



**Chombah v Aga Khan Health Services Trading as the Aga Khan
University Hospital Nairobi (Employment and Labour Relations Cause
E959 of 2022) [2025] KEELRC 3081 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3081 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E959 OF 2022
HS WASILWA, J
NOVEMBER 5, 2025**

BETWEEN

ERASTUS CHOMBAH CLAIMANT

AND

**AGA KHAN HEALTH SERVICES TRADING AS THE AGA KHAN
UNIVERSITY HOSPITAL NAIROBI RESPONDENT**

JUDGMENT

1. The Claimant instituted this claim vide an Amended Memorandum of Claim dated 24th November 2024 praying for judgment against the Respondent for: -
 - a. A declaration that the claimant's termination from Employment is unlawful and wrongful
 - b. A declaration that the claimant suffered unfair treatment and discrimination in Employment
 - c. General damages for wrongful termination being Kshs. 7,000,000/-
 - d. Compensation for unlawful termination (Kshs 650,000 x 12 months = Kshs 7,800,000)
 - e. General damages for psychological trauma, distress and inconvenience suffered as a result of respondent callous actions for sum of Kshs. 8,000,000/-
 - f. Ex gratia of Kshs. 5,000,000 as per provided to other members who have been terminated
 - g. Severance pay of one-month salary for every year worked.
 - h. Gratuity at the rate of 20%
Kshs 650,500 x 20x 10/30 (years worked)
 - i. Compensation worth three-year salary Kshs. 23,400,000



- j. Unpaid House Allowance
November 2012- September 2014
Kshs 150,000 x 15/100= Kshs 22,500 x 11 months = Kshs 247,500.00
Sept 2014- June 2016
Kshs 181,988 x 15/100= Kshs 27,298 x 30 months= Kshs 818,940.00
June 2016- 2018
Kshs 324,000x 15/100= Kshs 48,600 x 30 months= Kshs 1,458,000.00
2019-2020
Kshs 430,000 x 15/100= Kshs 64,500 x 12 months= Kshs 774,000.00
May 2021- January 2022
Kshs 650,000 x 15/100= Kshs 97,500 x 9 months= Kshs 877,500.00
Total Claim for unpaid house allowance.....Kshs 12,073,440.00
- k. Unpaid salary for 3 months.....Kshs 1,951,500.00
- l. 15 days unpaid leave days
Kshs 650,500/30=21,683 x 15 days worked.....Kshs 325,245.00
- m. Cost and incidental to the suit
- n. Any other relief this court might deem fit

Claimant’s Case

2. The Claimant states that vide a confirmation 25th June 2013, he was employed by the Respondent as an Associate in the General Accounts Department, Finance Division, earning a monthly salary of Ksh. 150,000.
3. On September 2014, he applied for a position of Finance Coordinator whereas upon a successful interview, he was paid upward, a salary of Kshs. 181,988. Subsequently, vide a letter dated 14th June 2016, he was promoted to Finance Manager earning a monthly salary of Kshs. 181,988.
4. The Claimant states that vide a letter dated 31st March 2017, his salary was increased to Kshs. 324,000 based on his performance appraisal and merit. It was further reviewed to Kshs. 430,000 in 2019 after a positive performance appraisal for the year 2018.
5. The Claimant states that on 24th May 2021, the Respondent confirmed his appointment as Financial Controller, AKUH, East Africa effective 1st May 2021 and his salary was revised further to Kshs. 650,000 after a successful interview.
6. It is the Claimant’s case that his employment was subject to terms and conditions; conflict of interest policy whereas he was required to fill a conflict of interest disclosure. The conflict of interest policy procedure defines the conflict of interest to arise when an employees obligations to the respondent are compromised.
7. The Claimant states that he was subjected to a creditors payment policy in which he was a signatory, having reviewed the same; which was further subjected to approval by the Respondent’s Chief Financial Officer. The scope as per the creditors payment policy under clause 4 on the claimant’s



- responsibility was to ensure that the amount payable on the cheque leaf matches with the names in the system and the payment voucher.
8. The Claimant states that under clause 4.3.7 of the policy, urgent payment adequately justified by end users shall be processed within 5 working days from the date of receipt by the finance department. Additionally, it provided that payment above 2.5M are required to be signed by three signatures and that the provided credit terms can vary based on situations.
 9. The Claimant states that vide the Board of Directors' resolution dated 7th April 2021, the Respondent: amended the list of signatures; added him as a signatory to the accounts held in the Respondent's name whereas he was bestowed additional duties and authorized to approve up to USD 50,000 or Kshs. 50,000,000/- together with any other signatory.
 10. The Claimant states that at the height of covid-19 pandemic, the Respondent's procurement department procured a new supplier for mask respiratory N95 namely Johngray Communications Limited (hereinafter "suppliers"). The supplier supplied the mask on the 29th December 2021 whereas the payment terms was 60 days credit period.
 11. The Claimant states that in accordance with his job description and role; he was required to ensure consistency to the effect that there had to be a local purchase orders, a goods received note and invoices; which was required to match that which was being billed per the order. In the event the said was consistent; in his ordinary course of duty, he was required to approve.
 12. However, the Claimant's approval was subject to approval by the chief financial officer (CFO) and two other signatories of the Respondent signatories as part of a control procedure. This is a mandatory requirement and condition precedent of the required signatories before he made any payment; and as such, the requirement does not exist as ceremonial nor an academic gesture.
 13. The Claimant states that upon request for approval by the Finance Coordinator that stated that covid 19 materials suppliers were deemed urgent, he approved payment for the suppliers having confirmed consistency of the documents on his docket. The said email emanated from the email thread of the suppliers who copied the Respondents' procurement team dated January 2021.
 14. The payment was then forwarded to Chief Financial Officer who was the Head of Finance and Head of Procurement. However, as per the Respondent's accounts payable checklist dated 12th January 2021; the Senior Finance Manager and two signatories failed, ignored and or refused to sign contrary to the standard requirement, but the Claimant had duly signed on his part.
 15. The Claimant stated that vide a letter dated 6th December 2021, the Respondent suspended him from duty on the grounds of alleged unprofessional conduct and conflict of interest. Subsequently, on 7th December 2021, the Respondent issued him with a show cause letter alleging 11 points.
 16. The Claimant states that the Respondent tabulated an individualized report dated 15th November 2021 based on their allegation founded on variation of payment terms and conflict of interest. However, the investigation report was neither signed nor are the authors disclosed. In his response via an email dated 15th November 2021, the Claimant requested to have the report signed but to date he has not received any written response.
 17. The Claimant states that the investigation report did an executive summary where it states that "following an investigation carried out on the purchase of counterfeit PPEsreview to ascertain the rate of Erastus Chombah with respect to variation of credit terms hence early payment and conflict of interest" The overall conclusion of the investigation was that he unilaterally varied the credit period



without necessary approvals, varying the 60 days' credit period to pay a supplier within 7 days which resulted in a financial loss of Kshs. 11,000,238.

