



**Mbiya v Moi Teaching and Referral Hospital Board (Cause E078 of 2024)
[2025] KEELRC 3128 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3128 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E078 OF 2024
MA ONYANGO, J
NOVEMBER 6, 2025**

BETWEEN

NOEL AYESA MBIYA CLAIMANT

AND

MOI TEACHING AND REFERRAL HOSPITAL BOARD RESPONDENT

JUDGMENT

1. The Claimant filed a Statement of Claim dated 3rd October 2024 against the Respondent alleging that her employment was unfairly terminated.
2. The Claimant averred that she was employed by the Respondent from 15th August 2006 until 28th February 2023 when she was suspended. She contended that her termination was effective from the date of the suspension.
3. It was the Claimant's case that she received a show cause letter from the Respondent dated 28th February 2023 on allegations that she had received money from patients which money ought to have been paid to the Respondent.
4. The Claimant averred that she responded to the show cause letter denying the allegations and that she was thereafter invited to a hearing on 7th July 2023 through a letter dated 14th June 2023.
5. The Claimant alleged that the allegation set out in the letter dated 14th June 2023 did not relate to any of the allegations set out in the show cause letter as it related to a claim of absence from work which was not set out in the show cause letter.
6. The Claimant asserted that she was not issued with a Show Cause letter in relation to the allegations of absence from work, which formed the subject of the invitation to the disciplinary process.
7. In addition, the Claimant stated whereas the Respondent alleged that the suspension of the Claimant was based on statements from patients who had complained against her, the Respondent did not avail



- the copies of the statements and that neither were the complainants present during the hearing for the Claimant to cross examine them.
8. The Claimant averred that she appealed against the decision to terminate her employment but the appeal was dismissed through a letter dated 21st November 2023.
 9. She stated that at the time of her termination, her basic salary was Kshs 239,161.
 10. The Claimant averred that the termination of her employment was unlawful, unfair and constituted to unfair labour practices. She prayed for judgment against the Respondent for:
 - a. Compensation equivalent to the Claimant's salary of 12 months
 - b. One month's salary in lieu of notice
 - c. Interest in (a) and (b) above until payment in full
 - d. Costs of the suit
 - e. Any other relief that the court may deem necessary
 11. The Respondent filed a Statement of Response dated 5th December 2024 in which it denied that it unfairly and unlawfully terminated the Claimant's employment. According to the Respondent, the Claimant breached its Human Resource Policy and Procedure Manuals by soliciting money from the Respondent's patients.
 12. The Respondent maintained that the Claimant's conduct tarnished its image as a customer centric and corruption free hospital and as such the suspension of the Claimant was to protect the image and reputation of the hospital.
 13. It is the Respondent's case that investigations were conducted and the investigation report found that the Claimant solicited for money from patients instead of directing them to pay via Safaricom Mpesa Paybill which is the mode of payment in the hospital.
 14. According to the Respondent, the investigation report recommended that disciplinary action be taken against the Claimant. Consequently, the Claimant was issued with a show cause letter which she responded to but her response was found unsatisfactory and she was subsequently invited to appear before the Respondent's Human Resource Management Advisory Committee- Discipline (HRMAC - Discipline) to present her case.
 15. It is the Respondent's case that the Claimant attended the hearing with a union representative but failed to exonerate herself from the charges levelled against her at the disciplinary hearing as a result of which her employment was terminated vide a termination letter dated 21st July 2023. The grounds of termination were that the Respondent had lost trust and faith in the Claimant and she could not continue working for the Respondent.
 16. In response to the allegation by the Claimant that the reasons in the letter inviting her to the disciplinary hearing were different from those in the show cause letter, the Respondent averred that the Claimant's services were terminated after being found guilty of the charges contained in the show cause letter and not of unauthorized absence from work. According to the Respondent, the offence of unauthorized absence from work as captured in the invitation letter dated 14th June 2023 was an error that does not go to the root of the disciplinary hearing of 7th July 2023.
 17. The Respondent denied the averment by the Claimant that her basic salary was Kshs 239,161 and maintained that the Claimant's last salary was Kshs. 127,944.90.



18. In the end, the Respondent maintained that the Claimant is not entitled to the reliefs sought since she was subjected to a fair disciplinary hearing and the reasons for her termination were fair and valid. The Respondent urged the court to dismiss the Claimant's suit with costs.

