Ngugi & 3 others v Board of Management Kenya Hospital Association t/a Nairobi Hospital & another (Employment and Labour Relations Cause E248, E251, E250 & E247 of 2021 (Consolidated)) [2026] KEELRC 489 (KLR) (20 February 2026) (Judgment)

Neutral citation: [2026] KEELRC 489 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS CAUSE
E248, E251, E250 & E247 OF 2021 (CONSOLIDATED)

JW KELI, J

FEBRUARY 20, 2026

BETWEEN

CAROLINE NJERI NGUGI ..... CLAIMANT

AND

THE BOARD OF MANAGEMENT KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI HOSPITAL ..... RESPONDENT

AS CONSOLIDATED WITH

EMPLOYMENT AND LABOUR RELATIONS CAUSE E251 OF 2021

BETWEEN

IRENE JEPKOSGEI KIBET ..... CLAIMANT

AND

THE BOARD OF MANAGEMENT KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI HOSPITAL ..... RESPONDENT

AS CONSOLIDATED WITH

EMPLOYMENT AND LABOUR RELATIONS CAUSE E250 OF 2021

BETWEEN

MOSES GITIMU MUREITHI ..... CLAIMANT

AND

THE BOARD OF MANAGEMENT KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI HOSPITAL ..... RESPONDENT

AS CONSOLIDATED WITH

EMPLOYMENT AND LABOUR RELATIONS CAUSE E247 OF 2021

BETWEEN

BRANTINA WAIRIGU BOKE ..... CLAIMANT

AND

THE BOARD OF MANAGEMENT KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI HOSPITAL ..... RESPONDENT

JUDGMENT

1. By an amended memorandum of claim dated 14th June 2021, the Claimant seeks:-
    a. A declaratory order that the claimant's dismissal was wrongful, unjustifiable, malicious, and unfair.
    b. An order of reinstatement into employment without loss of benefits.
    c. An order of payment of all salaries due from the date of dismissal till the date of payment.
    d. In the alterative, general damages for unjustifiable, malicious, wrongful, and unfair dismissal and terminal dues as tabulated and assessed, in paragraph 25 of this Amended Memorandum of claim.
    e. Exemplary damages.
    f. Costs and Interest of this suit and any other relief as the court may deem just.
2. The Claimant's claim was accompanied by her witness statement dated 14th June 2021; witness statement of Irene Jepkosgei Kibet of even date; and list of documents of even date.
3. In response to the claim, the Respondent entered appearance through the law firm of Kamotho & Njomo Advocates, and filed a statement of response dated 28th June 2021. In support of their response, the Respondent filed a list of witnesses dated 28th June 2021; witness statement of Maurice Mayende dated 28th June 2021; and a list and bundle of documents of even date. They later filed a witness statement of Christine Mbukuli dated 12th July 2023; witness statement of Joan Chege dated 7th July 2023; witness statement of Jacques Kioko dated 10th July 2023; and consolidated list and bundle of Documents dated 11th July 2023.

Hearing and evidence

4. The claimant's case in chief was heard on the 20th September 2022 before Justice Ocharo Kebira where the claimant testified and adopted her witness statement dated 14th June 2021 as evidence in chief in her case which was picked as the test suit. The claimant produced her filed documents. The court adjourned. On the 11th March 2025 , the parties appeared before me on transfer of Justice Ocharo

Kebira, when the claimant and her witness, Irene Kibet and claimant in cause 251 of 2021 were cross-examined by Kamotho for the respondent and re-examined by their counsel Kiluva.

5. The respondent's case was heard on the 19th June 2025 when the respondent called three witnesses namely Joan Chege as RW1 who adopted her witness statement dated 7th July 2023 as the respondent's evidence in chief and produced the respondent's documents as a bundle. RW2 was Christine Mbukuli Oncheni who produced the investigation report as R-exhibit 7 and RW3 was Benard Ouma who produced the internal audit report as R-exhibit 13. all witnesses were cross-examined by Kiluva Advocate for the claimants.

The Claimant's case in summary

6. The Claimant's case is that she was employed by the Respondent in the Finance Division, specifically in Admissions, Discharges and Transfers, and she earned a salary of Kshs. 72,800/- per month as at the time of termination in February 2021.

7. The circumstances that gave rise to this suit are that on 18th January 2021, the Claimant and her colleagues in the Admissions, Discharges and Transfers department received an email titled "CIC Suspected Fraud Case" from the office of the Finance Director directing them to report to the Security Office. Upon their arrival at the said office, they were interrogated by hospital security officers regarding some files that they had handled and were informed that concerns had been raised by Co-operative Insurance Company (CIC) that the Hospital had irregularly and fraudulently raised claims for payment in respect of individuals who were not on its cover. CIC returned the claims raised to the Hospital to confirm and provide proof that the cases were legitimate. It became clear that all the claims in contention were approved by the same Case Manager at CIC.

8. The Claimant states that beginning on 18th January 2021, she recorded statements on the files raised, and confirmed that she had no knowledge of irregularities or fraudulent activities at the Insurance Company or the Hospital. On 2nd February 2021, the Claimant was directed to report to the Finance Director's office by her line manager, the Hospital's Credit Controller. She was subsequently issued with a suspension letter dated 1st February 2021 placing her on suspension for one (1) month; and a Show Cause letter dated 2nd February 2021 requiring a reply from her by 4th February 2021. Thereafter, I the Claimant was ordered to hand in her work badge and leave the hospital premises immediately. The Claimant confirms that she duly responded to the Show Cause letter and handed in her work badge as directed.