18. It is the Claimant's case that the Respondent failed to consider and or investigate other signatories who were part and parcel of the subject matter that issued. Notwithstanding the Respondent's acknowledgement and admission that the claimant was part of the payment approval process. In addition the respondent failed to recognize that the loss was due to poor procurement practice of not doing due diligence to the supplier to the extent of the claimant's job description.
19. The Claimant states that at the height of the Covid-19 which had been declared as a pandemic by world health organization(WHO) pandemic and the provision of masks was not only necessitated but considerably of paramount urgency; which would ideally warrant variation of credit terms of payment.
20. The Claimant states that the Respondent's action was unfair, malicious and without valid or fair reason to warrant his termination or dismissal or the purported non-renewal of his contract violating his right to fair labour practices enshrined under Article 41 of *the Constitution*.
21. The Claimant states that the report findings on early payment; was that his key tasks were to manage the Treasury Department and in this regard to ensure liquidity i.e; adequacy of cash balances to pay liabilities and as when they fall due with same priorities as per policy requirements. The Claimant asserts that he ensured liquidity before duly discharging his mandate in conformity with the policy requirements.
22. It is the Claimant's case that his actions were not out of the blues nor was it the first time for him doing so in the discharge of his function. In December 2019, he managed contractual ratios i.e. AFD ratios; and most of these payments were past due but he had to negotiate with most suppliers to be paid late. This is evidenced by hefty list of unrepresented cheques worth over Kshs 800M held in December 2019.
23. The Claimant asserts that he ensured there was liquidity and given the priority that arose at the time of the covid-19 pandemic, he acted well within his mandate as his approval was after a formal request on email and after a written approval.
24. The Claimant states that this was not the first time the supplier had supplied to the Respondent; he was not a stranger and after the supplier had expressed himself in writing as well as in person; the request was considered urgent owing to the supplication of the much-needed masks.
25. The Claimant states that despite these other departments required as signatories to any work that he would undertake, it should be noted that he forwarded the documents to the Respondent's CFO, Rashid Khalani whom the procurement department reported to. He referred to the procurement material management division (mmd) organogram. Then later taken to director projects and operation and later approved by the CEO, subsequently, the Respondent's blame was untrue and unfounded.
26. It is the Claimant's case that 60 days credit period is interpreted by ICPAK, the body that regulates accountancy profession, to mean that payment is be done within 60 days and not after. However, the investigation report erroneously and or maliciously stated that 60 days credit period meant that payment should be made after 60 days.
27. The Claimant states that he is being blamed for releasing funds for counterfeit goods; yet nowhere in his job description even from his promotion through the ranks dictate a role of quality assurance of goods on his part.
28. The Claimant states that the Respondent noted in its investigation report dated 15th November 2021 that it came to notice that he is a director of Decapoli Consulting Limited; resulting in a conflict of



interest. However, the Respondent failed to reflect on the fact that in the conflict of interest disclosure form dated 3rd May 2021 that it had been duly stamped; the Claimant had already disclosed that he is a director of the said company.

29. The Claimant states that the report questioned that he had filled tax returns for; his father, Hudson Chomba, mother, Rose Wairimu Macharia, mother-in-law, Jacinta Wambui Kungu; colleague, Margaret Wambui Njenga. Additionally, he had filed tax returns on a pro bono basis to his church ACK St. James Ribarori Gachie, and as such they cited a conflict of interest. However, the Respondent knowingly and discriminatorily failed to cite conflict of interest or bring to question why he had also filed tax returns for his bosses such as Rahim Khawaja the CFO, Amin Hunzai, Director Engineering, Shawn Bolouki the Chief Executive Officer and other expatriate bosses. This issue was never investigated, nor brought out in the report nor the hearing thereof.
30. It is the Claimant's case that the filing of tax returns cited as conflict of interest were done for free and not for any monetary consideration for all persons including his family, friends and of the greatest importance and relevant to this suit; for his bosses as well who are the Respondents herein. Therefore, there was no conflict of interest and his actions were compliant with clause 6.4 and 6.6 of the Respondent's conflict of interest policy.
31. The Claimant states that the Respondent unfairly and discriminatorily, only cited the filing of returns for those close to his kin as conflict of interest; while the filing of tax returns for the Respondent was deliberately, discriminatorily and knowingly not cited for the same conflict of interest.
32. The Claimant states that the other companies that the Respondent alleges conflict of interest; were not in conflict of interest as per the definition of the respondent's policy on conflict of interest since the claimant involvement was not active.
33. The Claimant states that the Respondent's request to submit all his M-pesa statements is an abuse of his right to privacy and goes against the laid-out principles of data protection and policy guidelines, 2021 as per legislation. Further the Respondent's demands on disclosure was not in conformity with any written law nor was it pursuant to a court order.
34. The Claimant states that upon the Respondent's request, he furnished it with all his banks statements from Absa and Standard Chartered Bank which is deemed sufficient for the investigation they required. However, the investigation report quoted bank statement extract which he never provided a bank statement with such transactions. This is in utter disregard to the principle of data protection whereas lawfulness, fairness, transparency, accuracy, integrity, confidentiality and accountability are demanded.
35. The Claimant states that the investigation report gave an overall conclusion that he declined to share his personal M-pesa statement for a whole year. He contends that this was information phishing which the Respondent construed as self-suspicion and loss of trust contrary to his right to not give self-incriminating evidence.
36. The Claimant states that the Respondent terminated his employment on 26th January 2022 citing unilaterally approval of payment and conflict of interest. The letter was signed by Lubnah Alam who has never had a local work permit or registered with institute of Human Resource Management nor was she an employee of the Respondent.
37. The Claimant states that he objected the termination on 15th March 2022 which was considered as an appeal. The Respondent responded on 14th April 2022 via letter dated 7th April 2022 giving appeal response, which appeal was never afforded a hearing. He further requested for an appeal hearing on 21st



April 2022 and sent a reminder on 12th May 2022, however, the Respondent neither gave the appeal a hearing at the very least nor responded.

38. It is the Claimant's case that his illegal and unfair termination was due to the fact that he had unearthed, questioned and tabled to the CFO and CEO a system by procurement team where they could procure homogeneous products to higher bidders which made him rub off wrongly with the Respondent.
39. The Claimant states that he was a dedicated employee as evidenced by his promotions after successful appraisals and job interviews. He never had any disciplinary or warning during his tenure and in order to keep offering quality services, he enrolled for a degree in Business Administration and did other internal courses with the latest being a certificate on course titled "Developing Healthcare Leaders for Tomorrow (DHLT) programme" on 6th September 2021.
40. The Claimant states that the Respondent contravened section 25 of the *Employment Act* by not submitting his necessary statutory deductions for the employee. The Respondent never submitted the January and three months' notice payment for ABSA loan. He received NIL cash after the final dues contrary to section 19(3) of the *Employment Act* whereas deduction should not exceed 2/3.
41. The Claimant states that he has been subjected to financial and psychological trauma by the manner the termination was carried out by the respondent. He avers that the termination was calculated to frustrate his employment experience amounting to illegality and unfairness. The respondent actions were unlawful as it did not accord him his right to natural justice.

