



**Mbugua v Nursing Council of Kenya (Civil Appeal E390 of 2022)
[2025] KEHC 12961 (KLR) (Civ) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E390 OF 2022

JN NJAGI, J

SEPTEMBER 19, 2025

BETWEEN

GEORGE MBUGUA APPELLANT

AND

NURSING COUNCIL OF KENYA RESPONDENT

(Being an appeal from the ruling of the Inquiry Committee of the Nursing Council of Kenya into alleged malpractice at Sipili Maternity and Nursing Home delivered on 10/5/2022)

JUDGMENT

1. The appellant is a registered nurse and was the administrator of Sipili Maternity and Nursing Home in Laikipia County. Following an expose by the Nation Television on alleged sexual assault of patients at the facility, the Nursing Council of Kenya constituted an Inquiry Committee to look into the matter. The Committee conducted the inquiry in which it heard a total of six witnesses including the appellant. The Committee thereupon made the following findings on the appellant:
 - (i) He was unprofessional while providing care to the complainant by engaging in acts that failed to promote an environment in which human rights, values and customs at the Nursing Home are respected;
 - (ii) He failed to document the care given to the complainant;
 - (iii) He is not clear on his role and tasks at the Nursing Home with respect to Nursing Provision;
 - (iv) He is totally hands off when it comes to supervision of nursing services at the Nursing Home as the committee noted a lot of gaps on documentation; and



- (v) He is not keen renewing his practice license as he previously failed to do so for a duration of one and three quarter years.
2. The Committee consequently ruled that the appellant had contravened section 18A 1(f) of the Nurses and Midwives Act Cap 257 Laws of Kenya by failing to observe and apply professional, technical, ethical, or other standards prescribed by the council as guidelines for practice by registered nurses and section 18A 1(m) of the Act by failing to do any other Act which may be prescribed. Consequently, the Council ordered that the appellant be:
- (i) Suspended for a period of two (2) years from the date of the ruling.
 - (ii) Fined Ksh.35,625/= in default of payment within six months of the date the ruling his licence be suspended for a further two years; and
 - (iii) Required to undertake a Senior Management course at his own cost within six months from the date of the ruling and submit evidence of such training to the council.
3. The appellant was aggrieved by the decision and filed the present appeal. The grounds of appeal vide an amended Memorandum of Appeal dated 27/10/2022 are that:
- (1) That the Respondent erred in facts and in law in noting the following against the appellant without substantiating the evidence that was placed before them -
 - (a) He was unprofessional while providing care to the complainant by engaging in acts that failed to promote an environment in which human rights, values and customs at the Nursing Home are respected;
 - (b) He failed to document the care given to the complainant;
 - (c) He is not clear on his role and tasks at the Nursing Home with respect to Nursing Provision;
 - (d) He is totally hands off when it comes to supervision of nursing services at the Nursing Home as the committee noted a lot of gaps on documentation; and
 - (e) He is not keen renewing his practice license as he previously failed to do so for a duration of one and three quarter years.
 - (2) That the respondent failed in law and fact in not appreciating that the appellant was only involved in administration duties of the facility.
 - (3) That the decision by the council is baseless arbitrary biased and discriminatory against the appellant as compared to the decision made against the other parties on the same cause of action.
 - (4) That it is only the appellant that was suspended and in fact the only one who was fined a very exorbitant amount of Kenya Shillings Thirty-five Thousand Six Hundred and Twenty-five (Kshs. 35,625.00/=).
 - (5) That the ruling of the council does not relate to the complaint before it.
 - (6) That the council did not on the bear minimum conduct a physical inspection of the medical facility before making the ruling.
4. The appellant sought that this court overturns the ruling of the respondent with costs.