9. It is averred that on 16th February, 2021, the Claimant was invited for a disciplinary hearing scheduled for 18th February 2021, through a telephone call from the Human Resources office. On the material date, the Claimant attended the disciplinary hearing before a four (4) member panel. The Claimant complains that she was not provided with any documentation relied on to bring charges against her, before, during or after the hearing, to allow her better understand the case or evidence against her. Following the disciplinary hearing, on 26th February 2021, the Claimant was informed via telephone call by the Human Resources office, that her suspension has been extended until 15th March 2021. The extension of her suspension was confirmed by an e-mail. On 17th March 2021, the Claimant was instructed, again via telephone call, to report to the Human resource office on 18th March 2021. On the said date, she was issued with a summary dismissal letter by the Finance Director and asked to undertake clearance procedures. The Claimant states that she later learnt that her colleagues, namely, Brantina Boke Wairigu, Moses Gitimu Mureithi, and Irene Jepkosgei Kibet had undergone the same disciplinary process as her, which ended in all their summary dismissals.

10. The Claimant explains the admission procedure in the hospital as follows: the Admissions and Discharges officer confirms that there is an admission form that is dully filled in by the patient and determines the mode of payment; the Admissions and Discharges officer registers the patient in the Hospital Information Management System, or confirms that the patient is already registered and has a hospital number (UHID), then the Admissions officer registers the patient under an Inpatient number; for cash paying patients, after confirming registration and the preferred mode of payment, the Admissions and Discharges officer sends the patient to the cashier for payment of deposit; while for third party payable patients, the Admissions and Discharges officer registers the patient and admits the patient per the Corporate Scheme requirements and hands over to the patients the necessary documents for filling in. The next step is the Admissions officer explaining the National Hospital Insurance Fund (NHIF) requirements and requesting the necessary NHIF documents during registration; then the Admissions officer sends the patient to the admissions nurse for transfer to the ward.

11. The Claimant explains the discharge procedure at the Hospital as follows: the Discharge officer during the discharge of a patient compiles all the doctors' invoices, and updates the same on the patient's bill before handing in the final bill; the Discharge officer during the discharge of patient under Insurance or third party, procures a full committal letter in writing from the said Insurance before financial clearance has been done; the Discharge officer during the discharge of self-paying patients, generates, tabulates and issues the final bill to the patient for clearance with the Admissions and Discharges cashier at the main Admissions Centre; and finally, the Discharge officer issues the clearance (blue slip) to the ward to show financial discharge of a patient has occurred, and actual clearance has been finalized.

12. On the specific charges brought against the Claimant, she states that the patients involved had a different insurance declared on admission, or were admitted as cash-paying patients. They only declared CIC Insurance on discharge. The Claimant's defence is that: she did not have prior knowledge of the patients having a different insurance; the hospital admission policy does not require that a patient declares all their insurances beforehand; the hospital does not have any written policy on how to handle third party (insurance) clients who present a cover at the point of discharging the patient; and most of the cases had individuals who had exhausted their cover and required to pay excess hence their introduction/declaration of the other cover.

13. The Claimant's complaints are that during the disciplinary process against her and her colleagues, the Case Manager at the said Co-operative Insurance Company (CIC) Insurance, who at the time acted on behalf of the Insurance Company and who was adversely mentioned in the Claimant's case, was not called as a witness. After the purported disciplinary hearing, the case was forwarded to the internal audit team to carry out investigations, and no documentation was ever shared with the Claimant.

14. The Claimant states that she and her colleagues were dismissed under the pretext of alleged Insurance fraud, but their dismissal was in actual fact a retrenchment exercise, which the Finance Director was overheard stating. She notes that the Respondent hospital has never reported the alleged offence(s) to the police or the relevant Criminal Investigations Department and no criminal charges have been preferred against her.

15. It is the Claimant's case that she and her colleagues' dismissal from employment was wrongful, unjustifiable, malicious and unfair, and contravened the Rules of Natural Justice and her legitimate expectations of working up to retirement.

16. The Claimants claims are as follows:

    i. Cause E248 of 2021

a) One month salary in lieu of notice Kshs.72,800.00

b) Salary for March, 2021 (16 days) Kshs.44,800.00

c) Damages for wrongful, unjustifiable, malicious and unfair dismissal (12 month's salary) Kshs.873,600.00

d) Unpaid Leave (26 days) Kshs.72,800.00

e) Service and/or gratuity (5 years) Kshs.182,000.00 (or as shall be assessed by the Honourable Court)

f) Exemplary Damages Kshs.5,000,000.00 (or as shall be assessed by the Honourable Court)

g) Certificate of Service

ii. Cause E251 of 2021

a) One month salary in lieu of notice Kshs.73,000.00

b) Salary for March, 2021 (16 days) Kshs.44,923.00

c) Damages for wrongful, unjustifiable, malicious and unfair dismissal (12 month's salary) Kshs.876,000.00

d) Unpaid Leave (26 days) Kshs.73,000.00

e) Service and/or gratuity (6 years) Kshs. 219,000.00(or as shall be assessed by the Honourable Court)

f) Exemplary Damages Kshs.5,000,000.00 (or as shall be assessed by the Honourable Court)

g) Certificate of Service

iii. Cause E250 of 2021

a) One month salary in lieu of notice Kshs.71,400.00

b) Salary for March, 2021 (16 days) Kshs.43,938.00

c) Damages for wrongful, unjustifiable, malicious and unfair dismissal (12 month's salary) Kshs.856,800.00

d) Unpaid Leave (26 days) Kshs.71,400.00

e) Service and/or gratuity (5 years) Kshs.178,500.00(or as shall be assessed by the Honourable Court)

f) Exemplary Damages Kshs.5,000,000.00 (or as shall be assessed by the Honourable Court)

g) Certificate of Service

iv. Cause E247 of 2021

a) One month salary in lieu of notice Kshs.75,712.00

b) Salary for March, 2021 (16 days) Kshs.46,592.00

c) Damages for wrongful, unjustifiable, malicious and unfair dismissal (12 month's salary) Kshs.908,544.00

d) Unpaid Leave (26 days) Kshs,75,712.00

e) Service and/or gratuity (10 years 3 months) Kshs.388,024.00 (or as shall be assessed by the Honourable Court)

f) Exemplary Damages Kshs.5,000,000.00 (or as shall be assessed by the Honourable Court)

g) Certificate of Service.