Respondent's Case

42. In opposition, the Respondent filed an Amended Statement of Response dated 7th March 2025.
43. The Respondent states that it is a private, not-for-profit hospital providing quality healthcare to all those who need it throughout East Africa. It has developed several policies in relation to its operations including, as far as material to these proceedings.
44. The Respondent states that it has a Conflict-of-Interest Procedure (the "CIP") that defines the conflict of interest as arising when an employee's commitments and obligations to AKU are compromised when he/she is in a position to influence, either directly or indirectly the AKU's teaching, research, service related activities or other decisions that could lead to gain for the employee, the employee's family or associates are compromisers when he/she is in a position to influence either directly or indirectly. The CIP; lists non-exhaustive examples of conflict or potential conflicts of interest; requires an employee to complete and sign a conflict-of-interest disclosure form which would confirm or disclose whether or not there is any potential or actual conflict of interest; review of such disclosures by the Respondent's HR Director and the concerned department/division head to determine, what, if any action needs to be taken to address any established conflict of interest; disciplinary action for any infraction of the CIP; prohibits employees from engaging in employment, business or service with another organization or have any financial/business interest with any other organization/ entity even on a part time or temporary basis; and requires employees to consult the Respondent's HR Department prior to undertaking any activity that might potentially give rise to a conflict of interest.
45. The Respondent further has a Creditors Payment Policy applicable to all creditors' payments. Subject to exemptions for standing payments, pre-payments and exceptional urgent payments (all for which specific provisions are made), suppliers paid on a credit basis ranging, depending on the nature of supply, between due date and 60 days. The credit period for medical supplies is 60 days. Additionally, it has a Disciplinary Procedure and Grievance Handling Procedure.



46. The Respondent states that it employed the Claimant vide a letter of employment dated 5th September 2012. The said letter was accompanied with its Statement of Main Terms and Conditions of Employment (“the Main Terms”) the Job Description (the “JD”) together with a Conflict-of-Interest Disclosure Form. The Claimant signed the letter but, he did not complete and sign the conflict-of-interest disclosure form.
47. The Respondent states that the Claimant rose through the ranks over the years. By a letter dated 14th June 2016, he was promoted to Finance Manager. Save for the termination of acting allowance, it was expressly stipulated that all other terms and conditions of service will continue to be governed by the Human Resource policies and service rules of the hospital. A detailed job description was also provided which described the purposes of the role.
48. It is the Respondent’s case that the Claimant was added as one of the signatories to its bank account on 7th April 2021 and was permitted to transact amounts valued from Ksh.5,000,000 to Ksh.50,000,000 for local currency accounts or equivalent to USD 50,000 to USD 500,000, for foreign currency accounts. He was subsequently appointed as Financial Controller on 24th May 2021.
49. The Respondent states that between 31st December 2020 and 6th January 2021, Johngray Communications Limited supplied it with 20,000 pieces of 3M N95 facemasks or an aggregate sum of Kshs. 11,000,238 (USD 100,920). On 25th January 2021, it was established these masks were counterfeit and efforts to stop payment which should have been possible given the 60-day credit period, were not successful as the payment had already been made. Due to the early payment, the Respondent lost Kshs. 11,000,238.
50. It is the Respondent’s case that its Internal Audit Department commenced investigations to the role played by the Claimant in effecting the early payment made to the supplier. While he was generally cooperative, the Claimant only gave some of his bank statements and declined to share his Mpesa statement. The Respondent contends that this was not a violation of the Claimant’s right to privacy, data protection legislation or any other written law either. Nor did the partial provision of the information requested amount to their sufficiency either as alleged.
51. In respect to the early payment, the findings of the investigation were that:
- “ i. There was variation in the credit period without necessary approvals; varying the 60 days’ credit period to pay a supplier within seven (7) working days that resulted in a financial loss of Kshs.11,000,238 (USD 100,920). The supplied items were detected to be counterfeit during the credit period and as such the loss may have been avoided by returning goods to the supplier. Erastus, as part of the payment approval process did not mention to the approvers this being an early payment;
 - ii. Erastus signed off Payment Requisition Form (01/21-084) where the credit terms were stated incorrectly as 30 days instead of the standard 60 days as per the supplier master file;
 - iii. Erastus declined to share his personal Mpesa statement, while he had already been made aware of the ongoing investigation. This may be construed as an act of self-suspicion not cooperating with the investigation and loss of trust.”



52. It was also established that the Claimant had business interests that he had never disclosed:
- “ iv. Non-disclosure of his involvement with other companies as an active director (receiving payment) and a trainer in contradiction to the Conflict of Interest policy; and
 - v. Misstatements to the audit team about making proper Conflict of Interest disclosures to HR.”
53. The Respondent states that the said investigations recommended that the Claimant be taken through the disciplinary process in accordance with institutional policy.
54. On 6th December 2021, the Claimant was suspended from duty on full pay to enable further inquiry into alleged unprofessional conduct and conflict of interest. Following a meeting with HR, on 7th December 2021, he was served with a show cause letter which detailed the allegations of unprofessional conduct and conflict of interest made against him and also provided him with copies of all the relevant documents. He was required to give his response to the allegations by Friday 10th December 2021, which deadline was extended to 15th December 2021, when he provided his response, at his request.
55. The Respondent states the Claimant completed and submitted his Conflict-of-Interest Disclosure Form dated 3rd May 2021, which he submitted to the Respondent's HR Department on the same day. He disclosed that his brother's position as a financial controller with liberty life; he had been co-opted as treasurer Utabibu Investment and had no salary; and he was a dormant director of Decapoli Consulting Limited.
56. The Respondent states that the Claimant's response was deemed inadequate, by an email dated 14th January 2022, he was invited for a disciplinary hearing on 21st January 2022. The Disciplinary Committee members were Dorothy Obiayo- Senior Manager, Employee Relations; Mildred Maisiba- Director, Hospital Administration (Chairperson); Esther Mwadime- Manager, Internal Audit; Amin Hunzai — Director, Facilities Management (Independent Manager); Hellen Munyi- Director, Nursing Administration Office (Independent Manager); Rahim Khawaja — Chief Finance Officer; and Tabitha Nekesa — Specialist, Employee Relations.
57. It is the Respondent's case that upon the conclusion of the hearing and consideration of his representations, all members of the committee were satisfied that he had not only violated the policies but he was not remorseful. However, given his length of service, it was recommended that the Claimant's employment be terminated as opposed to summary dismissal. On 26th January 2022, the Claimant's employment was terminated by payment of three months' salary in lieu of notice.
58. The Respondent avers that the Claimant cleared as required following which he was issued with a Certificate of Service dated 26th January 2022 as well as all the payments that were due to him without protest.
59. However, vide a letter dated 15th March 2022, the Claimant protested his termination and asked the Respondent to: pay him severance pay as one month salary for every year worked, allegedly as done to other contracts that had been terminated; pay him 10 months ex-gratia to facilitate transition as allegedly paid to other contracts terminated such as the one for Dr. Eunice Mwangi and John Kamau; that his file to reflect contract ended as mutual agreement and not as a result of disciplinary; for the purpose of the loan at ABSA Bank, to get a letter showing contract termination on redundancy. He stated that this would assist him in 9 months loan repayments to be done by the insurance and not a loan holiday; and, his leave days to be corrected from 9 to 15.



