

2026 NOVEMBER | Employment

AN INVESTIGATION IS NOT A DISCIPLINARY HEARING

Gulf Strem Investments Ltd v Stephen (Suing as the Legal Representative of the Estate of Stephen Munyao Kini – Deceased) (Civil Appeal E011 of 2020) [2026] KECA 1581 (KLR)

1. Introduction

1.1. On 31st July 2026, the Court of Appeal at Mombasa (Murgor, Laibuta & Okong'o, JJA) held that an investigation and a disciplinary hearing are distinct processes which serve different purposes, and that one cannot ordinarily substitute for the other.

1.2. The Court upheld the finding of the Employment and Labour Relations Court that the termination of a senior manager's employment was procedurally unfair, notwithstanding that there was a valid reason for the termination. It also declined to interfere with the award of compensation equivalent to 5½ months' salary.

1.3. The decision is a reminder to employers that Section 41 of the Employment Act provides the minimum threshold of a fair procedure, and that it must be complied with even where the employee is senior and the misconduct is grave.

2. Background

2.1. The Respondent (now deceased and represented by the legal representative of his Estate) was employed by the Appellant on 17th January 2005 as an Operations Superintendent and subsequently rose to the position of Deputy Terminal Manager. His role entailed oversight of critical operational activities, ensuring compliance with safety procedures, and implementation of terminal operational standards.

2.2. On 13th June 2016, the Appellant terminated his employment on the grounds of gross misconduct. It was alleged that he sanctioned unauthorized repairs to the boiler despite a management decision to defer the repair to await the sourcing of proper spare parts. According to the Appellant, this unilateral action resulted in a fire at the workplace, causing damage and exposing the plant and personnel to risk.

2.3. The Respondent was suspended on 18th May 2016, whereupon investigations were conducted and he was given an opportunity to respond. He was paid three months' salary in lieu of notice. He testified that he was not issued with a

show cause letter, nor accorded a disciplinary hearing as required by law.

2.4. The Respondent filed a claim at the Employment and Labour Relations Court seeking, among other reliefs, compensation for unfair termination, severance pay, unpaid annual leave and overtime. The total claim amounted to Kshs. 23,602,412.

2.5. The trial court (Rika, J.) held as follows:

a) **There was a valid reason for termination.** The Respondent had authorized repairs contrary to a corporate management decision, and his unilateral action exposed the Appellant's plant and machinery to risk. Termination was substantively justified under Sections 43, 44(4)(c) and 45 of the Employment Act.

b) **The termination was procedurally unfair.** Although investigations were carried out, the **Appellant** did not conduct a distinct disciplinary hearing as required under Section 41 of the Employment Act. The investigation process was not equivalent to a disciplinary hearing, and there was failure to formally communicate the charges the Respondent faced and to convene a disciplinary forum after completion of investigations.

c) **The claims for severance pay, overtime and 50 days' leave failed.** Termination was not on **account** of redundancy, management employees were not entitled to overtime, and the leave claim was not proved.

2.6. The court awarded compensation equivalent to 5½ months' salary, being Kshs. 1,408,231, declared the termination unfair only on account of the manner of termination, and ordered issuance of a Certificate of Service.

2.7. Aggrieved by the decision, the Appellant appealed to the Court of Appeal.

3. Court of Appeal's Determination

3.1. The Court of Appeal identified the following issues for determination:

a) Whether the appeal was incompetent.

b) Whether the learned Judge was in error in finding that the termination of the deceased's employment was procedurally unfair despite the investigations conducted by the Appellant and the opportunity allegedly accorded to the deceased to respond to the allegations against him.

c) Whether the learned Judge properly exercised his discretion in awarding the Respondent compensation equivalent to 5½ months' salary for unfair termination, taking into account the relevant factors under Section 49(4) of the Employment Act.

d) Whether the award of compensation was excessive and unjustified.

3.2. On the competency of the appeal:

a) The Respondent raised a Preliminary objection that the Notice of appeal was filed out of time and that the appeal was

filed against a deceased person who has no capacity to be sued.

b) The Court held that the legal representative of the Estate, having been appointed as such, clearly became the person through whom the deceased was capable of being sued. On the delay in service of the Notice of appeal, the Court, having regard to Rule 86 of the Court of Appeal Rules, considered that it was too late in the day for the Respondent to raise the issue. The Preliminary objection was found to be devoid of merit.

3.3. On whether the termination was procedurally unfair:

a) The Appellant argued that the deceased was informed of the allegations through the suspension letter, participated in the investigation process and was afforded an opportunity to explain his conduct before the decision to terminate was made, and that the requirements of Section 41 of the Employment Act were therefore substantially complied with.

b) The Court of Appeal disagreed and held as follows:

i) In determining the procedural fairness of a dismissal, a court should consider whether Section 41 of the Employment Act, which provides the minimum threshold of a fair procedure, has been complied with by the employer.

ii) An investigation is intended to establish facts and determine whether the intended disciplinary action is warranted.

iii) The hearing contemplated under Section 41 is the forum through which an employee is informed of the charges facing him and afforded an opportunity to make representations before a decision affecting his employment is made.

iv) The two processes are distinct and serve different purposes. In the Court's words, "One cannot ordinarily substitute for the other."

c) The Court noted that the record did not reveal any notice convening a disciplinary hearing, minutes of such hearing, or evidence that the deceased was invited to appear before a disciplinary panel in the company of a fellow employee or representative as contemplated under Section 41.

d) In the circumstances, the learned Judge could not be faulted for reaching the conclusion that what was undertaken was an investigation and not the distinct disciplinary hearing required by law. There was no basis for interfering with the decision that the dismissal was procedurally unfair.

3.4. On whether the award of 5½ months' salary was a proper exercise of discretion:

a) The Appellant contended that the learned Judge failed to adequately consider the Respondent's contribution to the circumstances leading to his dismissal and the payment of three months' salary in lieu of notice, and that the award was excessive.

b) The Court of Appeal held as follows:

i) Under Section 49(1)(c) of the Employment Act, an award of compensation for unlawful termination is discretionary, and Section 49(4) requires the court to consider relevant factors, including the employee's conduct, the extent of contribution to the termination, the circumstances of dismissal, and the interests of justice.

ii) An appellate court will not interfere merely because it would have reached a different conclusion. Interference is warranted only where the trial court misdirected itself in law, took into account irrelevant considerations, failed to take into account relevant considerations, or arrived at a plainly wrong decision.

iii) The learned Judge expressly took into account the Respondent's approximately 11 years of service, his rise through the ranks to the position of Deputy Terminal Manager, his age of 53 years at the time of termination, and his significant contributions to the Appellant's operations, including oversight of ISO certification processes.

iv) The learned Judge also recognized that the Respondent had materially contributed to the circumstances leading to termination, and that the dismissal was rendered unfair solely because of the Appellant's failure to comply with the procedural requirements of Section 41.

v) Far from ignoring the Respondent's contribution to the events leading to dismissal, the learned Judge expressly acknowledged it and moderated the award accordingly.

vi) The Court was satisfied that the award was not excessive and that the learned Judge properly exercised his discretion under Section 49 of the Employment Act.

Consequently, the appeal was found to be devoid of merit and was dismissed in its entirety with costs to the Respondent.

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