The evidence

19. The Claimant testified on 6th May 2025 as CW1. She adopted her witness statement recorded on 3rd October 2024 as her evidence in chief and relied on the documents she filed in court in support of her case.
20. In her testimony, the Claimant stated that she was suspended from employment on allegations that she had solicited money from patients. She averred that although she was subsequently invited to a disciplinary hearing, the letter of invitation cited the charge of unauthorized absence from work, yet during the hearing she was confronted with a different charge of soliciting money from patients.
21. The Claimant testified that the witness statements relied upon by the Respondent were never availed to her before the hearing. She added that had she indeed received money from any patient as alleged, the Respondent would have been aware, since there was a CCTV camera positioned directly above her workstation.
22. Upon cross-examination by learned counsel Mr. Owino for the Respondent, the Claimant conceded that she did not seek clarification regarding the inconsistency between the charges in the show cause letter and those in the invitation to the disciplinary hearing. She confirmed that the period between receipt of the invitation and the hearing date was sufficient for her to prepare, and that she attended the hearing accompanied by her union representative, Mr. Abdala Soita.
23. The Claimant maintained that as a nurse in a specialized clinic, it was not within her duties to receive or handle money. She stated that she had attended to one of the patients, Salome, who later accused her of soliciting money.
24. She further testified that she did not request for copies of the witness statements because she was unaware that any had been recorded.
25. The Claimant confirmed that she had been interrogated by Denis Koech, who was the officer responsible for recording the statements during the internal investigations.
26. On re-examination, the Claimant maintained that she did not raise an issue on the discrepancy in the letter inviting her for hearing as the letter did not require her to seek clarification.
27. The Respondent called Paul Kiprotich Mulwo, its Senior Human Resource Officer who testified as RW1 and adopted his witness statement recorded on 5th December 2024 as his evidence in chief. He also relied on the documents filed in court by the Respondent in response to the claim.
28. RW1 testified that the letter inviting the Claimant to the disciplinary hearing contained a clerical error, in that it referred to the charge of unauthorized absence from work instead of soliciting money from patients as set out in the show cause letter. He stated that the Claimant did not seek clarification on the discrepancy, attended the hearing, and was heard on the allegation of soliciting money from patients, following which her employment was terminated on that account.
29. It was RW1's position that the Claimant was not prejudiced by the error contained in the letter inviting her to the disciplinary hearing.
30. RW1 further testified that before the disciplinary committee resolved to terminate the Claimant's employment, it considered comments from the Director of Nursing Services indicating that the



Claimant had financial issues, which had led to her redeployment from her previous area of specialization. He added that during the hearing, the Claimant admitted to soliciting money from one patient.

31. Upon cross-examination, RW1 stated that the Claimant had received money from one Purity, as indicated in the investigation report. He conceded that none of the patients involved recorded witness statements and that, from the minutes of the disciplinary hearing, when the union representative asked whether there was any witness to the incident, the question was not addressed. He confirmed that no patients were called to testify before the committee and that one Benson Koech conducted the investigations.
32. On re-examination, RW1 stated that it was not logical or humane to invite patients as witnesses to disciplinary hearings.
33. At the close of the hearing, parties were directed to file written submissions. The Claimant's submissions are dated 6th May 2025 while the Respondent's submissions are dated 17th June 2025.

The Claimant's submissions

34. The Claimant identified the issues for determination to be:
 - i. Whether the reasons for the termination were valid and fair.
 - ii. Whether the procedure followed was fair and lawful
 - iii. Whether the reliefs sought are merited.
35. On the first issue, the Claimant submitted that the reasons given for her termination, as captured in the Respondent's letter dated 21st July 2023, were invalid and unsubstantiated. According to the Claimant, the show cause letter dated 28th February 2023 accused her of demanding and receiving money from patients and alleged breaches of several clauses of the HR Manual.
36. It is her submission that although she worked in an area with CCTV surveillance, the Respondent failed to produce the footage or any other evidence showing her receiving money.
37. The Claimant further submitted that from the minutes of the disciplinary hearing, her union representative sought answers as to whether there were witnesses to the alleged offence levelled against her but the issue was not addressed by the Respondent.
38. It is also the Respondent's submission that although the Respondent's witness alleged in his testimony that the Claimant had financial issues, no proof was provided to prove this allegation. The Claimant thus argued that such an allegation was irrelevant and not a valid ground for termination under the *Employment Act*.
39. She further argued that while the hearing invitation letter cited absenteeism, the Respondent provided no evidence of absenteeism and even conceded that it was not the reason for termination.
40. Additionally, the Claimant submitted that the internal memo dated 28th February 2023 issued on the same day as her suspension, already concluded that she was guilty of corrupt conduct which action demonstrated that the decision to terminate her was predetermined.
41. On the issue of procedural fairness, the Claimant submitted that Clause 11.9.15 of the HR Manual requires the CEO to constitute a team of not less than three officers to conduct investigations in cases of gross misconduct, yet in her case only one person, Boniface Koech conducted the investigations.



