

## Kenyan Court Affirms Employer Discretion in Sexual Harassment Dismissals

in two decisions backing the sacking of two former managers for sexual harassment.

The Employment and Labour Relations Court at Kericho has delivered two important decisions affirming an employer's right to dismiss employees for sexual harassment where investigations are conducted reasonably and in compliance with the Employment Act. The decisions, successfully argued by Sheila Onyango, a Senior Associate at Kaplan & Stratton Advocates on behalf of Lipton Teas and Infusions Plc (Formerly Ekaterra Tea Kenya Plc), provide practical guidance for employers managing sensitive workplace misconduct allegations.

### Overview of the Decisions:

In [Robert Cheruiyot v. Ekaterra Tea Kenya Plc](#) and [Jackson Limo v. Ekaterra Tea Kenya Plc](#), the Court upheld the dismissal of two former managers accused of sexual harassment. In both cases, the Court emphasized that sexual harassment often occurs in private and does not require direct eyewitness evidence to justify disciplinary action. The Court confirmed that an employer need only establish a reasonable belief, on a balance of probabilities, that misconduct occurred. It rejected arguments that the absence of cross-examination of complainants or access to all witness statements rendered the disciplinary process unfair.

### Procedural Fairness Under the Employment Act

The Court found that the employer complied with Section 41 of the Employment Act by:

- Issuing show cause letters setting out the allegations
- Giving the employees an opportunity to respond
- Convening and conducting disciplinary hearings
- Allowing employees to call witnesses
- Providing minutes of the proceedings
- Granting a right of appeal

In both cases, claims that the disciplinary process was rushed or unfair were dismissed, particularly where the employees confirmed readiness to proceed and participated fully in the hearings.

### Key Implications for Employers

- Sexual harassment complaints should be investigated promptly and seriously, even in the absence of direct evidence.
- Employers are not required to subject complainants to cross-examination in internal disciplinary processes.
- A fair process under Section 41 focuses on notification of allegations and a genuine opportunity to respond, not trial-style procedures.
- Well-documented investigations and disciplinary processes significantly strengthen an employer's position in litigation.

### Conclusion

These decisions reinforce the importance of having clear sexual harassment policies, prompt investigative procedures, and disciplined adherence to statutory processes. Employers who act reasonably and fairly when addressing harassment complaints can expect judicial support.



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