60. The Respondent responded via its letter dated 7th April 2022 in which it declined the first four requests for reasons given but acceded to request correcting his leave days from 9 to 15 and the Claimant was paid a further Kshs.104,391/-.
61. The Respondent states that the Claimant was not discriminated against as he was under active investigations for integrity as at the time his contract of employment expired as indicated in the investigation reports.
62. The Respondent states that as per his JD, the Claimant was required to ensure all the payments were made in accordance with the Creditors Payment Policy (the “CPP”).
63. It is the Respondent’s case that end user is not the supplier but the requesting department which in this case the department was the Purchasing and Supply Chain Management Division (PSCMD). PSCMD never sought nor provided any justification that the payment to JCL be made within five working days. Additionally, when the Claimant was put to task on why the invoices were settled before the credit period, he admitted via his email of 11th February 2021 that the supplier visited his office and explained the way she was suffering from demurrage charges on her supply on Covid-19 related items, on this ground he approved the payment.
64. The Respondent states that its board resolution passed on 7th April 2021 differentiated two categories of signatories. The Claimant was included in second category whose authority matrix for signing in respect to disbursements for amounts up to Kshs.50 million or USD of 50,000 to USD 500,000 was limited to upon any two signatories the first category or any one signatory from the first category with any one signatory from the second category.
65. The Respondent states that the supplier’s representative, Mr. Gerald Otieno vide an email of 7th January 2021, requested Mr. Kevin Nyakundi a former staff based in the Respondent’s Finance Department to have the payment made to him. Mr. Nyakundi forwarded the email to the Claimant on 8th January 2021, informing him to consider the vendor’s request to be paid. The Claimant vide an email of the said date, approved the payment to be made through a Payment Requisition Form after which payment was made via RTGS Transfer.
66. The payment was made within nine days or thereabouts of delivery instead of it being made within sixty days of delivery as per the credit period contrary to clause 4.6.2 of the CPP.
67. Following inquiry by the late Mr Shakeel Muradali from the PSCMD to Mr. Joel Mutuku of 3M Kenya (the authorized distributor of the masks in Kenya), the Respondent established that the masks that had been supplied by the supplier were counterfeits. Thereafter, PSCMD unsuccessfully sought to halt payment only to learn that payment had already been done.
68. The Respondent states that vide an email of 11th February 2021, the Director, PSCMD inquired from the Claimant why the payment was made before the Credit period. The Claimant responded claiming: “In this particular payment, the supplier (Ms. Sylvia) visited my office and explained the way she is suffering from charges on her supply of covid related items, on this ground I approved.” The Director PSCMD responded on the same day by casting doubts on the manner in which the payment had been fast tracked.
69. It is the Respondent’s case that the decision to fast track the payment and or qualify the same as being urgent ought to have originated from the user department (PSCMD) and not Finance as in clause 4.3.7 of the Credit Payment Policy which states: “Urgent payment indicated as such and adequately justified by end users as urgent shall be processed within 5 working days from the date of receipt in Finance.”



70. The Respondent asserts that the Claimant authorized the payment of Kshs.11,00,237.00 upon an irregular request from his junior, the finance coordinator requesting its approval for the payment on the foot of the request from the supplier. There is no evidence that the payment that was approved by the Claimant, was forwarded to the CFO.
71. The Respondent admits that the Accounts Payable Checklist dated 12th January 2021, was not signed by the Senior Finance Manager and two other signatories as required. However, it contends that the lack of these signatures coupled with an inquiry which was made by way of an email dated 15th January 2021, by one Mr. Brian Mwangi of Diamond Trust Bank (where the Respondent holds an account) on whether or not the payment should be made and the Claimant's response in which he states, "Confirmed correct," demonstrates how the Claimant single handedly approved and pushed for the payment to be made despite other signatories having not signed off.
72. The Respondent states that reports by its Internal Audit Department meant for internal use, are usually not signed but if required for external use, they are signed. The Claimant was informed that audit reports were internal documents used by the management.
73. It is the Respondent's case that Covid-19 notwithstanding, all payments to suppliers had to be done in accordance with the CPP and it was the Claimant's duty to ensure that this was done.
74. The Respondent admitted that the RTGS Transfer form was finally signed by the Chief Financial Officer, the Director Projects and Operations and the Chief Executive Officer. However, this was done by them under the trust that all documents forwarded to them for signature by the Claimant had been processed as per the Respondent's policies and procedures.
75. The Respondent avers that disciplinary action was recommended and initiated against the Claimant for his violation of the CPP as well as the CIP, not, quality assurance of goods supplied either as alleged
76. It is the Respondent's case that no disciplinary action was taken against the Claimant with respect to tax assistance he provided to members of his family or his church with tax services. The Show Cause letter of 7th December 2021, restricted the conflict of interest complaints to lack of disclosure of the three companies, payment he received from one of them and misrepresenting the disclosures he had made to HR.
77. The Respondent states that the additional bank information was obtained by its Internal Audit team from a laptop issued to the Claimant to which he was not entitled to any privacy and which was only supposed to be used for official work. The Respondent's Acceptable Use of IT Assets Policy (the "IT Policy"), provides, inter alia, that: "Users should have no expectation of privacy with respect to the use of AKU's IT assets" and "Storage of personal information on AKU system or devices will be considered the property of AKU and managed as the organization sees fit. AKU is not responsible for ensuring the confidentiality of such personal information. Without notice, AKU may delete, move, copy, or remove any personal information as deemed necessary."
78. The Respondent states that there is no legal requirement that a letter of termination of employment must be signed by a person with a local work permit and/or be registered members of the Institute of Human Resource Management.
79. The Respondent states that by the time the Claimant's employment was terminated, he had an outstanding loan with Utabibu Cooperative Savings & Credit Sacco. In his application for the loan, the Claimant had authorized the Sacco to recover from his dues any outstanding balances should he leave the Respondent prior to completing the repayments thus it duly remitted the dues to Utabibu Sacco to offset the loan balance.



80. The Respondent avers that any claims for unpaid house allowance for any period prior to 23rd November 2021, is statute-barred having not been commenced within three years the acts complained of. Additionally, the Claimant was paid a consolidated salary which was inclusive of housing allowance and the salary increments over the years did not affect the terms of conditions of his employment.
81. The Respondent states that the Claimant is not entitled to any compensation for loss of employment either as sought as he was terminated following a disciplinary process. He is also not entitled to any gratuity either.

Evidence in Court

82. The Claimant (CW1) adopted his witness statement dated 18th December 2022 as his evidence in chief and produced his bundle of documents dated 14th December 2022 and 22nd April 2024 as his exhibits.
83. During cross examination, CW1 testified that Kevin Nyakundi was the Finance Coordinator in charge of payables and was reporting to him. He was not part of the team that procured the N95 masks.
84. CW1 testified that he relied on Kevin before making the approval, there was no email sent to him from the procurement department on the request. However, he admits that the request should have come from the user department.
85. CW1 testified that he had interest in Decapoli Limited which was acquired in 2018, however, he did not disclose this to the Respondent until May 2021. He admitted that he received money from Decapoli from October 2020 to June 2021 as reimbursement but he did not mention this in his response to the NTSC.
86. CW1 testified that the auditor gave him a questionnaire to answer in September 2021 and the issues of payment arose in February 2021.
87. CW1 testified that the investigation was commenced in the second quarter which began in April 2021 but he was not part of the investigation.
88. CW1 testified that he did not disclose that he had interest in Jerusalem Green Home.
89. He testified that the NTSC alleged that he approved an early payment to a supplier. He received an email from the supplier's representative, Jared Otieno and his junior, Kevin Nyakundi asking him to approve the payment which he did, he however avers that the emails were not a request for early payment as the invoices were paid beyond the 5 days provided in the policy.
90. CW1 testified that the credit period as per clause 4.6.2 of the CPP provides for 60 days and others 30 days and it was not necessary to involve the user department.
91. CW1 testified that on house allowance, he was informed that his salary was consolidated. In subsequent contracts, the terms of service remained the same and he did not object that he had been denied house allowance.
92. CW1 testified that he was issued with a NTSC which he responded to. He was invited for a hearing wherein he was allowed to make representation and subsequently terminated.
93. CW1 testified that he appealed the decision to the CEO and was given a response to the appeal. The appeal hearing was not ranted.