42. She further relied on Clause 11.4.1 (i, ii, viii and xi) of the HR Manual, which grants an employee the right to cross-examine individuals providing adverse evidence. According to the Claimant, RW1 in his testimony confirmed that the complainants were not called as witnesses and that the Claimant was not given copies of their statements.
43. The Claimant argued that the Respondent's explanation that the complainants were sickly was unsupported by evidence and that the HR Manual did not provide for such deviations.
44. She further contended that she was not provided with the investigation report or supporting evidence prior to the hearing, contrary to Clause 11.10.1(ii) of the HR Manual, which entitles an employee to peruse documents produced against them.
45. The Claimant also submitted that her appeal was dismissed without a hearing, contrary to the principles of natural justice. She cited *Benedict Nduulu v National Oil Corporation of Kenya* (Nairobi ELRC Cause No. 2021 of 2017) and *Mugo Hsc v Mugo & 2 Others* [2024] KEELRC 1273 (KLR).
46. In conclusion, the Claimant submitted that she had proved that her termination was predetermined, procedurally defective, and substantively unjustified. She therefore urged the Court to grant the reliefs sought.

The Respondent's submissions

47. On its part, the Respondent framed the issues for determination to be:
 - i. Whether the termination of the Claimant's employment was fair
 - ii. Whether the Claimant is entitled to the reliefs sought
48. On the first issue, the Respondent submitted that the Claimant was found culpable of soliciting money from patients in contravention of its Human Resource Policy and Procedures Manual. It argued that investigations revealed that on separate dates in February 2023, the Claimant unlawfully received Kshs. 300 from two patients; Salome Jepkorir and Michael Kiprotich for services meant to be paid through the official M-Pesa Paybill.
49. The Respondent argued that the Claimant's conduct amounted to gross misconduct under Section 44(4)(g) of the *Employment Act* as it undermined the hospital's integrity and caused distress to patients.
50. The Respondent maintained that under Section 43 of the Act, it only needed to show that it genuinely believed the reasons for termination existed, not to prove them beyond reasonable doubt. In support of this position, the Respondent cited the case of *CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona* [2015] eKLR.
51. On procedural fairness, the Respondent submitted that it complied with Section 41 of the *Employment Act* by issuing a show cause letter, allowing the Claimant to respond, and inviting her to a disciplinary hearing with the right to union representation.
52. The Respondent added that the inclusion of "unauthorized absence" in the invitation letter was a clerical mistake that did not prejudice the Claimant, since she was cross-examined on the allegations contained in the show cause letter. The Respondent further argued that the Claimant's appeal was duly considered and dismissed by the Board of Management.
53. On remedies, the Respondent submitted that the Claimant was lawfully terminated and therefore not entitled to compensation or notice pay, as Section 44(4) of the Act allows for summary dismissal in cases of gross misconduct.



54. The Respondent maintained that the Claimant's termination was lawful, fair, and justified in all respects as it complied with both statutory requirements and internal human resource policies in addressing the Claimant's misconduct.
55. The court was thus urged to dismiss the Claimant's suit with costs.

Analysis and Determination

56. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are as follows: -
 - i. Whether the termination of the Claimant's employment was justified,
 - ii. Whether the procedure followed was in accordance with the *Employment Act*,
 - iii. Whether the reliefs sought are merited.

Whether the termination of the Claimant's employment was justified.