The Respondents' case in brief

17. The Respondent admits that the Claimant was its employee, having been employed on 19th March 2016 on probationary basis and formally confirmed on 9th August 2018 in the ADT section/ department. The Claimant's duties involved in ensuring all patients meet all the requirements before admission and discharge, monitoring of inpatient bills and advising insurance /other corporate entities when the limits are reached, among others

18. On the dispute at hand, the Respondent's position is that the Claimant and her 4 colleagues were lawfully and procedurally dismissed from employment for defrauding the Respondent. They explain that at the time of their dismissal, the said department had about 15 employees, who, like all other staff at the Hospital, were contractually bound to have a duty of fidelity and serve the Hospital with faithfulness, loyalty, allegiance, commitment and devotion. On or about 8th December 2020, the Respondent received information from its patients that they were experiencing inordinate delays during the discharge process within the Hospital despite having paid their bills on time. The Respondent commenced an investigation into the cause of the delay, and it was established through the Investigation Report that some of the Hospital's staff were involved in a fraudulent scheme to fleece the institution and CIC Insurance Company. The Claimant, in particular, was discovered to have fraudulently carried out transactions with one Mr. Dennis Munene Ntwiga of CIC Insurance, whose value was Kshs. 217,000/-. The Claimant's actions violated the Respondent's Code of Ethics and amounted to gross misconduct.

19. The Respondent admits that through a letter dated 1st February 2021 headed "SUSPENSION", the Claimant was suspended from work with full pay on suspicion of fraudulent insurance claims, after her statement to the investigating team was considered and having failed to produce the necessary and expected official communication with CIC Insurance regarding the transactions. The Claimant was subsequently issued with a show cause letter why disciplinary action should not be taken against her. The letter particularized the charges against the Claimant indicated that the Hospital was considering surcharging for the loss of Kshs. 217,000.00. On 16th February 2021, the Claimant was invited for a disciplinary hearing on 18th February 2021 per Section 41 of the *Employment Act* 2007. The Claimant was afforded an opportunity to make representations, and after the Respondent's Disciplinary Committee considered the same, they found her guilty of gross misconduct and recommended summary dismissal. No satisfactory explanation was given of how a cash paying patient became a third-party patient under C.I.C.

20. Before the final decision was made, the Respondent requested its Internal Audit Department to carry out an in-depth investigation into the fraud. In its report dated 9th March 2021, the Internal Audit

Department confirmed that the Claimant did not adhere to discharge requirements for a patient known as Christina Koki Munyaka, and intentionally failed to verify the validity of the said patient's membership to CIC. She processed the patient's claim without being presented with the membership card, leading to a loss of Kshs. 217,000/- despite the fact that the patient was initially a cash patient and had paid a cash deposit of Kshs. 100,000/- on 21st November 2020. She did not involve her supervisor when converting the cash payment to an insurance claim. The Claimant failed to obtain an email from the Insurance company confirming that the Claimant had a valid policy of insurance, as was the norm where a patient did not have their medical insurance card with them. Additionally, the Claimant was found to have used her personal email and phone number instead of the Respondent's official email address in this transaction. She further failed to copy management in her correspondence with Dennis Munene of CIC Insurance, contrary to the parties' MOU terms, all of which conduct was taken to be an attempt to conceal the fraud.

21. The Respondent denies the claim that the Claimant was never supplied with any documentation regarding the charges against her, and confirms that since the Claimant's gross misconduct amounts to a criminal offence, the Respondent has since made a formal complaint with the Directorate of Criminal Investigations for further investigations and possible prosecution.

22. The Respondent is vehement that they had just cause for summarily dismissing the Claimant on grounds of gross misconduct as explained., and adhered to lawful procedure during her said dismissal. They state that they are opposed to the Claimant's reinstatement to her previous position as they have lost trust and confidence in the Claimant's abilities, following the breach of her fiduciary duty to the Respondent.

Determination

23. The court issued directions on filing of written submissions and the parties complied.

24. the court having heard the case discerned the issues for determination in the suit to be-

    a. Whether the termination of the services of the claimant was fair

    b. Whether the claimants were entitled to relief sought

Whether the termination of the services of the claimant was fair

The claimant's submissions

25. The Court laid down the fairness test principle(s) in the case of Walter Ogal Anuro Vs Teachers Service Commission [2013] KEELRC 386 (KLR) that:- "However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness" The Court then proceeded to examine the disciplinary procedure adopted by the Respondent against the beams of Section 43 of the *Employment Act*, 2007 in the Walter Ogal Anuro Vs Teachers Service Commission [2013] KEELRC 386 (KLR) SUPRA. On Substantive Justification, Section 43 of the *Employment Act*, 2007 provides that:-

    (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. Section 45 (2) of the Act provides that:-

