



Odundo v Kenya Hospital Association t/a The Nairobi Hospital (Cause E548 of 2021) [2025] KEELRC 3098 (KLR) (22 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 3098 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E548 OF 2021
DKN MARETE, J
OCTOBER 22, 2025

BETWEEN

GORDON OTIENO ODUNDO CLAIMANT

AND

**KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI
HOSPITAL RESPONDENT**

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim date 6th July 2021. It does not disclose any issue in dispute on its face.
2. The Respondent in a Respondent's Statement of Response and Counter Claim dated 24th August, 2021 denies the claim and prays that this be dismissed with costs. It also prays for judgment in terms of the Counter Claim as set out and presented.
3. The claimant's case is that on or around April, 2016 the Respondent undertook an extensive recruitment and selection of high calibre, experienced and results oriented professionals for the position of Chief Executive Officer. The claimant was sort listed and recommended to employment by the Board as he possessed the requisite knowledge, skills and competent for this position.
4. The claimant's further case is that during the recruitment and engagement process, he was promised that employment would last until retirement and against this overture, he resigned from his position as CEO, Gertrude's Childrens Hospital where he had been in employment for thirteen (13) years. He was employed as CEO by the letter dated 14th May, 2016 for an initial term of four (4) years commencing on 4th October, 2016. This employment was confirmed on 28th June, 2017 and was effective on 1st April, 2027 at a gross monthly salary of Kshs.3,725,000.00. He was always willing, able and ready to serve the Respondent on renewed contract for four (4) years until ultimately retirement.



5. The claimant's other case is that on or about 2018, issues arose in his employment occasioned by seven members of the Respondent's board of directors who were conspiring to have him removed as CEO. This was masterminded by the chair of the board to which the Claimant had resisted on several occasions. On 14th December, 2018, while the Claimant was in a meeting in his office, security officers accompanied by lawyers from Kaplan & Stratton and representing the Respondent attempted to gain entry into his office allegedly to serve the claimant with an unknown document and also have him forcefully removed from his office. This was dramatic and attracted the press to the humiliation of the Claimant.
6. The claimant avers that on 14th January, 2021 about a month from this event he was served with a letter of ninety (90) days leave pending thorough investigations to access the magnitude of financial implication of the action undertaken in last two (2) years based on a forensic audit conducted by Ernst & Young (EY.) This was without authority of the same board or his letter of appointment besides the Human Resource Manual and code of conduct that empowers the board to suspend the claimant. The claimant responded to this and requested for particulars of the issues raised but this was done through vague and evasive responses from counsel for the Respondent.
7. The claimant's further case is that on 27th March, 2019, he was issued with a notice to show cause as to why his employment would not be terminated on grounds that the Respondent was considering. He was awarded seven (7) days to respond to this but was also barred from his office which would have enabled him access materials for a comprehensive response to the issues raised. He however did respond to this on 5th April, 2019 and issued documentation in such defence but these were never considered by the Respondent. The claimant attended a disciplinary hearing on 9th April, 2019 as requested in the notice to show cause but this was adjourned to 12 April, instant. He was ultimately dismissed by a letter dated 16th April, 2019 on ground of gross misconduct. The claimant's appeal the determination of dismissal but this was declined and decision upheld. He deems this unlawful as he was never afforded a fair and proper hearing as required by the law in contravention of section 41 of the *Employment Act*, 2007. This was also a violation of section 43 and 45 of the Act for failure to adduce reasons and grounds for such termination.
8. He prays as follows;
 - a. A declaration that the Claimant's summary dismissal from employment was unfair, unjustified, wrongful, null and void,
 - b. A declaration that the letter dated 10 April 2019 dismissing the Claimant as Chief Executive Officer is unlawful, and the letter be expunged from the Claimant's employment records, and
 - c. Reinstatement of the Claimant to employment in the capacity of the Chief Executive Officer without any loss of benefits, In the alternative to reinstatement
 - d. Payment of the Claimant's salary from date of summary dismissal for the remainder period of his contract of employment up to October 2020,
 - e. Payment of the Claimant's benefits up to October 2020 being:
 - i. Car benefit
 - ii. Annual subscriptions
 - iii. Medical cover
 - iv. Group life insurance



