

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT

ELDORET

CAUSE NO. E080 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

ALLAN KIPROP BETT.....

CLAIMANT

VERSUS

MOI TEACHING AND

REFERRAL HOSPITAL

BOARD RESPONDENT

JUDGEMENT

1. The Claimant filed a Statement of Claim dated 18th October 2024 against the Respondent, alleging that his employment was unfairly terminated.
2. The Claimant averred that he was employed by the Respondent as an artisan in the Public Health Department on permanent and pensionable terms of service, and was earning a gross salary of Kshs. 94,972/= at the time of termination of his employment.
3. He states that he was employed by the Respondent from 21st April 2010 until 31st January 2023, when the

Respondent, through its Chief Executive Officer (CEO), purported to terminate his employment and backdated the termination to 2nd September 2022.

4. The Claimant contends that he received a Show Cause/Interdiction letter from the Respondent, through the CEO, alleging that on 30th August 2022, he had stolen 15 liters of jik in three containers of five liters each.
5. The Claimant further avers that in August 2022, he was redeployed from his work station at C.C.C.D.C Complex to Shoe for Africa Hospital within the Respondent's hospital under unclear circumstances.
6. It is the Claimants case that his dismissal from employment was instigated by the Respondent's CEO who had a grudge against him.
7. The Claimant avers that throughout his employment, he diligently commenced duty at 8:00 a.m. and concluded at 5:00 p.m. daily, as stipulated in his contract of service.
8. The Claimant states that he was invited to appear before the Human Resource Management Advisory Committee - Discipline via a letter dated 10th January 2023, which he attended on 25th January 2023. He avers that he was not accorded a fair hearing, as the allegations against him were

not properly investigated and he was denied an opportunity to defend himself.

9. The Claimant alleges that the Respondent's CEO acted with the intent to frustrate him due to political differences unrelated to his employment.
10. He contends that the backdating of his termination from 31st January 2023 to 2nd September 2022, coupled with the withholding of salary during the interdiction period, was prejudicial and contrary to law.
11. The Claimant avers that he was not promoted during his 13 years of service, despite other employees in similar positions with comparable qualifications receiving promotions.
12. The Claimant contends that the actions of the Respondent to terminate his employment without any credible proof of the allegations made against him was not only grossly unfair and unlawful but also a clear indication that the CEO sought to settle personal scores.
13. The Claimant asserts that the termination of his employment was unlawful, unfair and amounted to unfair labour practices. He therefore seeks compensation and payment of his terminal dues, which he itemized as follows:

a) One month's salary in lieu of notice Kshs.
94,972

b) Compensation for unfair termination ... Kshs.
1,139,664

c) Withheld salary from September 2022 to January 2023

d) General damages for breach of employment contract

14. The Claimant prays for judgment against the Respondent as follows:

a) A declaration that the termination of his employment by the Respondent was unlawful and unfair

b) Payment of the sums claimed above

c) Costs of the claim and interest at the court's rate

d) Any other relief that the Honourable Court may deem fit to grant

15. In response, the Respondent filed a Statement of Response dated 30th January 2025, in which it denied that it unfairly or unlawfully terminated the Claimant's employment and asserted that the Claimant exhibited a lack of integrity in his conduct on various occasions during his employment with the Respondent.

16. The Respondent states that a boda boda rider reported an incident that occurred on 30th August 2022 at Shoe 4

Africa Hospital, located within the Respondent's hospital, implicating the Claimant in the theft of 15 litres of Sodium Hypochlorite (Jik), valued at Kshs. 1,380. The rider reportedly transported the Claimant, who was in possession of the stolen Jik, to Barngetuny Plaza and subsequently raised the alarm.

17. The Respondent avers that it conducted an investigation which established that the Claimant had indeed stolen Jik, packed in three containers of five litres each. That upon interrogation, the Claimant confessed to stealing the 15 litres of Jik for his personal use and admitted collaborating with another individual, Timothy Kiptoo, with whom he shared the stolen goods.
18. The Respondent avers that CCTV footage confirmed the identities of the Claimant and his co-conspirator. That after investigation the Claimant was issued with a show cause letter to which he responded. He was subsequently invited to appear before the Respondent's Human Resource Management Advisory Committee - Discipline (HRMAC - Discipline) to present his case and be heard.
19. The Respondent avers that the Claimant appeared before the HRMAC - Discipline on 25th January 2023, accompanied

by a union representative. That the Claimant failed to exonerate himself of the charges during the disciplinary hearing. Consequently, the HRMAC - Discipline recommended that he be terminated from the Respondent's services with effect from 2nd September 2022, and that he forfeits the salary withheld during the period of interdiction.