"(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" Justice D. K. Njagi Marete had the following to say in the case of Mugo Vs Teachers Service Commission [2022] KEELRC 13180 (KLR) regarding character and track record of an employee in service; "What is evident is that the determination of the disciplinary panel was based on this one off omission by the claimant. The claimant's entire career and employment stint which was blemish free was not considered or at all. If this is not unfairness and injustice, we must revisit the English dictionary for a definition of terms. ... There must have been alternative modes of punishment or disciplinary measures available to the claimant even in the events of being found or admitting culpability for the offences raised against him. These were not addressed or applied in the circumstances. Whatever the outcome of the disciplinary proceedings, I find the determination or sentence wrongful, unfair and unlawful. This is based on the history of the employment relationship inter partes and the circumstances of the case. There were alternative and sane means of dealing with the situation without resort to this draconian outcome. I therefore find that the termination of the employment of the claimant by the Respondent was wrongful, unfair, unjust and unlawful and hold as such." From the above holding by Justice D. K. Njagi Marete, we invite the court to factor the irrefutable fact, that during the Claimants' entire period(s) of service, s/he/they were never served with any administrative warnings nor was s/he/they involved in any irregularities, which the Respondent failed to take into account before meting out its wrongful, unfair, unjust and unlawful decision. The Respondent failed to take into account its harmonious relationship with the Claimant(s) for the respective period(s) the Claimant(s) had worked for it. The claimant(s) had maintained high professional standards and had never experienced any accusations and allegations against her/him/them, or at all. The Respondent/Hospital has not denied that the Claimant(s) had never before been found culpable of professional negligence, gross misconduct and or poor performance, or at all. In the circumstances, even if, it was indeed true that the Claimant(s) had misconducted herself/himself/themselves, and which the Claimant(s) has/have expressly denied throughout these proceedings, a first reprimand and/or first warning either in writing or verbal would be a reasonable and/or appropriate remedy in the circumstances in the view that there had been no prior or previous matter against the Claimant(s). The decision by the Respondent/Hospital was thus too harsh so as to be irrational in the circumstances. It is the Claimants' submissions that the Claimant(s) has/have, throughout the outrightly malicious investigations, tainted and unjustifiable disciplinary proceedings and ultimate wrongful, unfair, unjust and unlawful dismissal(s), been victimized by the Respondent and as a result, the Respondent has tried to taint her/his/their image and reputation through terminating her/his/their employment completely disregarding the key issues that ought to have been critically analyzed. 39. Section 12(3) of the *Employment and Labour Relations Court Act* gives the Court power to

make orders as follows:- "(3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders— i. Interim preservation orders including injunctions in cases of urgency; ii. A prohibitory order; iii. An order for specific performance; iv. A declaratory order; v. an award of compensation in any circumstances contemplated under this Act or any written law; vi. an award of damages in any circumstances contemplated under this Act or any written law; vii. an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; or viii. any other appropriate relief as the Court may deem fit to grant." The Respondent/Hospital has not denied the admissions and discharge procedures at its facility as pleaded in paragraphs 20 & 21 of the Amended Memorandum of Claim. Taking for instance, in the case of Caroline Njeri Ngugi, the Claimant in Cause E248 of 2021; and Test Suit in Cause E251 of 2021, Cause E250 of 2021 and Cause E247 of 2021 as per "Appendix 6"; the copy of the summary dismissal letter dated 15th March, 2021, the Respondent/Hospital gives the only reason for summarily dismissing the 11 Claimant's employment as discharging a patient before getting a letter of undertaking from the insurance. We note that the reason is wanting plus it was not the fault of the Claimant because; the cases raised had a different insurance declared on admission, or had been admitted as cash-paying patients and on discharge is when the new Insurance (CIC) was declared, the Claimant did not have prior knowledge of the patients having a different insurance, the Respondent/Hospital admission policy does not require that the patient declare all their insurances beforehand, the Respondent/Hospital does not have any written policy on how to handle Third Party (Insurance) clients who present a cover at the point of discharging the patient and most of the cases had individuals who had exhausted their cover, and required to pay excess, that is when they introduced the other cover. The Respondent/Hospital, even from the face value, seriously breached the provisions of Section 41 of the *Employment Act* on the requirement of a hearing hence the dismissal was also substantively and procedurally flawed. In Mary Chemweno Kiptui Vs Kenya Pipeline Company Limited [2014] eKLR the Court held that Summary dismissal takes place when an employer terminates the employment of an employee without notice or with less notice than that which the employee is entitled to by any statutory provision or contractual term. And in cases of serious breach of a contract as under section 44(3) or on committing acts as outlined under Section 44(4) of the *Employment Act*, an employee being absent from work, being intoxicated, negligence, abusive, failure to obey lawful orders, criminal arrest or charges, suspect in a criminal case, all these serious acts, such an employee is subject to be treated as under Section 41 of the *Employment Act* which provides that:- "41. (1). 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." The purported disciplinary hearing adopted by the Respondent/Hospital was procedurally and substantively flawed and rules of Natural Justice were breached because; the Respondent/Hospital has not denied that the Claimant(s) was/were on 2 nd February, 2021 given One (1) Month suspension letter dated 1st February, 2021, together with a Show- Cause letter dated 2nd February, 2021 requiring a reply by the 4th February, 2021 which is barely Two (2) days. Why was the suspension letter

