



Cheruiyot v Lipton Teas and Infusions Plc (Formerly Ekatera Tea Kenya Plc) (Employment and Labour Relations Cause E016 of 2023) [2025] KEELRC 2191 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2191 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
EMPLOYMENT AND LABOUR RELATIONS CAUSE E016 OF 2023**

**AN MWAURE, J
JULY 24, 2025**

BETWEEN

ROBERT CHERUIYOT CLAIMANT

AND

**LIPTON TEAS AND INFUSIONS PLC (FORMERLY EKATERA TEA KENYA
PLC) RESPONDENT**

JUDGMENT

1. The Claimant commenced this suit via Memorandum of Claim dated 11th September 2023.
2. The Claimant later made amendments to its Memorandum of Claim vide an amended Memorandum of Claim which is undated but filed on 2nd April 2024.

Claimant's case

3. The Claimant avers that he was employed by the Respondent as Assistant Divisional Manager on 25th February 2015, placed on probationary terms, and he was confirmed on 23rd August 2015.
4. The Claimant avers that he maintained a positive working relationship with the Respondent until 15th March 2023, when he was suspended pending an investigation into allegations of sexual harassment.
5. The Claimant avers that the disciplinary was a rushed disciplinary process, leading to the Respondent issuing a summary dismissal letter dated 8th May 2023, which the Claimant alleges amounted to unfair and unlawful termination.
6. The Claimant avers that he had a clean disciplinary record over seven years of employment, was served with a show cause letter on 22nd April 2023, prompting allegations of sexual harassment and interference with investigations. Specifically, he was accused of propositioning Caren Chepngetich,



- retaliating against her after rejection, favouring Lydia Chepkirui in recruitment due to an alleged relationship, and attempting to influence witnesses.
7. The Claimant avers that in his response dated 24th April 2023, he denied all allegations, stating that Caren did not report to him and that recruitment decisions were made collectively and transparently. He provided detailed recruitment procedures to dispute favouritism claims, citing documented consensus among colleagues. He also denied interfering with any investigation or contacting potential witnesses and affirmed that he had not breached any provisions of the Respondent's code of conduct.
 8. The Claimant avers that he was invited to a disciplinary hearing on 27th April 2023 after allegations of sexual harassment had surfaced. During the four-hour meeting, he maintained his innocence. Evidence was presented through testimonies of nine witnesses, including Caren Chepngetich, who accused him of misconduct; however, her signed statement was not made available to the Claimant. Witness 2 remained anonymous and provided hearsay remarks. Factory Manager Peter Ngeno testified about unrelated issues like tree felling and drunk drivers, confirming no complaints were lodged against the Claimant. Witnesses Lydia Chepkirui and Lorna Kiget both denied any knowledge of sexual misconduct, with Lydia explicitly stating she had no relationship with the Claimant and Lorna attributing the accusations to mere rumours.
 9. The Claimant avers that he refuted all allegations of sexual misconduct during disciplinary proceedings, emphasizing his clean record, adherence to company policy, and fair treatment of employees. Testimonies from witnesses, including an anonymous witness and others alleging interference, lacked concrete evidence and mostly relied on hearsay.
 10. Despite the unsubstantiated claims, the Claimant avers that the Respondent summarily dismissed him via WhatsApp on 8th May 2023, granting a right of appeal. He submitted the appeal within the allowed seven days, but it was dismissed on 16th May 2023.
 11. The Claimant challenges the disciplinary process as fundamentally flawed and orchestrated to appease overseas clients following the British Broadcasting Corporation (referred to herein as BBC) exposé on sexual harassment in the tea industry. He contends that the investigation lacked credible complainants and relied on unverified gossip, with key witnesses, such as Caren Chepngetich, not presented for cross-examination. The investigators' credentials were undisclosed, testimonies included anonymous sources, and no substantial evidence was provided to support the sexual harassment allegations.
 12. The Claimant argues that none of the conduct described meets the International Labour Organisation's definition of sexual harassment, which requires behaviour that is both unwelcome and offensive, either through quid pro quo or creation of a hostile work environment.
 13. The Claimant avers that the accusations amount to rumours of a consensual relationship and that his dismissal was unjust and based on unfounded speculation.
 14. The Claimant contends that his dismissal was procedurally flawed, unjustified, and in violation of Article 47 of *the Constitution*, the *Fair Administrative Action Act*, and Section 45 of the *Employment Act*, 2007. He was denied a fair hearing, and was not given the chance to confront his accusers, and no substantive evidence, such as texts or direct testimony, were produced.
 15. The Claimant avers that the disciplinary process was allegedly a rushed attempt to appease the Respondent's overseas clients following external pressure, leading to his dismissal without benefits despite eight years of unblemished service.
 16. The Claimant, an agribusiness manager earning Kshs. 230,048.77 monthly, argues that his termination cost him future earnings estimated at Kshs.67 million and damaged his professional reputation.



17. The Claimant seeks exemplary damages for wrongful termination, loss of income, and defamation, citing the Respondent's failure to respond to his demand and notice to sue.
18. The Claimant prays for:
 - a. A declaration that the termination of the Claimant's contract of employment on unfounded allegations of sexual harassment of employees is unconstitutional, unfair and unlawful.
 - b. An order that the Claimant be reinstated as an employee of the Respondent, and in the alternative, the Claimant be paid Kshs.15,000,000/= for unfair dismissal and Kshs. 67,288,800.00 being the loss of future earnings.
 - c. Exemplary and general damages
 - d. Any other relief the court may grant as it deems fit.
 - e. Costs of the claim and interest.

Respondent's Memorandum of Defence

19. In opposition to the Memorandum of Claim, the Respondent filed a Memorandum of Defence dated 19th December, 2023.
20. The Respondent denies all allegations brought by the Claimant, maintaining that his summary dismissal on 8th May 2023 was lawful and justified following investigations initiated in January 2023, prompted by a BBC exposé on sexual harassment within the company.
21. The Respondent avers that the Claimant made repeated unwanted sexual advances toward female employees, facilitated preferential recruitment in exchange for sexual favours, and interfered with the investigation by contacting potential witnesses.
22. The Respondent avers that the Claimant was suspended on 15th March 2023, extended on 31st March and 16th April 2023, and issued with a Notice to Show Cause on 22nd April 2023.
23. The Respondent avers that the Claimant responded on 24th April, 2023 and attended a disciplinary hearing on 27th April, 2023, where multiple witnesses presented evidence. The Respondent claims the Claimant was given a fair chance to respond and that he signed the minutes of the hearing acknowledging the proceedings.
24. The Respondent avers that the Claimant's summary dismissal on 8th May 2023 was both procedurally and substantively fair, following internal investigations and a disciplinary hearing prompted by sexual harassment allegations.
25. The Respondent contends that the Claimant was given opportunities to respond and appeal, which were duly considered but found lacking in merit.
26. The Respondent denies that the process was rushed or based on hearsay, emphasizing the need to protect witness identities due to the Claimant's alleged intimidation. Respondent rejects claims of targeting Claimant for dismissal to appease its European customers and regards such allegation as false and defamatory.
27. The Respondent disputes entitlement to reinstatement, compensation, future earnings, and exemplary damages, citing irreparable breakdown of trust and lack of legal foundation.
28. The Respondent urged that the Honourable Court to dismiss the claim with costs.



Claimant's reply to the Memorandum of Defence

29. The Claimant filed a reply to the Memorandum of Defence dated 27th November 2023.
30. The Claimant maintains that the disciplinary process was fundamentally flawed, arguing that the Respondent failed to establish a credible basis for the allegations and violated the principle of natural justice by denying him the opportunity to confront his accusers. He further asserts that the termination procedure was unfair and contravened the *Fair Administrative Action Act*.
31. Consequently, the Claimant urges this Honourable Court to strike out the Respondent's defence with costs and enter judgment in his favour as sought.

