

RUNAWAY RESIGNATIONS: DISCIPLINE MUST BE FACED, NOT ESCAPED



There are moments in law when a single judgment reshapes decades of practice with muted currents that re-draw lines between right and wrong, fairness and manipulation, process and panic. The Court of Appeal's decision in **Chege v Timsales Ltd (Civil Appeal No. 29 of 2020) [2025] KECA 1660 (KLR)** is one such moment.

In a sweeping and deeply reasoned judgement, the Court of Appeal (the CoA) declared that no employee can resign or retire to escape an ongoing disciplinary process. Once an employer has lawfully begun disciplinary proceedings, walking away does not wash away misconduct, and any resignation or retirement designed to defeat that process is invalid in law.

This decision reaffirms and restores the moral architecture of employment, reminding all that accountability cannot be abandoned at will. In sum, accountability does not end with a resignation letter.

THE CASE THAT SPARKED IT ALL

Chege, (the Claimant), had participated in an unprotected strike. Following the lawful resumption of disciplinary proceedings upon court authorization, he abruptly wrote and attempted to hand in a letter purporting to retire on 30th June 2019 (the Retirement Letter), one day before show-cause notices were issued.

The timing spoke volumes as the Claimant had neither reported to work for nearly a year nor attained the requisite retirement age, yet he claimed to be retiring just before the disciplinary process commenced. Timsales Ltd., his employer (the Respondent), saw it as a tactic to avoid accountability and the Employment and Labour Relations Court (ELRC) agreed.

It is worth noting that there was no proof that the Retirement Letter was received by the Respondent. As such, the CoA found that the Respondent had issued a Notice to Show Cause dated 1st July 2019 before the Claimant retired. Even so, the CoA held that even if the Retirement Letter had been received prior to the issuance of the aforementioned Notice to Show Cause, it was without notice as required by law, consequently invalid, and it did not preclude the Claimant from being subjected to a disciplinary hearing.

The ELRC had also initially found that the so-called retirement was a smokescreen - a desperate curtain call which the Claimant hoped would let him exit before the disciplinary process took off. On appeal, the CoA upheld this finding, calling the move an attempt to sanitize misconduct through paperwork.

The CoA further held that allowing such retirements and resignations would reward indiscipline, weaken internal control, and undermine fairness.

THE LEGAL TURNING POINT

At paragraphs 34 to 36 of the judgment, the CoA laid down a principle that will now define Kenyan employment exits as follows: ***"An employee cannot escape a disciplinary process by tendering a resignation or a retirement 'with immediate effect.' There exists nothing like 'resignation with immediate effect' in the employment context unless the employer waives the notice period."***

Relying on Section 35 of the Employment Act, 2007 (the Act), the judges made it clear that every employee must give lawful notice before leaving employment — even where the contract or Collective Bargaining

Agreement (CBA) is silent. If an employer does not accept an immediate resignation, it is invalid. Period. The CoA also drew guidance from the Supreme Court of India in **Mahanadi Coalfields Ltd v Rabindranath Choubey [2020] 18 SCC 71**, holding that a resignation or retirement intended to evade discipline is not valid and can be disregarded.

WHY THIS JUDGEMENT MATTERS

For years, employees facing dismissal for misconduct would abruptly resign or retire to pre-empt disciplinary action, often claiming benefits thereafter. Employers, uncertain of their rights, would let it pass to avoid legal confrontation. That era is over. This case draws a bright red line that:

- i. once a disciplinary process starts, the law demands that it runs its course;
- ii. a resignation or retirement meant to defeat that process cannot cleanse misconduct; and
- iii. fairness cannot be claimed by someone acting in bad faith.

This judgement reaffirms the principle that employment is not a casual arrangement; it is a relationship governed by order, good faith, and respect for process. What makes this decision extraordinary is the balance the CoA struck between maintaining the protections accorded to workers and re-emphasizing the essence and need for accountability at the workplace. It purged the myth that resignation excuses accountability.

In effect, rights and responsibilities must coexist. Fairness is not one-sided and due process protects everyone, but only those who respect it. By drawing this line, the CoA

has harmonized Kenyan labour law with global standards, reaffirming that good faith is the lifeblood of employment relationships. Fairness now belongs to those who respect the process, not those who purport to outsmart it.

THE END OF “IMMEDIATE RESIGNATION”

The CoA’s words are as practical as they are profound: **“Where the employment contract is silent on the question of notice... the governing law comes into play... There exists nothing like resignation with immediate effect unless the employer waives the notice period.”** These simple lines quietly debunk the popular myth, “I resign with immediate effect.” Under Section 35 of the Act, notice is mandatory. Even retirement must follow lawful notice consistent with the pay cycle. Employment is not something you walk away from; it is a relationship that must be concluded as prescribed by contract and/or law.

IMPLICATIONS GOING FORWARD

For Employers:

- i. you can decline to accept an immediate resignation, especially where the same is a ruse to escape disciplinary action;
- ii. you can now lawfully proceed with disciplinary processes even after an employee purports to resign or retire without the required notice;
- iii. you are protected from manipulative resignations and sudden retirements meant to dodge accountability; and
- iv. you retain managerial control, provided you act fairly and within the law.

For Employees:

- i. you cannot resign to escape accountability/disciplinary proceedings and expect to receive your benefits;
- ii. you must give proper notice as immediate

resignation is unknown in law unless accepted by your employer; and

- iii. your constitutional labour rights remain intact, but they cannot be used to defeat justice.

CONCLUSION

The decision in *Chege v Timsales Ltd* (2025) is more than a case citation — it is now a philosophy of accountability. It reminds us that the rule of law in the workplace is not a technicality; it is the very soul of justice between an employer and an employee. As Kenya's workplaces evolve, this case will be the touchstone for integrity, discipline, and procedural fairness. It closes the age of impulsive exits and opens a new one where accountability meets duty.

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