given a day after it was issued? And why was/were the claimant(s) given barely Two (2) days to respond to the Show-Cause letter? Additionally, why was/were the Claimant(s) given both the suspension letter and Show- Cause letter at the same time and day? The Respondent/Hospital has not denied that on 16th February, 2021, the Claimant(s) was/were called for a disciplinary hearing on the 18th February, 2021. The Notice Period is too short in the circumstances. The Claimant(s) was/were not entitled to have another employee or a shop floor union representative or an advocate of her/his/their choice. The Claimant(s) was/were on suspension from 1st February, 2021 up to 15th March, 2021, why? During the entire purported disciplinary hearing, the Care Manager at the Co-operative Insurance Company (CIC), that is, Mr. Dennis Munene, who was at the time acting on behalf of the Insurance Company and who was adversely mentioned in the Claimant's case(s) was neither called as a witness or a person of great interest or concern, nor did he record any statement or at all, or testify in court as the Respondent's witness. After the purported disciplinary hearing, the case(s) was/were forwarded to the internal audit team, to do investigations, and no documentation was ever shared with the Claimant(s). This should have been done at least before the purported disciplinary process and the report availed to the Claimant(s) so as to adequately mount a good defence to the allegations before her/him/them. The Respondent/Hospital has not denied that the Finance Director, in some quarters, was heard saying that the dismissal of the Claimant(s) together with her/his colleagues, being the team members will aid the Respondent/Hospital in the retrenchment exercise, which was not denied or at all, by the Respondent during the hearing. The Finance Director, when asked whether his position on dismissal still stands, indicated yes, implying it was an already pre-determined, to aid in the retrenchment exercise. Despite the reason provided in the Summary Dismissal letter being criminal in nature, the Respondent/hospital had never reported the alleged offence(s) to the police or the relevant Criminal Investigations Department, at least before the purported disciplinary process. To date, there are no criminal charges preferred against the Claimant(s) or any judgement of guilty against her/him/them by any court of competent jurisdiction. It is hence the Claimant's position that the reason advanced by the Respondent/Hospital is either not valid or premature in the circumstances. The sole reason advanced by the Respondent/Hospital in dismissing the Claimant(s) is quite wanting. It is wrongful and pre-mature without the requisite criminal process being done by the competent body or institution. On this, we are guided by the opinionof the court in disciplinary cases against employees where in the opinion of the employer there exist a criminal element as set out in the guiding applicable principles in the case of Mathew Kipchumba Koskei Vs Baringo Teachers Sacco [2013] eKLR, Industrial Cause No. 37 of 2013 at Nakuru, thus:- "Nevertheless, such circumstances have never ceased to occasion complex considerations that must be taken into account to ensure that justice is done in every individual case. It is the opinion of the court that the following general principles would apply in assessing the individual cases: (a) Where in the opinion of the employer the employee's misconduct amounts to a criminal offence, the employer may initiate and conclude the administrative disciplinary case and the matter rests with the employer's decision without involving the relevant criminal justice agency. (b) If the employer decides not to conclude the administrative disciplinary case in such matters and makes a criminal complaint, the employer is generally bound with the outcome of the criminal process and if at the end of the criminal process the employee is exculpated or found innocent,

the employer is bound and may not initiate and impose a punishment on account of the grounds similar to or substantially similar to those the employee has been exculpated or found innocent in the criminal process. (c) If the employer has initiated and concluded the disciplinary proceedings on account of a misconduct which also has substantially been subject of a criminal process for which the employee is exculpated or found innocent, the employee is thereby entitled to setting aside of the employer's administrative punitive decision either by the employer or lawful authority and the employee is entitled to relevant legal remedies as may be found to apply and to be just.

(d) To avoid the complexities and likely inconveniences of (a), (b) and (c) above, where in the opinion of the employer the employee's misconduct amounts to a criminal offence, the employer should stay the administrative disciplinary process pending the outcome of the criminal process by the concerned criminal justice agency. In event of such stay, it is open for the employer to invoke suspension or interdiction or leave of the affected employee upon such terms as may be just pending the outcome of the criminal process." Fraud being a complex matter, the tenets of natural justice mandated the Respondent/Hospital to be patient enough and await the outcome of the Criminal Investigations at least before summarily dismissing the Claimant's employment. By so doing, the Respondent/Hospital acted contrary to the rules of natural justice. In Onyango Oloo Vs Attorney General [1986-1989] EA 456, the Court of Appeal expressed itself as follows:-"The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair... (emphasis ours) The Respondent's substitute witness, that is, its main witness, did NOT, or at all, participate actively or passively

during the purported Claimants' administrative/disciplinary process and also during the purported investigations. The said Witness admitted during cross-examination that she joined the Hospital after the Claimants' dismissal and notwithstanding that she did not adduce in court, any authority to represent it in court, all her testimony can only best be termed as hearsay or secondary evidence which is 15 inadmissible in court. As such, she cannot and did not rebut the Claimants' case(s) or explain the legality or otherwise of the process. Indeed, the virtual court's proceedings can attest to the irrefutable fact that she had nothing to say as regards the Claimant(s). As such, she is not useful to the Respondent's case, at all fronts. The Respondent did not explain to the court why it could or did not call its present or past officer(s) who were involved during the purported Claimants' administrative/disciplinary process. It goes without say that the relevant Respondent's officer(s) are/were not dead, they are available thus shied away in light of the wrongful, unfair, unjust and unlawful process and decision by the Respondent. None of the Respondent's other Witnesses in court, directly placed blame on the Claimant(s). The Respondent/Hospital's decision was pre-determined or the Respondent/Hospital was trying to achieve another agenda, that is, that the hospital was preparing to undergo a retrenchment exercise, which the CEO had held a meeting with the hospital union team, to brief them on 18th March 2021 (not denied by the Respondent/Hospital) hence there could be nothing during the process to find guilt on the Claimant(s). No proper disciplinary Management Policy was stated and/or adduced by the Respondent. The duties, mandate and/or responsibilities of the Hospital Security Officers was not stipulated as regards the Claimants' contracts of employment. The role of an internal audit is to provide independent and objective assurance that an organization's risk management, governance, and internal control processes are operating effectively, thereby ensuring the organization can achieve its goals. It can help organizations improve their operations by; evaluating risk management, governance, and control processes, ensuring internal controls are adequate, assessing quality, ethics, economy, efficiency, and controls and communicating information and opinions clearly and accurately. Though there is nothing to show that the undertaking or process of the Internal Audit was brought to the attention of the Claimant(s), it is evident that the whole exercise was done, after the purported disciplinary /administrative hearings and no documentation was ever shared with the claimant(s). Most important, it is the overall recommendation of the Respondent's/Hospital own Internal Auditor, that there are gaps in the Admissions and Discharges procedures at the Hospital whose responsibility lies with the hospital management and the Respondent/Hospital had the 16 option of surcharging the Claimant(s), if indeed, it was able to substantiate its claims beyond doubt. The Audit report, shows that the auditor could not ascertain to whom the alleged payments were made and how? The Statement of Response dated 28-06-2021 filed by the Respondent does not contain a Counter-claim(s), or at all, against the Claimants implying that the Respondent did not lose any money(s)/ revenue. It is also the recommendation of the Internal Auditor, that the responsibility to ensure that pre-authorization forms are valid lies with the Respondent/Hospital management and that management should continuously monitor controls to ensure they are working as intended and the Security Officer should explain what steps he took after getting the reports. The Respondent/Hospital has not shown that the Claimant(s) was/were entitled to have another employee or a shop floor union representative or an advocate of her/his/their choice or witness during the hearing and