The complaint in brief

5. The brief facts of the case are that the NTV Kenya received complaints from members of public that a male nurse by name of George Mbugua was sexually abusing female patients at Sipili Maternity and Nursing Home. An investigative team led by Stacy Ngina Karori set out to the said medical facility on a fact finding mission. She visited the Nursing Home on 24th August 2022 by a pseudo name Nancy Wanjiku. She posed as a patient suffering from stomach pain. Then she was directly admitted and injected with anti-acid without being examined at the triage. That a nurse went to her room and asked for her details. She put her on a drip. A clinical officer went to her and took blood samples from her. That at 5.30 pm, the Appellant visited her room for a counselling session. She told him that she had come to visit her boyfriend at Nanyuki who had caused her a lot of stress due to relationship problems. That at that point the Appellant started to press her stomach while asking whether she had sexual intercourse with the boyfriend. He asked her whether she knew the difference of two men penises. Then he lifted her top and tried to unclip her bra so that he could fondle her breast even more. She became uncooperative and he only stopped when he received a phone call to attend to something else.
6. The appeal was canvassed by way of written submissions.

Submissions

7. Counsel for the appellant submitted that one of the committee members, Mr. Alfred Obengo, had publicly given comments on the expose that had ran on Nation Television. That though he disqualified himself from chairing the committee he continued to sit in the committee as a member.
8. Counsel submitted that the committee refused to admit evidence of Loise Nyawira Wakahe and Caroline Muchina. That the Council erred in declining to admit the evidence.
9. It was submitted that the recommendations of the Council are at variance with the ruling in that the proceedings indicate that the appellant was fined Ksh.112,125/= while the ruling of 10th May 2022 indicates the fine to be Ksh.35,625/=. Counsel urged the court to allow the appeal.
10. Counsel for the 1st Respondent on the other hand submitted that the appellant was a nurse by profession and that he told the Committee that he has vast experience in nursing. That he admitted being involved partly on nursing provisions at the medical facility and could be called in when necessary to assist in duties of a general nurse. That he admitted he was involved in handling patients especially in cases where there were complicated maternity issues. That he admitted that he interacted with the complainant in his capacity as a nurse and even examined and counseled her. Therefore, in view of the foregoing, the Committee was right in its finding that the appellant was governed by the Nurses and Midwives Act and the attendant policies and guidelines therein. That the argument by the appellant that the Committee failed to appreciate that the appellant was only involved in administrative duties of the facility was not correct.
11. It was submitted that the appellant's action towards the complainant was in violation of the guidelines provided in The Scope of Practice for Nurses in Kenya 2021 (3rd Edition) which recapitulates the importance of a nurse to practice within the existing legal framework and to provide ethically sound and quality care which s/he is accountable.
12. It was submitted that the actions were in violation of The Standards of Nursing Education and Practice for Nurses in Kenya, 2012 which requires a nurse to demonstrate professionalism by adhering to the code of ethics and professional conduct as prescribed by the Council.



13. That the same was in violation of The Standards of Nursing Leadership, Management and Research guidelines which require nurses to provide leadership including;
 - a. Using relevant leadership styles in performing their duties.
 - b. Establishing and maintaining communication systems to support quality services and research.
 - c. Encouraging the development of skills to promote safe, competent and ethical professional practice; and
 - d. Advocating for quality practice setting that supports nurses' ability to provide safe effective and ethical care.
14. It was submitted that the appellant had positioned himself at the centre of leadership of the Sipili Maternity and Nursing Home and he thereby had the obligation to ensure that the facility had licenced nurses and an environment conducive for patients.
15. The respondent submitted that the findings of the council was sound and judicious and the sentence imposed was in compliance with the provisions of the law.
16. It was submitted that though the sexual assault complaint is a criminal offence that falls within the jurisdiction of the Director of Public Prosecutions, the council during the inquiry established professional misconduct on the part of the appellant in failing to give care to the complainant and engaging in acts that failed to provide an environment in which human rights were respected. It was submitted that the findings of the Committee were within the jurisdiction of the Council as they related to professional misconduct exhibited by the appellant. That the argument that the council inquired into what was not complained of is incorrect.
17. It was submitted that the Council has a broad jurisdiction that does not limit it to construct of a complaint before it but must have a global review of the circumstances pertinent to the conduct of the accused. That the Council was within its power to make the findings in relation to professional misconduct of the appellant.
18. The 1st respondent submitted that the Committee interviewed a total of 6 witnesses, five of whom worked at the medical facility. That from the testimony of the witnesses, it was sufficient to draw conclusions on the management of the facility. That the findings in respect to the facility were limited to leadership and structures in place which could be deduced from interviewing those who worked there. Therefore, that the argument that the 2nd respondent should have visited the facility before drawing conclusions is of no consequence.