- f. Bonuses earned and not paid in 2017, 2018, 2019 and 2020.
 - g. Three months' salary in lieu of notice.
 - h. Twelve (12) months' salary compensation as damages for wrongful dismissal
 - i. General damages for pain, suffering, loss of reputation and legitimate expectation of employment until retirement.
 - j. Accrued leave days of twenty-seven (27) days.
 - k. Interest on (f), (g) and (1) above, at court rates.
 - l. Costs of this suit and interest thereon.
9. The Respondent's case is a denial of the claim.
10. The Respondent's case is that in or about early 2018, they noted areas of concern on several matters under the claimant's docket in his capacity as CEO. They therefore procured the services of an independent investigator Ernst & Young LPP to investigate the issues. In the course of this audit, the auditors called for certain documentation and information from the claimant including his personnel file but the claimant declined to avail them. The claimant further made it very difficult for the auditors to undertake their assignment by raising many irreverent issues touching on conduct of the Respondent's affairs. This was tantamount to usurping the board's oversight roll and also dictating how it ran its affairs. He was therefore sent on leave for ninety (90) days.
11. The Respondent acknowledges and restates the sequence of events culminating to the Claimant's termination of the employment by way of summary dismissal for gross misconduct. She offers a Counter Claim by way of an order to compel the claimant to avail his original personal file within a time frame to be fixed and determined by this court. In default of this, the Respondent suggests and prays that sanctions be imposed to the claimant by this court.
12. There issues for determination therefore are;
1. Whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Respondent is entitled to the Counter Claim.
 3. Whether the claimant is entitled to the relief sought.
 4. Who bears the costs of this cause.
13. The 1st issue for determination is whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful. The claimant in his written submission dated 13th March, 2025 reiterates his case for unlawful termination of employment. This is because of lack of substantive justification. The Respondent relied on the Ernst & Young (EY) audit report, which was neither shared with the Claimant nor produced in court. The Claimant on this sought to rely on authority of *Stephen Chase Kisaka v Emirates Airline Limited* [2020] eKLR, where the court observed that failure to produce an investigation report vitiates termination.
14. Again, the allegations on the Notice to Show Cause were unsubstantiated. Here, the Claimant in further buttressing his case sought to rely on authority of *Moonglow Assets Limited v Commissioner of Lands & 4 others* [2023] eKLR, where the court emphasized that primary evidence (e.g., the EY



report) must be produced by its maker to imbue efficacy, reliability and sustainability. In the present scenario, it would be unsafe to rely on this.

15. The claimant further brings out a case of lack of procedural unfairness. With regards to compulsory leave, the Respondent's Human Resource Manual (HRM) provided for a maximum suspension of thirty (30) days, yet the Claimant was placed on compulsory leave for one hundred and twenty (120) days. This was manifestly unfair and unprocedural as is espoused in the authority of *Kamande v Nairobi City Water & Sewerage Company Limited* [2023] KEELRC 927 where indefinite suspension was decried and deemed unfair in circumstances like we now face.
16. On the short notice to respond, the Claimant was given only seven (7) days to respond to a 202-page Notice to Show Cause while being denied access to his office. The claimant sought to rely on authority of *Kinyanjui v Rural Electrification & Renewable Corporation* [2024] KEELRC 1824, where inadequate notice was held oppressive, unfair and unlawful in situations of employment.
17. The claimant also brings out a case of a predetermined disciplinary hearing. In the instant case, hearing was scheduled before the Claimant's response was considered. This is a blunt indicator of bias on part of the Respondent. Why would the Respondent not have awaited and considered a reply to the show cause letter before considering and issuing a date for disciplinary hearing, if at all. This would have the ideal situation in a normal case for a disciplinary hearing. It would never have been the case here because of the Respondent's predisposition to rushly terminate and rid off the claimant from their premises. The Claimant on this again sought to rely on the authority of *Bongo v United Kenya Club* [2023] KEELRC 1286, where such conduct by the Respondent was castigated and condemned.
18. The Claimant further averred that the hearing was flawed. The disciplinary panel refused the Claimant's request for documents and restricted his representative's participation, contrary to Section 41 of the *Employment Act*, 2007. The claimant was therefore not afforded adequate time and access to materials necessary to front a formidable defence to the issues raised against him. This amounts to a procedural failure and violates section 41 of the *Employment Act*, 2007. The authority of *Gilbert Mariera Makori v Equity Bank Limited* [2016] KEELRC 350 is employed by the claimant in support of the default of such failure.
19. The Respondent in their written submission dated 19th March, 2025 also reiterates their case for lawful termination of employment.
20. The Respondent denies the Claimant's allegations and maintain that the termination was lawful and justified. They posit and submit that the Claimant had in his brief stint of service engaged in acts constituting gross misconduct against the interests of the Respondent. This was notably the unprocedural recruitment of staff, including the Procurement Manager and the irregular procurement of services such as single-sourcing suppliers without adherence to procurement laws.
21. The Respondent further submits that the Claimant defied multiple directives to surrender his personnel file thereby obstructing internal administrative processes. This amounted to gross misconduct on his part. Here, they sought to relied on the authority in *Mark T. Mwangi v Gateway Insurance Company Limited* [2013] eKLR, where the court upheld the employer's decision to summarily dismiss an employee for breaching internal policies and procedures, arguing that the circumstances of the present case similarly warranted summary dismissal.
22. It is also their case and submission that the EY report was irrelevant to the termination. This is because the Notice to Show Cause contained standalone allegations supported by evidence. The Respondent sought to rely on authority of *Kenneth Nyaga Mwige v Austin Kiguta & 2 Others* [2015] eKLR, arguing the Claimant could have produced the report if this was material and critical in unearthing the