no admissible minutes of the purported hearings were availed in court. The date of Hearing in the purported minutes of the disciplinary Hearing is indicated as Thursday 19th February, 2021 which is non-existent and, in any event, the claimants(s) was/ were invited for hearing on 18th February, 2021. It is also indicated that the hearings took place at 8:00am which is im-practical for all the claimant(s) noting that there were also other persons in addition to the claimants. The Disciplinary Panel instituted by the Respondent was improperly constituted and comprised of a chair and two (2) panelists who had no knowledge or expertise about the admission and discharge department of the hospital hence had no clue on the processes involved. There is also nothing to show that the Respondent's Final Investigation Report, Internal Audit report and letter from DCI dated 12.03.2021 were ever brought to the attention of the Claimant(s) or at all. All of these documents are not acknowledged by the Claimant(s). The print out of EMAIL Messages availed by the Respondent, offend the express rules of evidence since no certificate of authentication under Section 106 (4)(b) of the *Evidence Act* has been adduced to confirm their origin/authenticity and hence, they are in-admissible as evidence before the court. However, the same are not the Claimant's private emails as is being peddled by the Respondent/Hospital since they are official being out-look as indicated at the top. The Respondent/Hospital did not have any just cause to dismiss the claimant(s). The Respondent/Hospital has not adduced anything to show that the use of phone calls is prohibited. See the Respondent's/Hospital – General Code of conduct and ethics. The Investigation report alleges that they received some information from clients but, none of such information is attached in the report, or at all. It is alleged that some witnesses were interviewed and statements recorded and similarly, none is attached. One Mr. Joel Wasiche is blamed for failing to supervise the cashiers; that is, the Claimants. Surely, it was not the Claimant(s) to blame. The investigations report is allegedly based on the client's own story. The Claimant(s) was/ were not called to give her/his/their version of the matter. This only leads to the conclusion that the report is biased and the team mostly did its own assumptions to suit the case of the Respondent/Hospital being its employer to the detriment of the Claimant(s). It is crystal clear that there was no proper reason(s) to warrant the Claimants' dismissal. Due process was equally not followed. There were unalloyed violations of the procedural and substantive legal guarantees given to employees in cases of summary termination of employment. 68. The accusations and the reason(s) for dismissal were jumbled. The procedure adopted by the Respondent/Hospital fell short of the well settled provisions of natural justice and the law. A matter of this nature requires a hearing of the employee before dismissal in the presence of a representative of the employee's Union or another person chosen by the employee or an advocate of her/his/their choice. There is nothing to show this happened. 69This court has to review the evidence that triggered the disciplinary process. It is criminal in nature as admitted by the Respondent. Throughout the commencement of the investigations by the Hospital Security Officers, to the purported disciplinary hearings by the Hospital disciplinary Panel/committee plus the entire court process, the Respondent has NOT indicated/revealed whether the 'suspected fraud' was ever ascertained or confirmed! It has all along remained 'CIC SUSPECTED FRAUD CASE' since the year 2021! That being the case, those tasked with the responsibility of determining the dispute were to do so with a lot of care and caution. On this, the Respondent/Hospital miserably failed. It has not provided reason(s) for the failure. It is thus irrefutable and a demonstrable fact, like, the earth is round or two plus two equals four, that

the Claimant(s) was/were dismissed from employment purely on the basis of mere suspicion which the Respondent has failed to proof or confirm or has been unable to substantiate 18 since the year 2021, being more than four (4) years ago, hence the Claimant(s) was/were NOT accorded a fair hearing.. The reliefs sought by the Claimant(s) are not un-reasonable or incapable of being granted or enforced. The Claimant(s) has/have not secured another job elsewhere. As a matter of fact, this Honourable Court ought to take judicial Notice under Section 60 of the *Evidence Act* of Kenya being a matter in the public domain, that the abrupt dismissal is/was being done when the Claimant(s) has/had financial obligations to fulfill, during the global Corona Virus (COVID-19) Pandemic and when it is common knowledge that it is difficult to secure formal employment in our country thereby out-rightly occasioned the Claimant(s) undue hardships and unfathomable inconvenience(s). The Respondent did not deny, or at all, the Claimants' prayers in paragraph 25 of the Amended Memorandum of claim. Specifically, it did not avail the claimants' file(s) to negative the claimants' claims in the stated paragraph 25.