Analysis and Determination

19. This being a first appeal, it is trite law that the court ought to examine and re-evaluate the evidence on record, assess it and make its own conclusion. This duty was well articulated by the Court of Appeal in *Selle & Another –vs- Associated Motor Boat Co. Ltd.& others* (1968) EA 123 where the Court stated thus:

“An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take



account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is and inconsistent with the evidence in the case generally.”

20. I have considered the grounds of appeal, the record of the Council and the submissions of the respective counsels for the parties. The main issue for determination is whether the appellant was guilty of the charges convicted of.

Section 18B of the Nurses and Midwives Act gives power to the Council to conduct an inquiry where a member of the Council or any member of the public has reason to believe that a registered, enrolled or licensed nurse has committed an act of professional misconduct. A “professional misconduct” is defined in section 18A (1) as follows:

A registered nurse shall be culpable of professional misconduct if such nurse —

.....

- (f) fails to observe and apply professional, technical, ethical or other standards prescribed by the Council as guidelines for practice by registered nurses;
 - (m) fails to do any other act which may be prescribed.
21. Before an inquiry is conducted, the schedule to the Act requires the person complained against to be served with a statement of the allegation. The schedule provides that:

Statement of allegation

- 1) The Council, member of the Council or member of the public shall prepare, or cause to be prepared, a statement, in such form as may be prescribed, setting out the allegation of professional misconduct to be investigated by the Council.
 - (2) The Registrar shall transmit to each member of the Council or its committee, and to the person whose conduct is the subject of investigation, a copy of the statement prepared pursuant to subparagraph (1) of this paragraph.
22. The statement of allegation sent to the appellant bearing the date 25th February 2012 reads as follows;

....the council is summoning you to appear before the Discipline, Standards and Ethics Inquiry Committee on Tuesday, 8th March, 2022 at 9:00a.m. The summon is necessitated following the video aired by NTV, on 23rd February 2022 at 9:00PM dubbed “Doctored Evil”.

In the video, it was alleged that you have been assaulting patients admitted at Sipili Maternity and Nursing Home as well as denying the patients to use their NHIF cards. This is against the Code of Ethics and Conduct for Nurses in Kenya, as stipulated by the Nursing Council of Kenya.

On lieu of the above, the Council seeks the following information to aid with the investigation of the above matter;

- 1. your written statement detailing the incident to be furnished on or before 2nd March 2022; and
 - 2. Any other relevant information that will aid in the investigation.
23. It is clear from the contents of the summons that the investigation was confined to two issues:
- (1) allegations of assaulting patients admitted at Sipili Maternity and Nursing Home, and