20. The Respondent contends that it informed the Claimant of his right to appeal to the Chairman of the Respondent's Board of Management within six (6) weeks of the termination letter.
21. In response to the Claimant's allegation that he was redeployed under unclear circumstances, the Respondent avers that redeployment is part of its human resource prerogative to ensure proper utilization of staff by placing employees where they are best suited.
22. The Respondent asserts that payment of withheld salary for the period from September 2022 to January 2023 is unwarranted because the Claimant was found guilty of the charges and did not perform any work during that period due to suspension.

23. The Respondent therefore urged the Court to dismiss the Claimant's suit with costs.

The evidence

24. The Claimant testified on 4th June 2025 as CW1. He adopted his witness statement dated 18th October 2024 as his evidence-in-chief and relied on the documents he had filed in court in support of his case.

25. In his testimony, the Claimant stated that on 22nd August 2022, he was accused by the Respondent of stealing 15 litres of Jik detergent. He alleged that he was forced to write a statement on 2nd September 2022 admitting to taking the Jik in order to be forgiven. He stated that he was subsequently interdicted and invited to a disciplinary hearing, which he attended accompanied by a union representative, where he denied the allegations of theft.

26. On cross-examination by Counsel Owino, the Claimant stated that he did not formally complain about being forced to write the statement. He maintained, however, that he did not admit to stealing the Jik detergent. He also testified that he did not appeal against the decision terminating his employment.

27. The Respondent called Paul Kiprotich Mulwo, its Senior Human Resource Officer, who testified as RW1. He adopted his witness statement filed on 30th January 2025 as his evidence-in-chief and relied on the documents filed in response to the Claimant's suit.
28. RW1 testified that on 2nd September 2022, a whistleblower named Mika Kiptoo reported that the Claimant and another person approached him for transport while carrying Jik, which the whistleblower suspected had been stolen.
29. RW1 stated that an investigation was conducted and CCTV footage identified the Claimant as the individual carrying the stolen Jik from the hospital.
30. RW1 further stated that the Claimant appeared before the disciplinary hearing and admitted to stealing the Jik, requesting leniency. The Claimant was subsequently issued with a termination letter dated 31st January 2023.
31. On cross-examination by Counsel Kirui, RW1 stated that the Notice to Show Cause was prepared by the CEO. He explained that according to paragraph 11:9:10 of the Respondent's Human Resource Policy and Procedures Manual, the CEO is the accounting officer, and the Director

of Human Resource Management and Development is normally responsible for issuing show cause letters.

32. RW1 also stated that there were no control measures in place to independently confirm that 15 litres of Jik were missing. He further stated that the theft incident was not reported to the police. He added that Mika Kiptoo, the boda boda rider who reported the incident, did not appear at the disciplinary hearing.
33. On re-examination, RW1 stated that the investigation report included the statement of the whistleblower, who had reported the incident to the Corporate Communications Department.
34. Daisy Chepkok, the Respondent's Security Officer testified as RW2 in furtherance of the Respondent's case. She adopted her witness statement dated 29th June 2025 as her evidence-in-chief.
35. RW2 stated that she prepared the investigation report found at page 19 of the Respondent's bundle. She explained that the matter had been referred to her by the Communications Department. She testified that she contacted the whistleblower to record his statement regarding the incident. RW2 stated that upon reviewing the

CCTV footage, she identified the Claimant and another employee as the culprits. RW2 further stated that the footage showed the Claimant removing his jacket to conceal the stolen items and that when confronted with the footage, the Claimant confessed to stealing the Jik.

36. On cross-examination, RW2 stated that she identified the Claimant and the other employee, Timothy Kiptoo, because she knew them personally and both confirmed their identities when shown the CCTV footage.
37. At the close of the Respondent's case, the court directed parties to file written submissions. The Claimant's submissions are dated 4th August 2025 while the Respondent's submissions are dated 29th September 2025.
38. By and large, the submissions reiterated the positions taken by the respective parties, and I need not repeat them.

Analysis and Determination

39. From the pleadings, the oral and documentary evidence tendered by the parties as well as their written submissions, the issues arising for determination are:
 - i. Whether the Respondent had a valid and fair reason to terminate the Claimant's employment

- ii. Whether the termination of the Claimant's employment met the procedural fairness requirements under section 41 of the Employment Act
- iii. Whether the remedies sought are merited.

Whether the Respondent had a valid and fair reason to terminate the Claimant's employment

40. Section 45(2) of the Employment Act prohibits an employer from terminating the contract of an employee except for valid reason and upon compliance with fair procedure. It provides as follows:

"45. Unfair termination

1) No employer shall terminate the employment of an employee unfairly.

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.”

41. Further, 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.
42. In the instant case, the show cause/interdiction letter dated 2nd September 2022 disclosed the reason for the interdiction of the Claimant to be theft.
43. According to the Claimant, the termination of his employment was unfair as no proof was provided that he was involved in the alleged theft. He further asserted that the accusation of theft was instigated by the Respondent's Chief Executive Officer. He alleged there existed a long-

standing personal grudge between them arising from political differences outside the workplace.