truth of the matter. The Respondent further submitted that the termination was procedurally fair. It was argued and submitted that placing the Claimant on compulsory leave was lawful and necessary to facilitate investigations, with reliance placed on authority of Charles Muturi Mwangi v Invesco Assurance Co Ltd [2019] eKLR, where the court affirmed an employer's right to suspend an employee pending investigations.

23. The Respondent also contends and submits that the disciplinary process met the requirements of fairness, as the Claimant was accorded an opportunity to be heard and allowed to appear with a representative of his choice. In support, the Respondent sought to rely on authority of Kenya Union of Sugar Plantation & Allied Workers v West Kenya Sugar Company Limited [2022] eKLR, where the court upheld unsigned minutes as valid evidence of a disciplinary hearing. Additionally, the Respondent lodged a counterclaim seeking an order compelling the Claimant to return his personnel file, which he was alleged to have unlawfully retained despite formal requests for its surrender.
24. A look at the respective cases of the parties tilts this matter in favour of the claimant. This is because he brings out a resounding case of unfair termination of employment. The process of termination is as determinant of its validity as are the reasons behind termination. These two bring out the test of substantive and procedural aspects of termination of employment.
25. In this case, one finds a case of a botched-up procedure of termination. The claimant was issued with a show cause letter which required a response within seven days of the date of the letter. The claimant was denied access to the facility of his office where he could have assessed materials and other data relevant to answering the show cause letter. This was not to be.
26. Again, the atmosphere in which the Claimant was operating had already been poisoned and soured from the date the Respondent's lawyers attempted to storm the claimant's office. Despite the time interval involved, the environment was not free or relaxed. It was tense and indicative of a fervent determination by the Respondent to rid off claimant. It is no wonder that the claimant from day one presents a case of a pre-determination to terminate his employment.
27. It is this court's observation that the sequence of event leading to the claimant's termination from employment fell short of requirements of substantive and procedural fairness as espoused by section 41, 43 and 45 of the Employment, Act, 2007. A case of unfair and unlawful termination of employment therefore ensues in the circumstances and I hold as such.
28. The 2nd issue for determination is whether the Respondent is entitled to the Counter Claim. The parties have not expended time to bring out the issues raised in the counter claim. It was particularly the onus of the Respondent to support this claim by way of evidence. This was never to be. It therefore become difficult for this court to make a finding on the Counter Claim for want of proof.
29. The 3rd issue for determination is whether the claimant is entitles to the relief sought. He is. Having won on a case of unlawful termination of employment, he becomes entitled to the relief sought.
30. I am therefore inclined to allow the claim and dismiss the counter claim with relief as follows;
 - i. A declaration be and is hereby issued that the claimant summary dismissal from employment was wrongful, unjustified, unfair and unlawful.
 - ii. Three (3) months salary in lieu of noticeKshs.4,690,000.00x3.....Kshs14,070,000.00
 - iii. Twelve (12) months compensation for unlawful termination of employment... Ksh.4690x12.....Kshs.56,280,000.00
 - iv. Payment for outstanding and untaken leave 27/30x4,690,000.00.....Kshs422,100.00



- v. Refund of unlawful deductionKsh.2,131,984.92
- Total of claimKshs.72,904,094.92
- vi. Interest at court rate from the date of this judgment of court till payment in full.
- vii. The cost of this cause shall be borne by the Respondent

DELIVERED, DATED AND SIGNED THIS 22ND DAY OF OCTOBER 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Chacha Odera and Kiragu instructed by Oraro & Company Advocates for the claimant.

Miss Wataka instructed by Munyao, Muthama and Kashidi Advocates for the Respondent.

