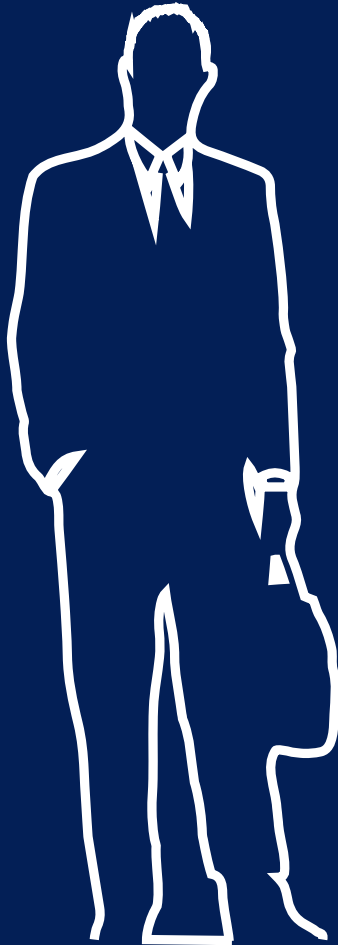




# EMPLOYEE GRIEVANCE MECHANISM

## 2020

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## Agenda

- 01 Definitions
- 02 Principles of effective grievance mechanism
- 03 Steps in Grievance handling Mechanism
- 04 Informal Methods
- 05 Formal Grievance
- 06 Grievance Hearing
- 07 Appeal

## **What is a grievance and grievance mechanism?**

- Grievance- this is an allegation, issue, problem that an employee may face in the course of his/her employment.
- Grievance mechanism-This is a procedure that provides a clear and a transparent framework through which employees' grievance can be raised, assessed, investigated and responded to.

## Principles of an effective grievance mechanism

- a. Legitimate- should be clear, transparent and equitable process
- b. Accessible-Simple as possible and avoid unnecessary administrative procedures.
- c. Equitable- advise and expertise, and a language that is understood by everyone.
- d. Predictable-time frame for each stage and swift resolutions
- e. Transparent-complaints should be treated seriously in an impartial and a confidential manner.
- f. Rights- compatible-outcomes and remedies should be in line with the legislations.
- g. A source of a continuous learning- evaluating the effectiveness of the procedure and resolutions.

## Types of grievances

- Individual grievance-This type of grievance happens when a single employee feels that the management has violated the agreement.
- Examples; work load, compensation(overtime), disciplinary.
- Group grievance-This type of grievance happens when the decision made by the management affects a group of people. For instance introducing work shifts.
- Policy or union grievance-This happens when employees represented by the union feels the actions of the management have violated the terms of employment.

## Step1; Informal methods

- In cases where an employee has a reasonable grievance they should start by talk it over with the immediate supervisor or line manager.
- If the discussions fails, departmental manager can hold an informal meeting to resolve the issues.

**Case law;** Cause No. 220 of 2014-Kenya law: A case between SRM(claimant) versus GSS(K)LTD(1<sup>st</sup> Respondent) and Dominic Ooko (2<sup>nd</sup> Respondent) – PTO  
case; The claimant went to court claiming that he was sexually abused at work place.

## **Case law; Cause No.220 of 2014- Kenya law**

### **The Judge ruled that;**

- The case for sexual abuse was proved on the balance of probabilities.
- The claimant to further bear the cost of the suit.

## Step 2; Formal grievance

If the employee is unsatisfied with the decisions made in the first stage, he/she should raise a formal grievance in writing (email or letter).

The written document should outline;

- a. What the grievance is about
- b. Evidence
- c. What the employee want.

**Case law;** Cause No.95 of 2014- Kenya law Banking Insurance and financial union(claimant) versus Barclays bank of Kenya limited)- PTO

Case; A staff went to court claiming that he was not notified when reviewing the contract with changes

## Case law; Cause No.95 of 2014-Kenya Law

### The Judge ruled that;

- There was no violation of section 10(5) of the Employment Act ,according to the witness that there was a memo issued to this effect and he signed on his new contract in 2008 and it has been in force since then.
- The subject of the warning letters to be declared illegal and unlawful, the letters shall remain the internal records of the respondent and where the issues of performance arises, having exhausted internal procedures, the respondent shall comply with the legal requirements under section 41 and 43 of the Employment Act.

## Response to a formal grievance (investigation)

Investigations are made to give a fair decision. This could be gathering of more information and evidence

*Case Law: Cause No 449 of 2015 Kenya Law between Mohammed Khamis Hemed (Claimant) versus Almas Beverages Limited (Respondent)*

*Case; A claimant filed a memorandum of claim against the employer due to unlawful termination of the employment (the disciplinary hearing was pending judgement), Inhuman treatment at workplace (humiliating the claimant before the staff working under him etc.), Compensation for damages (the claimant had 12 months to serve prior to termination of service), to be issued with the certificate of service and the respondent to bear the cost of the suits.*

## Case law; cause No 449 of 2015-Kenya law

### The Judge ruled that;

- The termination of employment was inconsistent with section 43 and 45 of the employment contract. It was not fair according to Section 42(2) of the employment contract.
- The court found out that the grievance set out in the email remained unchallenged by the management.
- The claimant to be compensated accordingly.
- The claimant to be issued with the certificate of service as per section 51 of the Employment Act 2007.
- The Respondent to pay the claimant's cost of suits.