94. The Respondent's witness, Dorothy Obiayo (RW1) adopted his witness statement dated 15th February 2024 as his evidence in chief and produced her bundle of documents dated 17th January 2023 as his exhibits 1-43.
95. Upon cross-examination, RW1 testified that the panel was properly constituted. The complainant was the Finance Department by an audit report from the Head of Internal Audit, however, he did not sit in the panel as the Manager from the department sat in.
96. RW1 testified that the Claimant's supervisor, the CFO, Rahim, sat in the panel and he is the one who interpreted the policy of 60 days within which the money was to be released. The CFO was competent to interpret the finance policy.
97. RW1 testified that there was document which ought to have been signed by 3 signatories including the Claimant before the release of the Ksh. 11 million and that the money could not be released without these signatures. However, the other two signatories were not present in the hearing and are still in employment.
98. RW1 testified that the Claimant failed to disclose his directorship in three companies one of which received Ksh. 300,000. The Claimant confirmed this during the hearing.
99. RW1 testified that the Claimant's terminal dues were made to Utabibu Sacco.
100. RW1 testified that she is not aware whether the information in the emails before payment was shared with finance. The Claimant wrote 30 days and signed it and thereafter Kevin approved the payment.
101. RW1 testified that the Claimant was not responsible for the quality of the masks which were indicated as counterfeit.
102. RW1 testified that the Claimant wrote to ICPAK seeking clarification on when payment ought to be made within 60 days, however, the same was clarified by the Respondent's internal auditors, but, the said write up was not produced in court.
103. The Respondent's second witness, Stephen Muriuki (RW2) adopted his witness statement dated 14th February 2021 and supplementary witness statement dated 1st April 2025 as his evidence in chief.

Claimants' Submissions

104. The Claimants submitted on two issues: - whether the termination was justified in both aspects of substantive and procedural fairness; and whether the Claimant is entitled to the relief sought.
105. On the first issue, the Claimant submitted that the reasons given for his termination were proved by the Respondent. He cited *Nicholas Otinyu Muruka v Equity Bank Limited* [2014] KEELRC 559 (KLR) wherein the court observed: "The employer must demonstrate reasonable and sufficient ground that links an employee to acts of criminal nature that amounts to gross misconduct to justify a summary dismissal otherwise if the employers are allowed to hold mere suspicions they would use simple reasons to harass and intimidate their employees for no just cause."
106. The Claimant submitted that the Respondent failed to consider and or investigate other signatories who were part and parcel of the subject matter that ensued. Notwithstanding the Respondent's acknowledgement and admission that they were part of the payment approval process.
107. The Claimant further submitted that the Respondent failed to recognize that the loss was due to poor procurement practice of not doing due diligence to the supplier. Vide an email of 9th March 2021, the legal department noted that the supplier was a questionable briefcase business after noting that they



- did not have a physical office. In addition, the CEO questioned the procurement department on the same email on why it engaged such a supplier.
108. The Claimant submitted that though payment was banked on 15th January 2021, there was an email dated 6th January 2021 to Respondent informing it that masks could be counterfeit, however, it was not shared with him, he came to know about it after his termination fired.
 109. The Claimant submitted that he acted well within his mandate. His approval was after a formal request on email and after a written approval from his subordinates and confirmation by his seniors who were signatories. This was after the supplier had expressed himself in writing as well as in person when they visited his office. This was not the first time the supplier was supplying.
 110. It is the Claimant's submission that the credit period of 60 days as interpreted by ICPAK, means that payment be done within 60 days and not after. However, the investigation report erroneously and/or maliciously stated that 60 days credit period meant that payment should be made after 60 days. The disciplinary minutes captured his interpretation of 60 days as payment within 60 days, however, his then boss, Rahim Khawaja said that the payment should be made after 60 days and hence should have been made after 70 days.
 111. The Claimant submitted that as per the investigation report dated 15th November 2021, the Respondent stated that it came to notice that he is a director of Decapoli Consulting Limited thus conflict of interest. However, the Respondents failed to reflect on the fact that he had already disclosed that he is a director of the said company in the conflict-of-interest disclosure form dated 3rd May 2021 that had been duly stamped by the Respondent. In addition, the Respondent failed to show if there was conflict of interest.
 112. It is the Claimant's submission that he filed the tax returns for free and not any monetary consideration for his family and friends and of greater importance and also for colleague and bosses at the respondents; this complied with the entire conflict of interest policy especially on clause 6.4 and 6.6. However, only the filing of returns for those close to his kin was cited as conflict of interest; while the filing of tax returns for the Respondent was deliberately and knowingly not cited for the same conflict of interest. He asserts that this is utter discrimination as no white person was cited yet his expatriate bosses used to request he file returns for them.
 113. The Claimant submitted that for the Respondents further gave an overall conclusion that he declined to share his personal Mpesa statement for a whole year; this was information phishing which the respondents construed as self-suspicion and loss of trust. This of self-suspicion was contrary to his right to not give self-incriminating evidence.
 114. It is the Claimant's submission that the request to have supervised extraction of all the Claimant's mpesa statements for a whole year to the respondent is an abuse of the right to privacy and goes against the laid-out principals of data protection and policy guidelines as per legislation. Further the Respondent's demands on disclosure were not in conformity with any written law nor was it pursuant to a court order
 115. The Claimant submitted that the investigation report quoted bank statement extract, he never provided a bank statement with such transactions.
 116. The Claimant submitted that his termination letter was signed by Lubnah Alam who was not an employee of the Respondent as she never had a local work permit or registered with Institute of Human Resource Management (IHRM). This means that the Respondent is having foreigners working locally without work permits and these foreigners are likely to be part of costs incurred by the hospital under



expense line by name Central support cost/contribution which is not subjected to withholding tax in accordance with *Income Tax Act*.

117. It is the Claimant's submission that Respondent neither gave the appeal hearing nor did he have courtesy to respond. He was a dedicated employee as evidenced by his promotions after successful appraisals and job interviews and never had any disciplinary or warning during his tenure.
118. The Claimant submitted that the termination was initiated by the employer, it is the burden of the employer to ensure that the termination is duly justified. Unfair termination occurs where the employer fails to prove that the reason for termination was valid and that the reason was fair and that the employment was done in the fair procedures. Article 47 of *the Constitution* provides for the right to Fair Administrative Action and posits that if a decision is to be taken by a body, which is likely to affect someone adversely, then it is prudent that such person be given reasons.
119. The Claimant submitted that he had taken a loan with ABSA bank, the bank the respondent had an agreement for cheque off with employees, this was to help me acquire my residential house. He had also topped up with a Sacco loan. As at time of termination, he had a balance of Ksh, 5,953,422 with ABSA and a loan of Ksh. 4,817,856 as reflected on December 2021 pay slip. He had taken this loan secured by pays lip as his job was permanent and pensionable. Termination of his contract left these loans balances and to date, he has never managed to pay the loans, he has received threats from auctioneers and this has destabilized his family.
120. It is the Claimant's submission that he received nil cash on termination, when he was taking back kids and dependents back to school and at end month when he was due to pay rent and monthly bills. The medical cover was also terminated without notice leaving him and his family with no cover or cash. He wrote to Respondent through his boss Expatriate Rahim Khawaja (Acting CFO) and human resource manager who never acknowledged his email, or acted or responded to the email. This caused financial and psychological trauma by the manner termination was carried out.
121. The Claimant submitted that upon receiving his termination letter, he requested to retain by way of buying the laptop he was using at least to help him navigate as it has happened with other employees who leave the organization. This was denied and as an accountant had no any working tool.
122. On the second issue, the Claimant submitted that Section 35(1) of the *Employment Act* provides for twenty-eight-day termination notice in writing or payment in lieu of such notice as provided under section 36 of the Act. He was unfairly terminated without due process both substantive and procedural, thus he entitled to pay in lieu of notice.
123. The Claimant submitted that as per the pay-slips annexed to his bundle of documents, for the last months before termination of employment, the Respondent only catered for basic pay at Ksh, 600,000, Car Allowance at Kshs 50,000, summing up to salary amount of Kshs 650,000; they do not indicate payment of house allowance.
124. The Claimant further submitted that the Respondent did not provide any proof to show that it catered for housing allowance. According to the contract of employment on payment clause it read: "..... Your salary will be paid at the end of each month subject to applicable deductions as per the legal requirements and institutional policies..."Please note that currently applicable statutory deductions are PAYE,NSSF and NHIF"
125. The Claimant submitted that he has suffered mental trauma as a result of the Respondent misdeeds and thus he had to undergo treatment. He has annexed the receipts amounting to Ksh. 48,000.



