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KENYAN EMPLOYMENT COURT CLARIFIES EMPLOYER OBLIGATIONS ON SICK LEAVE, EMPLOYEE ABSENTEEISM AND PROCEDURAL FAIRNESS

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The Employment and Labour Relations Court (ELRC) has delivered significant decisions overtime clarifying the legal standards governing sick leave administration, employee absenteeism, workplace disciplinary processes and procedural fairness under the Kenyan employment law.

In *Hellen Mwende Paul v Lina Kantaria t/a Commercial Registrars [2025] KEELRC 867 (KLR)*, the Court reaffirmed that while employers are entitled to enforce contractual and statutory attendance and sick leave obligations, disciplinary action arising from absenteeism must still comply with procedural fairness requirements under the Employment Act, 2007. This was also the holding of the Court in *Chandaria v Mungai (Appeal E086 of 2025) [2026] KEELRC 120 (KLR)* (23 January 2026) (Judgment) wherein procedure was emphasised in addition to the substantive reason for termination on the basis of absenteeism.

The judgment is particularly important for employers, multinational corporations, HR leaders, pension and reward specialists, compliance officers, in-house legal teams, workplace investigators, and boards because it highlights increasing judicial scrutiny over workplace governance, disciplinary documentation, electronic evidence and employer compliance systems.

The decision also reflects broader global trends toward enhanced employee protection standards, stronger workplace governance expectations, and heightened accountability for procedural compliance in employment decision-making.

Executive Summary

The former dispute arose after an employee alleged unfair and unlawful termination following absence from work on medical grounds. The employee contended that she had informed the employer of her illness through WhatsApp communication and was verbally terminated from employment upon returning to work.

The employer argued that the employee had absconded duty and failed to provide proper medical certification as required under both the Employment Act and the employment contract.

Upon re-evaluating the evidence, the ELRC held that:

- the employee failed to comply with contractual and statutory sick leave documentation requirements;
- the employer was justified in treating the conduct of failure to provide treatment notes as absenteeism;

- however, the employer failed to demonstrate procedural fairness because there was insufficient evidence proving service of the show cause letter and no formal termination letter had been issued.

The Court consequently awarded the employee:

- notice pay;
- unpaid salary; and
- service pay under Section 35 of the Employment Act.

The decision underscores the critical distinction between substantive justification for disciplinary action and procedural fairness obligations, both of which must be satisfied in order to withstand judicial scrutiny and uphold fairness in termination.

Key Legal and Regulatory Findings

1. Sick Leave Entitlement Requires Proper Medical Certification

The Court reaffirmed that entitlement to paid sick leave under Section 30 of the Employment Act is conditional upon production of appropriate medical proof confirming incapacity to work.

The Court distinguished between:

- ordinary treatment notes; and
- proper medical certification demonstrating actual incapacity or unfitness for work.

Importantly, the Court found that the employee failed to comply with Clause 15 of her employment contract, which expressly required proof from a medical practitioner confirming incapacity to work.

The judgment reinforces several important employment governance principles:

- employees must strictly comply with absence reporting procedures;
- employers may lawfully enforce contractual attendance obligations;
- sick leave management systems must be properly documented; and
- employment contracts remain central in determining workplace rights and obligations.

For employers, the judgment highlights the importance of maintaining clear and enforceable sick leave and attendance management frameworks.

2. Procedural Fairness Remains Mandatory Even Where Misconduct Exists

Although the Court found that the employee had effectively absconded duty, it nevertheless held that the employer failed to satisfy procedural fairness requirements under Section 41 of the Employment Act.

The employer alleged that a show cause letter had been issued; however, the Court found insufficient evidence proving service of the notice upon the employee. Further, no formal termination letter was produced.

The decision therefore reinforces a critical principle in modern employment jurisprudence:

Even where valid grounds for disciplinary action exist, employers must still demonstrate procedural fairness through proper show cause notice, hearing processes, documentary records and evidence of compliance with statutory disciplinary procedures (Section 41, 43 and 45 of the Employment Act).

This reflects increasing judicial expectations that employers maintain robust disciplinary governance frameworks capable of withstanding litigation and regulatory scrutiny.

3. Electronic Workplace Communications Present Increasing Evidentiary Risks

The case also raised important issues concerning reliance on WhatsApp communications in employment disputes.

The employer challenged the admissibility and evidentiary reliability of the WhatsApp messages on grounds of non-compliance with Section 106B of the Evidence Act relating to production of electronic evidence. The Honourable Court did not address this but relied on it in its decision.

As workplaces increasingly rely on digital communication tools, the decision highlights growing legal and compliance risks associated with:

- informal workplace communication channels;
- undocumented verbal instructions;
- inconsistent electronic record retention;
- unauthenticated digital evidence; and
- absence of formal communication governance protocols.

Employers should therefore consider implementing structured electronic communications governance frameworks covering:

- approved communication channels;
- digital record preservation;
- metadata retention;
- disciplinary communication procedures;
- evidentiary authentication requirements; and
- workplace data governance obligations.

The judgment aligns with broader international trends recognizing the growing importance of digital governance and documentary integrity on this ambit in workplace management.