## Step 3; Grievance hearing

- A meeting is arranged within a predetermined period of time to discuss the employee grievance.
- Employee is given time to explain their side of the story, express how they feel, ask questions, show evidence and provide details of any witnesses.
- The employee has a right to be accompanied by a colleague or a representative at the meeting on request.
- The employer asks questions to know what steps to take.
- Employer is advised to keep a confidential report of the meeting, evidence gathered and any decisions or actions taken.
- The grievance manager will give employee minutes signed by both parties and a decision in writing informing him/her outcome of the grievance, employer decision and right to appeal, within a predetermined time.

**Case law;** Cause No 1739 of 2015-Kenya law between Joshua Rodney Marimba(claimant) versus KRA(Respondent)... PTO

## Case law; Cause No 1739 of 2015-Kenya law

**Case;** The Claimant went to court claiming that he was dismissed unfairly and in an procedural manner.

### **The Judge ruled that;**

- There was a valid and a fair reason that justified the dismissal of the claimant from service; his dishonesty that rendered him incompatible with the respondent. However, the respondent failed to follow a fair procedure as provided under the contract of service. The reliefs sought were declined either due to limitation period provided by the law or because of lack of merits altogether.
- The suit was dismissed with no costs.

## Stage4; Appeal

- In case an employee is unhappy with the decision made, he should reach out to the grievance manager. The employee is invited to the appeal meeting within a defined period of time.
- The meeting can only take the rehearing form if the initial stage was procedurally flawed, it should therefore take the review form.
- At this stage the employee still has the right to be accompanied by a colleague or a representative.
- The employee shall receive the decision of the appeal in writing within the predetermined time.
- The decision is final.

Case law ;Cause No. 21 of 2016 between Republic (Appellant) and Danson Mgunya (Respondent)... PTO

Case; A state appeal was made against acquittal of the Respondent over murder charges.



## Case law ; Cause No.21 of 2016- Kenya law

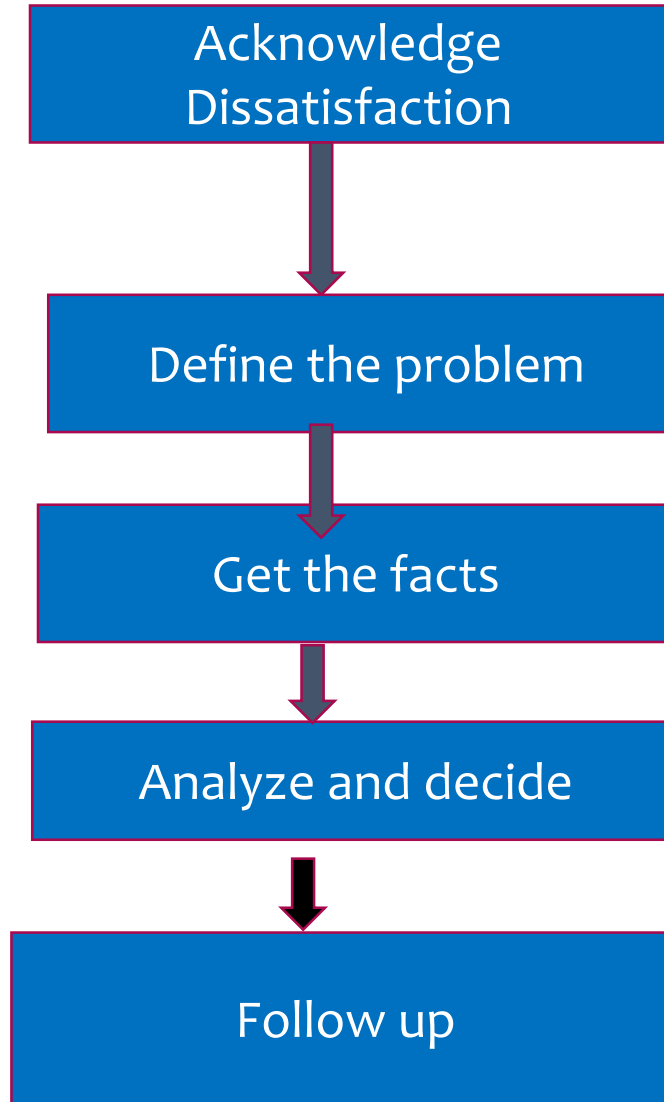
**The Judge ruled that;**

The case lacked rights and wrongs for consideration (bereft of merit) and it was dismissed completely.

## Benefits

- It serves as an outlet of employees dissatisfaction
- Helps create openness and trust within the organization
- Provides a fair, simple, and speedy way of dealing with the employees' issues.
- Builds an open Communication between the employer and the employee.

## Steps in grievance handling Mechanism





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# Thank you