126. The Claimant submitted that he never proceeded for annual leave the entire period that he was employed by the Respondent. The Respondent being custodian of the employment records has not proved otherwise to show that indeed the Claimant proceeded for all his leave days.
127. It is the Claimant's submission that not only was he unfairly terminated, the Respondent, its management and/ or representatives practiced unfair labour practices thus he seeks for an award as damages prayed.

Respondent's Submissions

128. The Respondent submitted that the issue leading to the Claimant's employment is not the payment to the supplier but the variation of the credit terms to enable an early payment well before the 60 day credit period, both in violation of the CPP. With the Claimant's intervention, such early payment would not have made before it was established on 25th January 2021 that the masks supplied were counterfeit. As the investigation report shows and the Claimant confirmed and solely made the approval and no one else.
129. The Respondent submitted that internal emails show that the payment requisition was prepared and processed on 12th January 2021, with the Payment Requisition Form (Tracking No. 01/21-084) indicating a credit term of "30 days" instead of the standard 60 days for medical surgical supplies. The RTGS transfer was executed on 15th January 2021 and the Claimant personally shared the RTGS confirmation with the supplier's representative, Sylvia.
130. The Respondent submitted that payment before that sixty-day credit period was authorized if urgent but if and only if initiated by the user department, which is this case, was the Purchasing and Supply Chain Management Division ("PSCMD") and such urgent payment must be adequately justified. There was no such initiation by the user department, nor justification.
131. The Respondent submitted that at the Claimant unilaterally varied the credit period contrary to the CPP as he admitted and confirmed. He did this by himself without involving the user department, nor his supervisor. At no time, prior to the payment being made, did he inform either CEO or the precise circumstances under which he alone approved early. To the contrary, he provided with them a payment requisition form mis-stating the payment credit period as 30 days credit period, and failed to disclose to them that the payment was being expedited outside the standard controls. Thus, it is red herring for the Claimant to assert that the CEO and CFO ought to have been keener before appending their signatures, when he not only withheld relevant information from them but also actively sought to mislead them.
132. The Respondent submitted that neither this Court nor indeed ICPAK, should second-guess AKUH as to the meanings of its own policy as well as its purpose as explained by RW2. Rahim's statement in the disciplinary hearing that 60 days means after sixty is the correct one given the definition of credit in the CPP. When confronted with this definition the hearing, the Claimant referred to the email from Lynn Nyoike of ICPAK, however, not only was she not provided with a copy of the CPP with its specific definitions, but she cannot override the actual terms of the CPP which she was not even aware of.
133. It is the Respondent's submission that just because the supplier was not a first-time supplier, the Claimant was not authorized the override or ignore, whether in good faith or not, the mandatory terms of the CPP as to urgent payments, which had to be initiated and duly supported by the user department.
134. The Respondent submitted that contrary to clause 5.3. of the CIP, the Claimant did not timeously disclose all his business and when it did in May, 2021, it was incomplete and false.



135. The Respondent submitted that the Claimant was actively engaged in business or the provision of services for Decapoli, and he also participated in other business ventures that required his time and for which he received compensation. However, he failed to disclose these interests and provided false information regarding his involvement. He subsequently defended himself that these were repayments for loan he advanced to Decapoli, however, this explanation was not provided at the time of the inquiry but only given in response to the NTSC; no evidence of any such loan was given either then or before this Court; and he always claimed that Decapoli was dormant, so why did need a loan to start up and from what activities did a dormant company generate the income to repay the loan.
136. The Respondent submitted that the right to privacy is not absolute, an employer has the right to conduct legitimate internal investigation into possible financial impropriety by seeking its employee private information. Thus, it was within the Claimant's rights to refuse to share the MPESA details, but such refusal does constitute grounds of reasonable suspicion of impropriety especially where the bank statements shared confirmed payment from an alleged dormant business.
137. The Respondent submitted that the Claimant's work laptop used to access and process company data was the property of the Respondent, with no expectation of privacy as was held in *Musa & another v Makini Schools Limited* [2025] KEELRC 17 (KLR) and *GJK v KPMG Advisory Services* [2017] KEELRC 1236 (KLR) where the court held that information from workplace communication devices is not protected under the legal data protection confines.
138. It is the Respondent's submission that AKUH's Acceptable Use of IT Assets Policy is unequivocal in its terms: all data stored on company devices are deemed to be its property and may be accessed, reviewed, or deleted at its discretion²⁶. This policy framework is consistent with established legal principles regarding workplace privacy. Accordingly, AKUH's actions in accessing or managing data on its IT assets are justified both by internal policy and by prevailing legal standards, provided such actions are undertaken for legitimate business purposes. Establishment to as to circumstances in which an organization lost Kshs.11 million odd on supplier of counterfeit masks because of early payment is a legitimate business purpose.
139. On procedural fairness, the Respondent submitted that an inquiry was initially made by the user department as to why there was early payment before credit period and the Claimant responded explaining how he and he alone approved the early payment at the request of the supplier leading to investigations. Thereafter, the inquiry team interviewed him, took his statement and gave him a questionnaire which he completed, the contents of which were considered in the report which identified and established his personal breaches of the CPP and CIP.
140. The Respondent submitted that the Claimant was served with a NTSC which detailed the allegations against him and also provided him with copies of the material on which they were based. He responded vide his letter of 15th December 2021 which was considered and he was invited for a disciplinary hearing to take place on 21st January, 2022 on the allegations whose details as well as supporting documents he had already been provided with.
141. It is the Respondent's submission that the hearing took place as scheduled before an 8-member panel, six of whom had not previously been involved in the process at all, while one, Dorothy Obiayo, had come in only after the investigations into the internal process had been completed to superintend the disciplinary process. Rahim, the then CFO and the Claimant's supervisor, come in to cast light on the CPP.
142. The Respondent submitted that the hearing commenced once the Claimant confirmed he understood the allegations against him, was ready to proceed before the panel and without any colleague to support