Claimant's evidence in court

32. CW1, the Claimant, adopted his witness statement dated 11th September 2023 together with the list of documents dated even date as his witness statement marked as exhibits 1 to 8 as his evidence in chief.
33. CW1 testified that he served the Respondent for nearly nine years without any prior disciplinary action until proceedings began on 15 March 2023, following a BBC exposé on sexual harassment. He stated that the dismissal process was unfair and is pursuing exemplary damages, arguing that the allegations deeply affected him as a family man, led him to unemployment, and violated his constitutional rights. He stated that he seeks either reinstatement or compensation.
34. In cross-examination, CW1 stated that he was initially appointed by Unilever before its name change. He referred to his appointment letter, noting that Clause 4 outlined behavioural standards, while Clause 3 detailed the company's business principles and consequences for violations. He emphasized the company's zero-tolerance stance on sexual harassment, applicable to all employees. Specifically, Clause 5.2 categorized unsolicited advances and unwanted sexual conduct as harassment, and Clause 5.7 obligated the employer to act decisively in addressing such misconduct.
35. CW1 testified that he was assigned to multiple company divisions, including Kimugu, Kimo, Changau, Chebown, and Chebau—but primarily worked at Kingu, as reflected in his appointment letter. He acknowledged that he was aware of both the BBC exposé on sexual harassment in February 2023 and the Respondent company's internal investigations that followed. CW1 confirmed receiving a suspension letter dated 15th March 2023 due to allegations of interfering with the investigation by contacting potential witnesses. He was later interviewed regarding the sexual harassment claims and questioned about his relationship with a colleague named Benta.
36. In re-examination, CW1 stated that he did not sexually harass his colleagues, and he was not given the statement beforehand, but the statements were presented to him at the hearing. He stated that he was not given the opportunity to interrogate his accusers. He stated that when he was issued with the Notice to Show cause letter, he was on suspension and could not access any documents prepared for the Notice to Show cause. He stated that the statements were not taken under oath.
37. CW1 stated that most witness statements, especially from witnesses 1 and 2, were neither provided to him nor confirmed during disciplinary proceedings, except for the Factory Manager (Witness 3), whose testimony did not pertain to sexual harassment. He emphasized that witnesses numbers 4 and 5 denied any personal or inappropriate relationship with him, and that witness number 6 spoke only of unverified rumours. CW1 denied interfering with the investigation and maintained there was no evidence or police report supporting the allegations of sexual misconduct. He further noted that the BBC exposé negatively impacted the Respondent's reputation, prompting a public response from its Head of Plantations.



Respondents evidence in court

38. The first Respondent witness Hillary Lombard adopted her witness statement dated 23rd February 2024. She also produced a bundle of documents dated 26th February 2024 as her exhibits as two other supplementary documents. She also produced still further supplementary list of documents dated 27th February 2024.
39. The first Respondent witness testified she was an independent investigator. She admitted she interviewed eleven witnesses and she was a team of Cheron and W. Ochieng. She says she would interview the witness and her team wrote the report and they signed it. Further she said her work was to do investigations and any action would be taken by the employer.
40. She says some of the witnesses did not take oaths as they were junior to the Claimant and so were protected. She says witness No. 2 and No. 6 were protected witnesses. The witness admitted she did not share all the statements with the Claimant during the investigation. She also said the Claimant was calling some witnesses and since he was interfering with the investigations he was placed on suspension.
41. The 1st Respondent witness says she was guided by the company's policy in her investigations. She said she provided the minutes of the investigations and not the statements. She says summary of witness statement is what is produced in court.
42. The 2nd Respondent witness is a Human Resource Officer from the Respondent's organisation. The witness relied on the witness statement dated 18th February 2025 which he said would rely on as his evidence in-chief. The witness says the Claimant used to sexually harass one Caren as per her statement in the investigation report. Witness No. 2 also says Claimant was asking to take her out and when she refused he got angry.
43. Also witness No. 9 said Claimant called her to inquire about the investigations and Claimant himself admitted he contacted five witnesses about the investigators and he said he regretted having done so.
44. The witness said she used to write the minutes and she issued Claimant with Notice to show cause on 22nd April 2023 which was a Saturday and he was expected to respond by 24th April 2023. The invitation to disciplinary hearing was given on 25th April 2023 and hearing took place on 27th April 2023. The witness says statements and investigations reports were not availed to the Claimant but he was given the minutes.
45. The court considered the Claimant's submissions dated 7th May 2025 together with the case laws. The respondent's submissions dated 2nd February 2025 were also considered by the court alongside the case laws.