Respondent's submissions

26. Analysis of the evidence on record. It is trite law that he who alleges must prove. In this case, the hospital stated categorically that the Claimant was guilty of gross misconduct. In terms of evidence, it called the 2nd and 3rd witnesses who tabled before your ladyship two comprehensive reports that concluded that the Claimant was guilty. The record will reflect that their evidence was not shaken during cross-examination and the conclusion in the aforesaid reports has not been impeached. We plead with this court to carefully peruse the reports and find that indeed the hospital had a valid reason to separate with the claimant and her colleagues. A perusal of the submissions filed by the Claimants confirms that indeed, the Claimant was issued with show cause letter which set out the charges as follows: a. Fraudulently conducting a transaction with one Mr. Dennis Munene Ntwiga of CIC Insurance group worth Kshs. 217,000.00 which is unprofessional and against TNH/CIC terms of contract and code of ethics signed by CIC which the Claimant knew or ought to have known constitute an offence. b. Failure to adhere to successful discharge process of Mrs. Christine Koki Munyaka, a TNH patient by illegally introducing a CIC insurance cover to the bill of the patient to enable them to fraudulently purport to settle the bill. c. Offering poor customer experience thereby damaging the reputation of the Hospital. The Claimant's brief response to the show cause letter dated 4/2/2021 was found to be unsatisfactory and the Claimant was invited for a disciplinary hearing. Upon being heard, the Disciplinary Panel considered the representations of the Claimant and recommended that she should be summarily dismissed from employment, subject to an Internal Audit Report, after finding her guilty of the following: a. She fraudulently converted a cash paying patient to insurance scheme of CIC without properly identifying the patient. No medical card was given to her. She alleged to have relied on what she was told which is unprocedural and/or irregular. b. She discharged a patient before getting the letter of undertaking from the CIC Insurance. We refer the court to the evidence on record where she confirmed this fact. c. She discharged the patient without seeking authority from her supervisor considering the special alleged circumstances. d. She used her personal Gmail account without copying her colleagues while communicating with the insurance care manager which process has never been approved by the Respondent. During the hearing, the Claimant was referred to the policy on email on page 170 which is categorical that individuals must not receive information through non-hospital email accounts. e. She did not inform her supervisor concerning the official email not working. The defence that the official email was not working was considered and found not be genuine since she neither informed her supervisor of the same nor copy the official hospital email of the hospital- "All ADT email" or that of the CIC! There was no reason of deliberately doing the right thing save to

commit the fraud. We refer your lordship to the Minutes filed by the Hospital whose authenticity has not been contested. As conceded in paragraph 22 of the Claimant's Submissions, one of the purposes of requiring the patient to fill the Admission Form is to determine the mode of payment. If the patient at the point of admission writes and states in the Admission Form that she will be a cash paying patient and as a matter of fact pay Kshs. 100,000.00 as a deposit, then the Claimant had no authority at all to convert such a patient to a CIC insured patient only at the point of discharge upon speaking to a next of kin. 14. In this case, CIC refused to settle the hospital bill on the basis that the patient was not insured by them at all. The Claimant and her colleagues had no evidence to convince the Disciplinary Panel that the patients were insured by CIC Insurance. Such evidence includes a medical card. As pleaded in paragraph 12 of the Statement of Response, where an insured patient seeking treatment does not have a medical card, the concerned insurance company must always send an official email to the Hospital identifying and acknowledging that such a patient has a valid policy of insurance to allow the patient to be attended. In other words, the insurance issues a letter of undertaking to the hospital. The argument in paragraph 24 of the Claimant's submission that ''the Claimant did not have prior knowledge of the patients having a different insurance and the hospital admission policy does not require that the patient declare all their insurances beforehand'' is a weak one considering that the patient was a cash paying as per the admission form in the patient's file. It is not that the patient had 2 different insurance cards. We submit that the alleged lack of policy on how to deal with such cases is just an excuse considering that the Claimant had worked in the department for 5 years. With long experience of 5 years and a clear job description, she ought to have sought guidance from her superiors at work if this was the first time, she encountered such. However, to the extent that she was using her own personal email without copying the group mail of the respondent and CIC, it means that she knew what she was concealing. In light of the foregoing, we submit that the Respondent met the conditions under Section 43 of the *Employment Act* which requires the employer to prove the validity of termination which is defined to include the matters that the employer genuinely believed to exist. In this case, the Respondent genuinely believed that the Claimants facilitated the fraud to its detriment. The Court of Appeal in Ondari v National Hospital Insurance Fund [2025] KECA 687 (KLR) the court on reasons for termination observed :- "The appellant complained that the termination process was unfair; he also blamed the trial court for finding that the court's duty was not to verify the truth of the reasons advanced for terminating employment. According to him, the trial court's reasons are contrary to and contradict section 45 of the Act. In several of its decisions, this court has 8 9 held that it has no supervisory role and is not required to substitute the thoughts of an employer where the employer has a valid reason to terminate employment and where due process has been followed." The submission that the Claimant has never been accused of poor performance ignores the Inter-Office Memorandum on page 3 of the Respondent's consolidated list and bundle of documents which confirmed that her performance was below average. Distinguishing the authorities relied upon by the Claimant. We submit that the case of Mugo Vs Teachers Service Commission [2022] KEELRC 13180 is clearly distinguishable from the facts of the cases before your ladyship to the extent that in the said case the disciplinary panel made its determination based on one off omission by the claimant. However, in the present case, the fraud was perpetuated by the Claimant by use of her personal email and telephone calls as opposed to the Respondent's official email and further failing to copy the Respondent's management in her communication/correspondence with Denis Munene of CIC which were not copied to the CIC group email. We submit that such conduct was intentional and deliberate. As pleaded in paragraph 8 of the Response, Dr. Mutie's office confirmed that they know the patient and she always pay cash. It is evident that the handwriting and signature on the preauthorization is not Dr. Mutie's and this was confirmed by his office. The claimant went to the extent of forging the doctor's signature to facilitate the fraud. It wasn't a case of oversight. The submission that the offence committed by the Claimant should have attracted a reprimand/warning as opposed to summary dismissal has no basis considering