- him. As evident from the minutes, the allegations were read out, and he was afforded a full opportunity to present his case, questions were posed to him which he answered.
143. The Respondent submitted that subsequently, the panel had a full discussion with each member evaluating the material before them including the Claimant's responses before unanimously concluding that the charges against him had been made out but given his service to AKUH, recommended termination, rather than dismissal. The Claimant was then issued a termination letter dated 26th January 2022, and was paid the net of his terminal dues which compromised salary, three-months pay in lieu of notice and 9 days leave after usual statutory as well as authorized deductions in respect to outstanding balance a loan he had taken from Utabibu Sacco in his Refinancing Loan and Repayment Agreement dated 5th October 2021.
 144. The Respondent submitted that the present complaints as to the composition of the disciplinary committee, are not well founded: the hearing was conducted in punctilious compliance with AKUH's disciplinary police which governed employment; the Claimant never objected to its composition; no member of the panel had been involved in the investigation; and the criminal model of trial is precisely that- criminal model. It has no application for internal disciplinary proceedings by an employer against the employee.
 145. The Respondent submitted that the termination letter was signed by the AKUH's duly authorized global director. The absence of a local work permit or membership in the Institute of Human Resource Management does not vitiate its effect.
 146. The Respondent submitted that it was not until 15th March 2020⁴¹, 45-days after the termination on his employment that the Claimant sent to the CEO a letter entitled to Objection to Contract term. CEO. Treating the letter as a belated appeal, notwithstanding the lack of request for extension of time, the Respondent declined the requests on grounds: "separation from the institution was done following a formal disciplinary process whereby HR, received an Internal Audit report on your conduct and proceeded to take you through a disciplinary process in line with Disciplinary Policy and Procedure. A disciplinary committee was constituted, your case heard and recommendations to terminate your contract of employment provided to the management and the said recommendations adopted."
 147. On discrimination, the Respondent submitted that discrimination is the differential treatment of similarly situated person without lawful justification as held by the Court of Appeal in Mohammed Abduba Dida v Debate Media Limited & another [2018] eKLR. It was further held that mere differential or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary, which is neither the case herein nor has it been demonstrated by the Claimant.
 148. On reliefs, the Respondent submitted that general damages for unlawful termination, severance pay, gratuity, compensation worth three-year salary, unpaid salary of for 3 months have not been pursued in the Claimant's submissions. Thus, by operation of law they are deemed to have been abandoned.
 149. The Respondent submitted that the Claimant's claims for unpaid house allowance are misconceived, his salary was consolidated and inclusive of housing, as per his contract and his employment was not affected by the CBA . It cited Mulla v Unga Farm Care East Africa Limited [2024] KEELRC 1790 (KLR) wherein the court held that when an employee's salary is consolidated and inclusive of allowances, any separate claims for house allowance are untenable.
 150. The Respondent submitted that the Claimant relies on a partial reading of his letters of promotion focusing of the statutory deduction only. What he would like this Court to overlook, which of course



it cannot, is the clause in those letters that all other terms and conditions remained as before the consolidated salary included housing allowance.

151. The Respondent submitted that the claim for housing allowance prior to 22nd November 2021 is statute-barred by section 90 of the *Employment Act* not having been commenced within three years next after the act, neglect or default complained. Thus, they not open for consideration by this Court.
152. The Respondent submitted that the relief for counselling charges is simply not available as a matter of law. The relief available in a case of unfair termination is prescribed in section 49 of the *Employment Act* and does not include any such head for relief. Even if it was available, no credible evidence has been presented.
153. The Respondent submitted that there is no claim that Erastus did not take any leave during the ten years he worked for AKUH. Further, there is uncontested evidence that he did go on leave and he was paid for the accrued by leave not taken. Initially, this was for 9 days but only is appeal, an extra 6 days was added.
154. The Respondent submitted that the Court of Appeal in *Ol Pejeta Ranching Limited v David Wanjau Muhoro* [2017] KECA 329 (KLR) held that this maximum award sum is awarded as of right but there must a basis of whatever sum awarded. Therefore, even assuming there was unfair termination, the Claimant has not laid any basis for the maximum award.
155. I have examined all the evidence and submissions of the parties herein and the issues for this court's determination are as follows:
 1. Whether the termination of the claimant was justified and fair.
 2. Whether the claimant is entitled to the remedies sought.

Issue No 1

156. On fairness and justification of claimant's termination, the claimant was terminated vide a letter dated 26/1/22. The letter set out 6 reasons for the termination as follows:

The Agha Khan University Hospital

Ret HR/NON-AIN/27786/22

26 January, 2022

Erastus Marugu Chombah Emp. No. 010349

C/o Financial Control Office

Finance Division

AKUHN

Dear Mr. Chomba

Re: Termination of Your Contract of Employment-unprofessional Conduct & Conflict of Interest

We write to communicate the outcome of your disciplinary hearing held on Friday 11, 2012 to hear allegations of unprofessional conduct and conflict of interest levelled against you as enumerated in the show cause letter dated 7 December, 2021.

The Hearing was attended by yourself, Director Hospital Finance Officer (Your Supervisor), Manager Internal Audit, 2 HR representatives and 2 independent Directors.



We refer to the Show cause letter dated December, 2011, and your oral representation during the disciplinary hearing, from the response to the show cause letter and your oral representation during the disciplinary hearing, the following facts emerged and were confirmed by the disciplinary committee.

1. You did not comply with the Creditors Payment Policy leading to loss of Kenya Shillings Eleven Million Two Hundred Thirty Seven Sixty Six Cents (Kshs. 11,000,237.66);
2. Had you complied with the above mentioned policy, the the loss of kshs 11,000,237.66 would have been averted as the counterfeit products would have been returned to the supplier within the agreed credit period;
3. You approved the variation of credit terms from 60 days and approved for Johngray Communications Limited to be paid within 7 days,
4. You did not involve your immediate supervisor in the decision to vary the credit terms and pay the above supplier within 7 days,
5. You did not comply with the Conflict of Interest Procedure by failing to declare your external interests in Decapoli Consulting Limited, Jerusalem Green Homes Land & Business Masters Investments Limited as and when they arose. You only disclosed your directorship holding in Decapoli Consulting Limited in May 2021 after investigations had commenced querying your conduct. It has since been established that this company was incorporated in 2018;
6. You received Kenya Shillings Three Hundred Forty one Thousand Two Hundred ninety (kshs 341,290) for services rendered to Decapoli Consulting Limited contrary to your contract of employment and the conflict of interest policy;

Your above actions are major and amount unprofessional conduct and conflict of interest contrary to institutional policies & procedures and your contract of employment.

Following review of your written response to the show cause letter, your oral representation and evidence presented during the disciplinary hearing, the disciplinary committee lost faith in you as a member of staff and found that your conduct above was unprofessional and unacceptable and recommended that your contract of employment be terminated.

Accordingly, having considered all the matters arising at the disciplinary hearing, the disciplinary committee's recommendation and pursuant to the terms and conditions of your contract of employment, it is Management's decision to terminate your contract of employment.

Please note that this does not exonerate you from any further liability that may arise from these incidents and we reserve the right to take any further necessary proceedings against you to protect the interests of the Institution.

On presentation of a duly signed clearance form to Finance Department-payroll, the following payments will be made to you, less any monies owed to the Institution:

Salary up to 26th January, 2022
Three months' pay in lieu of notice period
Encashment of 9 working leave days as at 26th January, 2022

Your Pension funds will be paid upon you completing and executing the necessary withdrawal forms and returning the same to HR Office for further action. The payments will be based on the scheme rules and regulations currently applicable.