57. Section 43 of the *Employment Act* provides that in a claim arising out of termination of contract of employment 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 be unfair within the meaning of section 45(2) of the Act. Subsection 43(2) further provides that the reasons must be those that the employer genuinely believes to exist at the time of termination.
58. The Claimant was suspended and subsequently terminated from employment on allegations that she solicited for money from patients contrary to its Human Resource Policy and Procedures Manual. The Respondent maintained that internal investigations found the Claimant culpable of receiving money from two patients; Salome Jepkorir and Michael Kiprotich.
59. The Claimant on the other hand denied the allegations and stated that she neither received any money from the patients nor was any evidence presented to substantiate the claim. She maintained that the hospital had CCTV cameras installed at her workstation which would have captured any such incident.
60. I have carefully perused the record, and in particular, the investigation report dated 28th February 2023 annexed to the Respondent's list of documents. I have equally examined the statements of the patients attached thereto. Upon analysis, I note that the report itself merely reproduces the contents of those statements and there is no witness statement from any staff member or other person who directly observed the alleged solicitation.
61. Further, RW1 stated under cross-examination that none of the patients appeared before the disciplinary committee, and that their statements were also not shared with the Claimant. Since the Respondent's decision to terminate the Claimant's employment was largely based on the patient's statements whose contents were not subjected to scrutiny during the disciplinary hearing, the resultant finding to terminate the employment of the Claimant was undermined by the validity of the reason advanced for the termination.
62. I therefore find that the Respondent failed to demonstrate that even though it had valid and justifiable reason to terminate the Claimant's employment, it did not prove the grounds for termination to the standards set out in section 43 and 45 of the *Employment Act*.



63. On the second issue regarding procedural fairness, Section 41 of the *Employment Act* provides: -

“Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”

64. The Claimant averred in her claim that due process was not followed in the termination of her employment. From the record and particularly the minutes of the disciplinary hearing titled HRMAC–DISCIPLINE 2022–2023 FY MIN.006, it is evident that the Claimant attended the disciplinary hearing on 7th July 2023 accompanied by a union representative, was given an opportunity to present her case, and was subsequently terminated from employment vide a letter dated 21st July 2023.

65. The Claimant faulted the disciplinary hearing on the basis that she was issued with a show cause letter dated 28th February 2023 citing allegations of soliciting money from patients, yet the invitation letter to the disciplinary hearing dated 14th June 2023 referred to a different charge of unauthorized absence from work. RW1 clarified that this was an error on the Respondent’s part.

66. The court is of the view that the inconsistency between the charges in the show cause letter and the invitation to the disciplinary hearing did not prejudice the Claimant. She was aware of the allegations against her having written a statement and responded to the show cause letter. Further, at the hearing she responded to the charges as per show cause letter and did not raise any issue on the discrepancy in the letter inviting her for the disciplinary hearing.

67. The Claimant further submitted that the statements of her accusers were never shared with her before the disciplinary hearing. RW1 confirmed that the statements from the complainant patients were never shared with the Claimant prior to or during the disciplinary hearing. Further, the Respondent did not call the investigating officer who interrogated both the Claimant and her accusers. This denied the Claimant a fair and reasonable opportunity to interrogate or challenge the evidence relied upon by the Respondent. This omission rendered the disciplinary process procedurally unfair.

68. Consequently, I find that the Respondent did not fully comply with the procedural requirements set out under Section 41 of the *Employment Act*. The termination of the Claimant’s employment was accordingly procedurally unfair.

Remedies

69. Having found that the termination of the Claimant’s employment was both substantively and procedurally unfair, I now turn to consider the reliefs sought in her Statement of Claim.

i. Compensation equivalent to the Claimant’s salary of 12 months

Under Section 49(1)(c) of the *Employment Act*, an employee whose employment has been unfairly terminated may be awarded up to twelve (12) months’ gross salary as compensation. Considering the Claimant’s long service and the circumstances of her termination, I award her six (6) months’ salary as compensation. Based on her February 2023 pay slip annexed to the Respondent’s list of documents showing a net taxable salary of Kshs., she is awarded Kshs. 1,415,503.14 under this head.

ii. One month’s salary in lieu of notice



Under Section 35(1)(c) of the Act, the Claimant is entitled to one month's notice or pay in lieu thereof. She is accordingly awarded Kshs. 235,917.19.

70. Consequently, judgment is entered for the Claimant in the following terms:

- i. The Claimant is awarded the following:
 - a. 6 months' salary as compensation for unfair termination.....Kshs 1,415,503.14
 - b. One-month's salary in lieu.....Kshs. 235,917.19
- ii. The Respondent shall meet the Claimant's costs of this suit.
- iii. Interest shall accrue from date of judgment unless payment of decretal sum is made within 30 days from date of judgment.

71. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF NOVEMBER, 2025.

M. ONYANGO

JUDGE