44. In addition, the Claimant contended that his sudden redeployment in August 2022, the initiation of disciplinary proceedings shortly thereafter and the backdating of his termination to 2nd September 2022 were all manifestations of malice and an attempt by the CEO to settle personal scores.
45. On its part, the Respondent maintained that the termination of the Claimant's employment was lawful and justified. It asserted that its internal investigations established that the Claimant was involved in the theft of 15 litres of jik on 30th August 2022 which accusation was supported by a whistle-blower's report, CCTV footage and the Claimant's own admission during the investigation process.
46. I have reviewed the CCTV footage as produced by the Respondent. The footage does not show the Claimant in possession of any jik or any item resembling the three 5-litre containers alleged to have been stolen. While the Respondent's witnesses stated that they identified the Claimant from the footage, their identification was based

on familiarity with staff rather than on any visual depiction of the alleged stolen items. The footage does not capture the Claimant carrying or concealing any substance or object, nor does it reveal any sequence of events that would reasonably support the allegation of theft.

47. The Respondent however produced the statement of the whistle blower Micah Kiptoo, the Boda Boda Rider who ferried the Claimant from the hospital to Barngetuny Plaza.
48. The Respondent further produced the statement of the Claimant written on 2nd September, 2022 in which he admits that he took 15 liters of jik in 3 containers of 5 liters each.
49. The Respondent further produced a statement by Timothy Kipkorir Kiptoo who averred that the Claimant had requested for his car to ferry the jik out of the hospital compound but he refused. In the statement Mr. Kiptoo states he was with the Claimant at the time the Claimant boarded the Boda Boda motorbike with the 15 liters of jik in 3 containers of 5 liters each.
50. The minutes of the disciplinary hearing also indicate that the Claimant admitted that he took the jik from the Hospital.

51. Based on the foregoing, the Respondent had valid reason to institute disciplinary proceedings against the Claimant and to terminate his employment.
52. On the second issue, the court must determine whether the Respondent adhered to the requirements of procedural fairness under section 41 of the Employment Act. 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.”*
53. From the evidence on record, the Claimant was issued with a Show Cause/Interdiction letter, invited to appear before the Human Resource Management Advisory Committee-Discipline, and was accompanied by a union representative during the hearing. He had the opportunity to respond to the allegations and to present his side of the story.

54. In these circumstances, the court finds that the Respondent complied with the procedural requirements under section 41. There is no evidence that the process was biased or that the Claimant was denied a fair hearing. Accordingly, the court finds that the termination was procedurally fair.

Whether the remedies sought are merited

55. Having found that the termination of the Claimant's employment was both substantively and procedurally fair, the court must now consider if he is entitled to any of the remedies sought in his claim.

56. In his Statement of Claim, the Claimant prayed for a declaration that the termination of his employment by the Respondent was unlawful and unfair. He is not entitled to this prayer as the termination was not unfair.

57. The Claimant also sought to be paid one month's salary in lieu of notice, compensation for unfair termination, withheld salary for the interdiction period from September 2022 to January 2023 and general damages for breach of contract.

58. Regarding notice pay, the Claimant's contract entitled him to one month's notice or salary in lieu of notice.
59. The Claimant's employment was terminated. He was not dismissed summarily. He is therefore entitled to one month's salary in lieu of notice. The same should be based on his gross salary.
60. The Claimant having not been terminated unfairly, he is not entitled to compensation for unfair termination.
61. The Claimant prayed for salary withheld from September 2022 to January 2023. Having been terminated and not summarily dismissed, the Claimant is entitled to the salary withheld during the period of interdiction in the sum of Kshs. 178,255.5 or the exact amount withheld if it is different from this figure.
62. With regard to the claim for general damages for breach of contract, it is well established that damages for breach of an employment contract is not ordinarily awarded where compensation for unfair termination would suffice. This prayer is therefore declined.
63. Consequently, the court makes the following final orders:

- i. The termination of the Claimant's employment was for valid reason and complied with fair procedure. The termination was therefore not unfair.
 - ii. The Claimant not having been summarily dismissed, is awarded salary withheld from September 2022 to the date of termination of his employment on 31st January 2023.
 - iii. The Claimant is not entitled to compensation as the termination of his employment was not unfair.
 - iv. The Claimant is not entitled to damages.
64. Interest shall accrue on the withheld salary from date of judgment unless payment of decretal sum is made within 30 days from date of decree.
65. Each party shall bear its costs of this suit.
66. Orders accordingly.

**DATED, SIGNED AND VIRTUALLY AT ELDORET
ON THIS 4TH DAY OF DECEMBER, 2025**

**MAUREEN ONYANGO
JUDGE**