Analysis and determination

46. The court has considered the pleadings and the evidence adduced in court by both the Claimant witness and the Respondent witnesses as well as the Parties' respective submissions. The issues for determination would be as follows:-
 - (1) Was the Claimant termination supported by valid reasons?
 - (2) Is Claimant entitled to his prayers as per the amended claim as well as the costs of the suit.
47. The Claimant was employed as an Assistant Manager and worked in several stations on 21st February 2015 and was confirmed on 23rd August 2015.



48. The Claimant was served with a Notice to Show cause letter dated 22nd April 2023. As per the letter he was informed that it was alleged that Claimant had sexually harassed various employees who reported to him including Caren Chepngetich on unknown dates and he was accused of frustrating her when she declined his advances. The notice also stated that it was suspected that he was in a sexual relationship with a term employee Lydia Chepkirui whom he favoured in recruitment. He was further accused with interfering with the witnesses during investigations and was thus intimidating the said potential witnesses.
49. The Claimant responded by his letter Exhibit 5 and he denied he had sexually harassed employees who reported to him. He said in particular Caren Chepngetich did not report to him. He said he could therefore not frustrate her work as he had no responsibility in allocating her work.
50. As for favouring an employee and offering her a job for sexual favours he denied the same and he said he did not recruit staff alone but worked with a team. He gave an elaborate process of how they recruited 90 employees on 7th May 2022 and they were with Lorna Kiget when they also took two other employees Josephine Chepkirui and Lydia Chepkirui.
51. He also denied he had interfered with investigations by contacting potential witnesses. He claimed he did not know who were to be the witnesses.
52. The Claimant was then summoned to a disciplinary hearing for 27th April 2023 by a letter dated 25th April 2023. He was informed to invite a witness to testify on his behalf.
53. The hearing proceeded on 27th April 2023 as scheduled. In Attendance was the Chairman Bett, Member Miss Mitei and Mumbi Mwangi Members of Code Committee. Lucy Kinyanjui represented the investigators. The Claimant was in attendance and he had no witnesses. In the hearing witness No. 1 Caren Chepngetich said Robert used to ask her for dates but she declined.
54. Witness No. 2 who is referred as “Protected” said Robert used to ask her if he could take her out. She reported the matter to Peter Ngeno their Operations Manager who told her later that he spoke to Robert. She says after that Robert’s behaviour towards her changed for the better.
55. Peter Ngeno, the Factory Manager of Karuma did not have any evidence about any sexual harassment of the Claimant with any female employees.
56. Witness Lydia Chepkirui said she had no relationship with the Claimant.
57. Lorna Kiget also had no concrete evidence of any sexual harassment between Robert and any female team leader.
58. Another Witness No. 6 whose identity is protected said Claimant tried to find out information about the investigations and by the questions he was asking she felt he had something to hide.
59. Witness No 7. Was also refereed as “Protected” and she said she had never seen ay suspicions of romantic interactions between Claimant and Caroline Chepngetich.
60. Witness No. 8 was Josephine Chebet. She said that the reporter who was part of BBC expose told her that Robert had been calling him persistently and was concerned that somebody was leaking the investigations to Robert.
61. Witness No.2 (protected) said Robert had asked her if she had been contacted by the investigators.
62. Leonard Kirui said he told Robert he had been interviewed by BBC and had told him he had lived with Robert and all was well.