- (2) allegations of denying patients the use their NHIF cards.
24. I have gone through the proceedings of the Council. Nothing was raised during the inquiry on the second allegation of denying patients the use of NHIF cards.
25. On the first issue in respect to the appellant assaulting patients, the Council made findings that:
- (i) he was unprofessional while providing care to the complainant by engaging in acts that failed to promote an environment in which human rights values and customs at the Nursing Home are respected, and
 - (ii) he failed to document the care to the complainant.
26. On the issue that the Appellant engaged in acts that failed to promote human rights while providing care to the complainant, the Council did not explain the acts that the appellant did that showed that he failed to promote human rights. The evidence adduced was that the Appellant sexually abused the complainant by fondling her breasts. The council did not make a finding on the issue but left it to speculation as to what the appellant did to the complainant that showed that he failed to promote human rights. The statement was in my view vague. There was no basis for the finding. The finding ought to be set aside.
27. It was the evidence of the Appellant that he was making rounds at the Nursing Home when he met the complainant who told him that she was experiencing stomach pain. That he took her to the emergency section where he called a clinical officer and a nurse to attend to her. He went for other duties. That later in the afternoon he was called by Dr. Hussein to attend to a patient with suicidal thoughts. He went and found the complainant in her room. She was crying. She said that she was in a lot of pain. He then took some history from her. She told him that she was a university student and that she had come to visit her boyfriend with whom she had relationship issues. That he then went ahead to counsel her on her relationship issues. After the session he left the room and never had contact with her again.
28. The Council found that the Appellant did not document the care he gave to the complainant as required by the Standards of Nursing Education and Practice for Nurses in Kenya, 2012 whereby Standard 3 on documentation requires a practicing nurse to document all the nursing care given to a patient. The appellant in his evidence before the Council admitted that he attended to the complainant while she was admitted at his medical facility. He admitted that he did not document the care he gave to the complainant as required by the Standards of Nursing Education and Practice for Nurses in Kenya, 2012. It is a professional misconduct under section 18A (f) of the Act for a registered nurse to fail to comply with standards prescribed by the Council. The Council's finding on the failure by the Appellant to document the care he gave to the complainant is thereby upheld.
29. The other aspects the Appellant was found guilty of relates to matters touching on his management at the Sipili Maternity and Nursing Home in which the Council found that the Appellant was not clear on his role and tasks at the Nursing Home with respect to Nursing Provision; was totally hands off when it comes to supervision of nursing services at the Nursing Home as the committee noted a lot of gaps on documentation and was not keen renewing his practice license as he previously failed to do so for a duration of one and three quarter years.
30. Section 18B of the aforesaid Act makes it mandatory for a statement of allegations that are to be investigated by the Council to be prepared and served on the person whose conduct is the subject of investigation. The statement of allegations served on the Appellant in this case did not raise any complaint in the manner the appellant was managing the medical facility. In other words, there were no charges on the manner the appellant was managing the medical facility. When the Appellant appeared



before the Council he was only expected to defend himself on the charges stated in the statement of allegations and not those outside that statement, unless a statement of these other allegations was prepared and served on the Appellant. The purpose of a statement of allegations is to make the person being investigated to know the charge and the evidence against him so as to enable him prepare for his/her defence. It is a cardinal principal of law that an accused can only be convicted of charges that have been brought to his attention.

31. In this case the only charges that were levelled against the Appellant were in relation to professional misconduct in respect to the complaint of sexual assault by one Stacy Kirori. The other complaints relating to the management of the Nursing Home were not contained in the summons dated 25th February 2022 that were served on the appellant and therefore should not have formed part of the inquiry. It is the above-mentioned letter that formed the basis of the inquiry against the Appellant. It was like a charge sheet. An accused person cannot be convicted of a charge not charged with. In *Yongo v R* [1983] eKLR, the Court of Appeal held that a charge can be defective if it fails to charge an offence disclosed in the evidence. The Council should, in my view, have served fresh statements of allegations stating the particulars of misconduct in relation to the manner the Appellant was managing the medical facility so as to enable him prepare his defence. To be found guilty of charges not served on him was, in my view, prejudicial to the appellant. I therefore find that these other charges did not relate to the complaint served on the Appellant.
32. In view of the foregoing, this court upholds the finding by the Council that the Appellant failed to comply with standards set by the Council in failing to document the care given to the complainant in the matter that was subject of the inquiry. The other findings of the Council in relation to the Appellant are set aside.

Sentence

33. It is trite that sentencing lies at the discretion of the trial court/ tribunal. A court or tribunal in sentencing should consider all the circumstances of the case before arriving at a particular sentence. Though it is a serious misconduct for a nurse to fail to document the care given to a patient, it is my view that the suspension of the Appellant for a period of 2 years was harsh and excessive. I thereby set aside the Council's Order for the suspension of the Appellant for a period of 2 years.
34. As regards the fine imposed by the Council, I find the same not to be excessive or harsh and the fine is thereby upheld.
35. On the requirement to undergo a management course for a period of six months, this is not necessary in view of the fact that the appellant has been acquitted of the charges relating to the management of the subject medical facility. The order to undergo the course is thereby set aside.

Orders accordingly

DELIVERED, DATED AND SIGNED AT GARSEN THIS 19TH SEPTEMBER 2025

J.N. NJAGI

JUDGE

In the presence of:

No appearance for Appellant

Mr. Ouko for Respondent

Court Assistant:

