

2026 January | Employment

EMPLOYEES MUST BE GIVEN AT LEAST THREE DAYS TO RESPOND TO A NOTICE TO SHOW CAUSE

Bakery Confectionery Manufacturing & Allied Workers Uni v Kenafric Industries Limited
[2025] KEELRC 3681 (KLR)

Background:

The Grievant, Thomas Komu Ndunda, was a unionisable employee and a member of the Claimant Union. He was employed by the Respondent, Kenafric Industries Limited, as a store assistant in the year 2000 and was confirmed into permanent employment in 2001.

The Respondent terminated the Grievant's employment on the allegation that he sold the company's drums for his personal benefit and without authorization.

The Grievant challenged the termination on grounds that the disciplinary process was procedurally unfair. Specifically, he argued that he was issued with a show cause letter and granted only twenty-four (24) hours to respond, before a disciplinary hearing was convened and his employment was subsequently terminated.

Court's Decision

The High Court held as follows:

1. For termination to be lawful and fair, the court must consider both the substantive grounds for termination and the procedure followed.
2. Regarding the procedure, section 41 of the Employment Act requires that an employee must be notified of the charges against them in a language they understand and be accorded an opportunity to respond to those allegations and to be heard, in the presence of a fellow employee or shop floor steward.
3. In the present case, the Court found that granting an employee only 24 hours to respond to the Notice to Show Cause was procedurally unfair, even if the employee managed to respond to the show cause within the time. The Court observed that issuing a Notice to Show Cause and scheduling a disciplinary hearing the following day without affording the employee sufficient time to respond or prepare is both casual and unfair.
4. The Court further held that an employee must be allowed reasonable time to respond to the Notice to Show Cause. Reasonable time should not be less than three (3) days, although a longer period may be necessary depending on circumstances of each case.

Key Takeaway for Employers

Employers must ensure that disciplinary processes comply with procedural fairness requirements. Issuing a Notice to Show Cause

with an unreasonably short response timeline exposes employers to findings of procedural unfairness, even where substantive grounds for termination may exist.

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