63. Claimant in his interview said he consulted the welfare team leaders whom he worked with in Kimiu and Chebown and such were Leonard who used to be his gardener and he would ask them if they had been asked about him by the investigators. He said he also called Lorna and Betty and he also asked Moraa. He says he also got a call from Benta who informed him she had been contacted by the investigators. The Claimant admitted he regretted having contacted those people and he said it was not in bad faith. When he was asked if he felt he had overstepped in the investigations he admitted he regretted having contacted those people.
64. The letter of dismissal of the Claimant dated 8th May 2023 he was informed after investigations and disciplinary hearing he was found to have breached company's Code Policy on Dignity and Fair Treatment as well as Section 44(3) of the Employment Act.
65. Reasons were given that he sexually harassed some women employees including Caren Chepngetich and another witness who requested her identity to be concealed.
66. The letter also clarified that he interfered with investigations by contacting potential witnesses and questioning them about the investigations.
67. He was also informed as an indictment that he employed two staff members Lydia Chepkirui and another and had cancelled two successful employees and replaced them with Lydia and another lady.
68. The comprehensive investigations by a professional investigator and the very detailed disciplinary meeting the Claimant was taken through by the Respondent's top team convinces the court that the Respondents complied with Section 41, 43 and 45 of the Employment Act.
69. Substantive justification was proved on a balance of probability as set out in among others the case of Walter Anuro Ogal -Vs- Teachers Service Commission Cause No. 955 of 2011 where the court held:-
- “The termination to pass the fairness test, it ought to be shown that there was not only substantive justification for the termination but also procedural fairness.”
70. Section 45(1) and (2) of the employment Act provide as hereunder:-
- (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 employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.
71. The reasons set out in the summary dismissal letter by the Respondent have set out valid reasons for summary dismissal of the Claimant.
72. Sexual harassment is very vicious and also secretive and by its very nature is not easy to always have eye witnesses. Section 6(1) a, b, c, and d of the Employment Act as follows:-
- (1) 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.

73. There is evidence the Claimant used language in respect to witness No. 1 Caren and witness No. 2 that had clear sexual connotations and so amounted to sexual harassment.

74. Section 43(2) of the *Employment Act* provides that an employer in terminating a contract of an employee shall be required to prove the reason or reasons for termination were such that the aforesaid employer believed to exist.

75. The court is also persuaded by the case of *Ooko & Another -VS- SRM & 2 Others* Civil Appeal 195 and 197 of 2019 where the court held:-

“...An employee is sexually harassed if the employer or a co-worker directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contained or implied promise of preferential treatment in employment or threat of detrimental treatment. Further, an employee is sexually harassed if the employer, his representative or co-worker showed physical behaviour of a sexual nature which directly or indirectly subjected the employee to behaviour that was unwelcome or offensive to that employee.

...a characteristic of sexual harassment is that it undermines the victim’s dignity at work and constitutes a detriment on the grounds of sex, and that the lack of intent is not a defence.”

76. The court therefore is persuaded the Respondents had valid reasons to terminate the Claimant inter alia sexual harassment, interfering with potential witnesses during investigations even as per his admission during the hearing. He also recruited two employees irregularly.

77. The court is also convinced the Respondent complied with procedural fairness during the disciplinary process. The process that is mandatory during the disciplinary hearing is set out in Section 41 of the *Employment Act*. The same provides as hereunder:-

- (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.
78. The Claimant was given a notice to show cause why he should not be dismissed. After responding to the Notice he was invited for disciplinary hearing. He was informed to invite two witnesses to speak on his behalf. He did not invite any witness.
79. During the hearing he confirmed he was comfortable to proceed and did not raise any concerns. After a lengthy hearing a decision was taken and minutes were produced. He appended to the minutes.
80. He then appealed the decision on 12th May 2023 after receiving the dismissal letter dated 4th May 2023. He got a response on 16th May 2023 to the appeal and the decision of the disciplinary committee was upheld. He was paid his final dues and a certificate of service was prepared dated 27th May 2023.
81. The court has considered also the Claimant's evidence and submissions but finds the evidence by the Respondent has been proved on balance of probability. Therefore, the court has to hold that the Claimant has not proved a case of unconstitutional, unfair and unlawful dismissal. The claim is therefore dismissed and Claimant's prayers are declined.
82. As for costs the court will exercise its discretion and order each party to meet their respective costs.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF JULY, 2025.

ANNA NGIBUINI MWAURE.

JUDGE

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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE.

JUDGE