As part of the clearance process, you are required to undergo a post-employment medical examination. Your appointment has been booked for 27th January, 2022 at 10.00 am. Kindly confirm your availability with the Human Resources Office on receipt of this letter.



Enclosed please find your Certificate of Service for your records.

Take note that you have 7 days from the date of receipt of this letter to appeal against this termination.

Yours sincerely,

Lubnah Alam

Global Director Shared Services

Human Resources

157. Before the termination the claimant was suspended vide a letter of 6/12/21 served with a show cause letter dated 7/12/21 which set out 9 reasons for response as follows:

Aga Khan University Hospital

Ref: HR/Non-Union/27399/21

7th December, 2021

Erastus Chombah Emp. No. 010349

Finance Department

AKUH.N

Dear Mr. Chombah,

Re: Show Cause- Unprofessional Conduct & Conflict of Interest

We refer to the meeting held on 7 December 2021 between you, Your immediate supervisor and the undersigned. From the said discussions and Internal Audit Investigation Report, the following issues/ allegations have been raised and have now been forwarded to the human resource department for action,

1. That you have been involved in unprofessional conduct to the disadvantage of the Institution,
2. That you varied payment terms for Johngray Communications Limited without necessary approvals contrary to the Creditors Payment Policy;
3. That you unilaterally undertook the above action without informing your immediate Supervisor and/or signatories of the RTGS Transfer Approval form;
4. That you by your actions above varied the 60 days' credit period/term and paid the supplier within seven (7) working days;
5. That as a result of your actions above, the Hospital lost Kshs. 11,000,237.66 (Eleven Million, Two Hundred & Thirty Seven Sixty Six Cents) being the total cost paid to the above mentioned supplier whose products (3M N95 masks) were confirmed to be counterfeit within the credit period of 60 days;
6. That had you not varied the credit terms of the above supplier, the Hospital would not have lost the above amounts as the counterfeit goods would have been returned back to the supplier,
7. That you failed to cooperate with internal investigation by declining to share your Mpesa statements;
8. That you have been involved in conflict of interest activities by being a Director/ Shareholder in the following 3 private companies;



- a) Business Master Investments Limited
 - b) Decapoli Consulting Limited
 - c) Jerusalem Green Homes Limited
9. That you have not disclosed your Directorship/Shareholding in the above companies as required and further it has been confirmed through investigations that you have received funds (Kshs. 341,290) from Decapoli Consulting Limited for services rendered. This is contrary to the Conflict of Interest Policy and your contract of employment
 10. That you gave incorrect information during investigation by claiming to have duly disclosed to Human Resources Department your conflict of interest on the three companies mentioned in 8 above.
 11. Your above actions are serious in nature and are contrary to your contract of employment and Institutional policies.

Please note that the above are serious offences, as such, you are hereby requested to show cause why disciplinary action should not be taken against you. Your written response should be received latest by Friday 10 December 2021 at 10 a.m. You will thereafter be appraised of the next steps.

Attached please find the following documents provided to you to enable you respond to the above allegations;

1. Internal Audit Report dated 15th November 2021
2. Payment requisition form-Tracking No. 01/21-084
3. RTGS Transfer Approval Ref: (RTGS/DO/JANUARY 2021-j038) for Kshs. 11,000,237.66
4. Extracts from Companies Registry confirming that you are a Director/Shareholder of the following companies;
 - i. Business Master Investment Limited i.
 - ii. Decapoli Consulting Limited
 - iii. Jerusalem Green Homes Limited
5. Summary/list of your other engagements outside Aga Khan University Hospital, Nairobi
6. Summary of payments you have received from Decapoli Consulting Limited
7. Copy of RTGS shared via email to Sylvia Wambui of Johngray Communications Limited
8. Your voluntary question and answer statement dated 7th July 2021
9. Your voluntary question and answer statement dated 14th September 2021

Yours Sincerely,

Borothy Obiayo

Senior Manager, Employee Relations



158. The claimant responded to the show cause letter vide a letter of 15/12/21 denying any culpability. Vide the said response the claimant denied engaging in unprofessional conduct to the disadvantage of the institution. He denied varying payment thus for John Gray communications limited without unnecessary approvals contrary to credit payment policy.
159. He indicated that the credit payment policy at para 4.6.2 did not define 60 credit days or minimum period before payment. He averred that credit period implied that the payment should be done within 60 days and not after 60 days. He insisted that the payment was done in accordance with the AKUHN credit policy.
160. In relation to the interpretation given that payment should be made within 60 days the interpretation given on this issue show that there was a difference in interpretation between the claimant and Rahim (page 123 of the documents).
161. The claimant also wrote to ICPAK to seek clarification on the interpretation of the 60 days credit and it was clarified that the payment should be within 60 days and not after the 60 days.
162. The claim then that the claimant breached the credit policy does not have the backing of law. It was averred that the claimant also did the payments without informing his immediate boss and signatories of the RTGS transfer form. The claimant pointed out that he sent emails requiring approval from a supplier to payable coordination and from payable consideration to finance manager (claimant) requesting for his approval in writing and his approval (in writing) was attached to the cheque and payment document when submitting the payment to the three signatories i.e CFO, CNO and CLO as at page 7 of appendix 2.
163. The explanation given by the claimant on his approval of credit payment before 60 days period was in my finding done within the policy regulations and this covers the first 4 reasons of termination of the claimant.
164. The other matter raised in the show cause letter relate to conflict of interest whereby the claimant failed to declare his external interests in Decapoli Consulting Limited, Jerusalem Green Homes Limited and Business Master Investments Ltd as and when they arise.
165. In relation to Decapoli consulting it is indeed true that the claimant only disclosed his interests in May 2021 and this was after investigations had commenced querying his conduct. It was also established that the company was incorporated in 2018 yet the claimant only disclosed about it in 2021. The lack of declaration of interest policy of the respondent was therefore a valid reason to enable the respondent to take disciplinary action against the claimant.
166. In the circumstances of this case there was valid reason to have the claimant subjected to disciplinary action. Section 43 of the [Employment Act](#) 2007 states as follows:
- (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
 - (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
167. Given that the claimant indeed failed to declare his interests in the companies listed, it is my finding that there were valid reason for his termination.



168. As concerns disciplinary action taken against the claimant there is no denial that he was taken through a disciplinary hearing on 21/1/22. Minutes of the said hearing have been submitted before this court.
169. From the said minutes the claimant was given an opportunity to respond to accusations against him and he explained himself accordingly and even explained that the companies he never declared had never traded with the respondent. The process of hearing was therefore fair.
170. Section 45(2) of the *Employment Act* 2007 provides as follows:
- (2) A termination of employment by an employer is unfair if the employer fails to prove——
- a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason——
 - i. related to the employee's conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure
171. Given that there were some valid reasons to warrant the termination of the claimant and that he was taken through a fair disciplinary hearing, I return the verdict that the termination of the claimant was fair and justified.

Issue No 3

172. As to the remedies sought, I have considered the prayers sought by the claimant. I do find that he is not entitled to the remedies accordingly.
173. This claim is therefore dismissed accordingly. I exercise my discretion given the circumstances of this case, I grant no costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF NOVEMBER 2025.

HELLEN WASILWA

JUDGE