4. Exposure to Service Pay Claims Remains Significant

The Court awarded service pay under Section 35(5) of the Employment Act after finding insufficient evidence demonstrating the employee's enrolment in NSSF or an alternative pension arrangement.

This aspect of the decision highlights the importance of maintaining comprehensive and auditable records relating to:

- NSSF contributions;
- pension and provident fund participation;
- gratuity schemes;
- employee benefit structures; and
- statutory remittance compliance.

Employers with weak employee benefits documentation systems may face significant financial exposure during employment disputes and regulatory audits.

Broader Implications for Employers and Workplace Governance

The decision, in addition to other recent decisions, reflects broader shifts in employment regulation and judicial oversight toward enhanced employee protection standards, greater procedural accountability, stronger workplace governance expectations, increased scrutiny of HR compliance systems and improved evidentiary standards in employment litigation. The judgment demonstrates the increasing expectation that employers maintain robust and integrated employment governance frameworks capable of withstanding judicial, regulatory and reputational scrutiny.

From a governance and enterprise risk management perspective, the Court's reasoning reinforces the importance of aligning internal employment compliance systems with the Employment Act, 2007 and constitutional protections relating to fair labour practices, fair administrative action, and fair hearing under Articles 41, 47 and 50 of the Constitution. It also underscores the need for organisations to comply with workplace investigation standards, employee wellbeing obligations, and data protection requirements. Further, employers should ensure that their HR governance and compliance frameworks align with internationally recognised best practices.The decision reflects the growing convergence between employment law, corporate governance, operational risk management and workplace compliance.

The judgment is also likely to influence how employers will structure and administer critical workforce management processes, including sick leave and absence management systems, workplace investigation protocols, disciplinary hearing procedures, employee wellness and return-to-work frameworks, HR documentation standards and governance policies relating to electronic and digital workplace communications.

In light of the decision, employers should consider undertaking comprehensive reviews of their employment governance and compliance systems to mitigate legal, operational, financial, and reputational risk exposure. Particular attention should be given to sick leave and absence management policies to ensure they clearly address reporting timelines, escalation procedures, approved medical documentation requirements, incapacity certification obligations, return-to-work processes and the consequences of non-compliance with attendance and reporting obligations.

Organisations should strengthen workplace investigations and disciplinary management frameworks. They should ensure that show cause procedures, hearing protocols, investigation documentation standards, and termination approval processes are properly documented and consistently applied. All disciplinary procedures should also comply with statutory procedural fairness requirements.

The judgment further highlights the growing importance of electronic communications and evidence governance within modern workplaces. Employers should therefore implement robust policies governing the use of WhatsApp and other informal messaging platforms in workplace communications, preservation and retention of electronic evidence, employee notification systems, digital workplace investigations and management of HR-related electronic records and communications.

From a pensions and employee benefits perspective, employers should ensure that accurate, accessible, and auditable records are maintained in relation to NSSF compliance, pension and provident fund participation, employee benefit enrolment, gratuity arrangements, and statutory remittances. Inadequate recordkeeping in these areas may expose employers to avoidable financial liabilities and evidentiary challenges during disputes or regulatory reviews.

The decision also underscores the importance of periodically reviewing employment contracts, workplace policies, employee handbooks, disciplinary codes and HR governance frameworks. This will ensure enforceability, statutory compliance, consistency with evolving judicial developments and alignment with international workplace governance and compliance standards.

Conclusion

The ELRC's decision in Hellen Mwende Paul v Lina Kantaria t/a Commercial Registrars represents an

important development in Kenya's evolving employment jurisprudence and reflects the increasing judicial emphasis on procedural accountability, workplace governance and compliance-driven employment practices. The judgment reinforces that employees are required to comply with lawful attendance to their work-place, reporting, and sick leave obligations, while employers remain entitled to take disciplinary action in cases involving absenteeism, misconduct or breach of workplace policies. However, the Court made it clear that procedural fairness remains mandatory irrespective of the nature of the alleged misconduct and employers must therefore demonstrate compliance with statutory disciplinary requirements through proper notice, hearing processes and documentary evidence.

The decision further highlights growing judicial expectations regarding workplace governance standards, management of digital workplace communications, disciplinary documentation and the adequacy of employment compliance systems. As employment relationships become increasingly digitised and compliance-driven, courts are placing greater scrutiny on the manner in which organisations administer disciplinary processes, preserve employment records, manage workplace investigations, and authenticate electronic evidence.

Employers that proactively strengthen HR governance structures, workplace investigation procedures, disciplinary frameworks, employee benefits compliance systems and digital evidence management protocols will be better positioned to mitigate litigation and regulatory exposure while preserving operational integrity, workforce confidence and organisational reputation.

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- Executive employment and termination advisory;
- Pension and employee benefits structuring;
- HR policy review and compliance audits;
- Employment governance and regulatory compliance;
- Workplace risk management frameworks;
- Employment litigation and dispute resolution;
- Executive compensation and incentive structures;
- Trade union and collective bargaining advisory;
- Data protection and workplace privacy compliance;
- Cross-border employment advisory; and
- Employment-related constitutional and regulatory litigation.

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