 17th August 2023
Certificate of service

Please note that the said terminal dues will only be paid to you after statutory deductions and any other monies owed to Lion Landscapes.

You have the right to appeal against this decision within 14 days. The same can be initiated via a letter written to the Chief Executive Officer.

Yours Sincerely,

Alayne Cotterill

Joint CEO

Lion Landscapes”

32. The letter cited three reasons namely; writing a false and misleading letter to the CEO on 10th July 2023; posting work related information in his Linked in account on 26th July 2023 without a disclaimer contrary to the staff handbook; and recording other work colleagues in the office without their consent. As regards the first reason for the termination, I have read the claimant's own letter dated 10th July 2023 (page 74-82) and confirmed that at page 79 he wrote: -

“I have played an instrumental role in securing funding for Lion Friendly through the innovative concepts I shared with you. Our discussion regarding my salary have also been significant aspect of my employment, with promises for review that never materialized and later changed the salary increment. Despite these changes, I have remained professional and dedicated to my work.”

33. The claimant produced the above letter and never disputed that he authored it. By the letter he claimed some credit for securing funding through the innovative concepts he had shared with the CEO. RW1 stated that the said statement by the claimant was false because fundraising in the respondent is never by one person. Having considered the said excerpt from the letter, I see nothing wrong with the claimant assigning some credit to himself for the role he played in securing funds for the respondent. He never stated that he did it single handedly, but rather stated that he played an instrumental role.

34. As regards the charge of posting information about his work at respondent on social media without a disclaimer, the claimant admitted that he posted the information in his Linked in account but averred that it was in good faith and accompanied by a disclaimer. RW1 produced 5 pages of posts by the claimant about his work at the respondent which had no disclaimer. During the disciplinary hearing, he admitted that he made 18 posts about his work on his Linked in account.

35. Before this court, the claimant never produced copies of the said posts to prove that they were indeed accompanied by a disclaimer as alleged. Consequently, I find and hold that the respondent has proved that the claimant made the social media posts without a disclaimer. Page 19-24 of the claimant's bundle of documents is Part 1 of the respondent's Code of Conduct in the Staff Handbook. On page 23 of the bundle, are guidelines on photos, media and social network. Paragraph 2 of the said guidelines states that: -

“Personal postings on social media that may be perceived as work related should always include a disclaimer that the views expressed are of the writer and do not represent the position or values of Lion Landscapes.”



36. The third charge was about recording colleagues in the office, of which the claimant admitted to have done. He contended he did the recording after the CEO demanded for evidence. He contended that it was confidential information to the CEO and the Operations Manager and there was no complaint from the recorded staff.
37. Having considered the explanation by the claimant, I find that the recording of colleagues at work place without their consent was wrong. The recording was done while the claimant was away from the office allegedly for use as a whistle blower. Such conduct was a violation of the right to privacy of the other employees.
38. Having considered the rival contentions, I find that the respondent has proved that it had two valid reasons for dismissing the claimant from service namely, posting on the social media information related to his work at the respondent without an accompanying disclaimer, and recording his colleagues in the office without their consent.

The Procedure

39. Section 41 of the *Employment Act* provides that: -
 - “(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”
40. In this case, the claimant was served with a show cause letter citing the charges and he responded within the 5 days’ time given. Thereafter he was invited to a disciplinary hearing with a fellow employee of his choice but attended alone because admittedly he was in bad relationship with all of them.
41. During the disciplinary hearing, the charges were read to him and he made his responses. The responses were deliberated upon after the hearing but the disciplinary committee found him guilty of the charges and recommended for his dismissal. The decision was communicated vide the letter dated 17th August 2023 which also indicated his exit benefits.
42. The claimant appealed against the termination and the appeal was heard by the CEO and another officer. The claimant was allowed to prosecute his appeal but, in the end, it was dismissed and the decision to terminate his employment was upheld. His terminal dues were computed and paid. He was also issued with a certificate of service.
43. The claimant alleged that the composition of the panels that heard his case in the first instance and on appeal were not impartial as in both levels, there were spouses namely the Behrs. Besides, the CEO who sat on the appeal was the author of the show cause letter. He contended that he requested for and was promised that his case would be heard by an external HR Consultant. However, RW1 averred that the office had 4 or 5 staff members and there was no other person to conduct the disciplinary hearing.



He further averred that even the chairperson of the disciplinary committee was based in Tanzania and the hearing was done virtually.

44. I have considered the foregoing controversy, and I find no merits in the claimant's demands. An employee in a small organization has limited rights when it come to going through disciplinary process. He has to appear before the same employer who mostly wears the hats of the accuser and the judge at the same time.
45. On the basis of the evidence and the circumstances of the case there, I find that the claimant's dismissal was done in accordance with a fair procedure as required under section 41 and 45 of the *Employment Act*.
46. I gather support from *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR, where the court held that:

“ 14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers' human resource manual or as set out in the *Employment Act* or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee's guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.”

47. Further in the case of *Kenya Postal Corporation v Andrew K. Tanui* [2019] eKLR the Court of Appeal held that:

“ Four elements must thus be discernible for the procedure to pass muster:-

- i. an explanation of the grounds of termination in a language understood by the employee;
- ii. the reason for which the employer is considering termination;
- iii. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- iv. hearing and considering any representations made by the employee and the person chosen by the employee.”

48. Having found that the respondent had valid reasons for dismissing the claimant and that a fair procedure was followed, I proceed to hold that the termination was fair and lawful within the meaning of section 45 of the *Employment Act*.



Reliefs

49. Having found that the termination was in accordance with section 45 of the *Employment Act*, I find that the claimant is not entitled to declaration that the termination was unfair and unlawful. For the same reasons, I find that the claimant is not entitled to declaration that the respondent has engaged in unfair labour practices.
50. The claimant prayed for declaration that the respondent violated his right to privacy contrary to Article 31 of *the Constitution* but upon considering the evidence on record, I find that it is the claimant who violated other employees' right to privacy by recording them without their consent. As regards his confidential letters being shared and read to others, I find that the claimant did not prove that such communication was privileged information that could not be shared by the employer. Consequently, the declaration sought under Article 31 of *the Constitution* is declined.
51. For the reasons that the claimant did not prove unfair termination and violation of his Constitutional rights, the prayer for compensation of Kshs.1,287,984 and General damages is declined. The prayer for certificate of service was not disputed as the respondent stated that it was issued after the termination. The claimant prayed for a proper certificate of service but he did not say how he wanted it to read. Consequently, I direct the claimant to go for it in case he has not yet collected.

Disposition

52. Having gone through the bundles of evidence and submissions presented, I find that the claimant has not proved his case on a balance of probability and therefore I dismiss the suit with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NYERI THIS 30TH DAY OF JULY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