that an employer is entitled under Section 44 (4) (d) of the Act to summarily dismiss an employee who is guilty of gross misconduct. It does not require the employer to wait for the employee to commit 2 or more gross misconduct prior to summary dismissal. As noted in the Audit Report, all 12 patients with CIC co-payment did not have medical cards 9 10 produced during discharge and neither was a copy of the card maintained in the inpatient financial file.

27. Procedural fairness -The submission that the Claimant was not entitled to have another employee during the hearing is not based on the evidence on record. A perusal of the invitation letter for a disciplinary hearing dated 16th February 2021 appearing on page 135 of the Respondent's bundle confirms that the Claimant was notified of her right to be accompanied by a colleague of her choice which right she exercised. We refer the court to see the Minutes on page 136 and find that the Claimant's wrongdoing was clearly established. We submit that a perusal the Statement of Response and the witness statement reveal that the Claimant was taken through a fair process prior to termination. The argument that the period for the invite and the hearing was too short is not based on the evidence before this court. It is evidence from the bar. In any case, there is no evidence that the Claimant requested for more time to prepare for the hearing. All in all, we submit that this court has found that a period of 2 days is sufficient for an employee to prepare for a disciplinary hearing. In the case of Kirui v Ekaterra Tea Kenya PLC (Employment and Labour Relations Cause E013 OF 2023) [2024] KEERLC 1747 (KLR) (9 July 2024) (Judgment) it was held that: "In the current case, there is no indication that the Claimant complained of being accorded inadequate time to present his case. It is apparent that he had already been served with NTSC which set out the accusation against him and to which he had responded within the time allowable and so may have felt adequate enough to face the disciplinary process. The issue of inadequate time for hearing was only raised in this claim which I find is an afterthought." The submission that the Disciplinary Panel was not properly constituted is neither pleaded nor is it based on the evidence before your ladyship. The counsel is not permitted to submit from the bar on matters that are not pleaded to allow the Respondent an opportunity to be heard on such issues. The counsel is further not permitted to object to the production of electronic evidence after the emails have been produced and marked as exhibits in his presence. The documents that were objected to, the respondent was able to bring/call witnesses. The submission that the audit report should have been done prior to the hearing of the Claimant ignores the fact that the Claimant's charges/infractions were founded on the investigation report on page 11 of the Respondent's bundle but the Disciplinary Panel recommended summary dismissal of the Claimant subject to there being an Audit report. It was therefore not necessary to hear the Claimants who had been heard prior to the investigation report being prepared by submitting their own statement forms. See page 4 of the Respondent's bundle. We submit that the criminal proceedings undertaken by the DPP and administrative disciplinary proceedings by the employer are two distinct and different processes and there is no requirement for an accused employee to be convicted prior to being terminated by the employer. That notwithstanding, the exhibits on pages 181 to 183 demonstrate that the fraud was reported to the police. The case of Mathew Kipchumba Koskei v Baringo Teachers Sacco [2013] cited by the Claimants is not helpful to them for the reason that the judge in the matter finally dismissed the Claimant's case with costs holding as follows: "The court finds that at the time of termination, on account of the claimant's own voluntary admission before the respondent's board, the respondent genuinely believed or had very good ground to believe that the claimant was guilty of the misconduct as charged. The court finds that on the standards of section 43 of the *Employment Act*, 2007 the termination was fair and lawful." Similarly, in the present case, the Respondent has brought evidence to demonstrate that it genuinely believed that the Claimants were guilty of serious misconduct and hence it has met the burden of justifying the grounds of termination required under Section 47 (5) of the *Employment Act*, 2007. We rely on the case of Kenya Revenue Authority v Reuwel Gitahi & 2 others [2019] KECA 300 the Court of Appeal held that: "The standard of proof is on a balance of probability

and not beyond reasonable doubt and all the employer is required to prove are the reasons that it genuinely believed to exist causing it to terminate the claimant's services. That is a partly subjective test." The record will reflect that during cross-examination, both Caroline and Irene denied almost everything including the obvious such as the Minutes filed by the Respondent. Such kind of evidence points to witnesses who are not truthful with the court while at the same time, they are seeking the court's assistance.

Decision

28. The Claimant and her witness, Irene, agreed they discharged patients on mode of payment not used at admission. Agreed, they used own personal emails to communicate with the insurance representative. Had no evidence of having copied other staff on the said emails or the insurer. The court did not believe the claimant could access and retrieve the said emails from their personal private accounts to prove having copied other staff and the insurer as required. The claimant admitted during cross-examination that the patients did not provide evidence of place of work and of being insured and relied on a third party allegedly working for the insurer. The hospital cannot be blamed for not picking the option of surcharging the claimants. The claimants had a tainted trust in handling the income-generating process of the employer. The lack of police involvement cannot taint a claim of fraud by employer. The threshold of proof of suspicion of fraud or theft by an employee is on a balance of probabilities under section (44(14) g) of the *Employment Act* to wit- 'an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property." The employer proved the basis of the suspicion vide investigation report and further vide admission by the claimant and the witness of careless/negligent handling of discharge, posing risk of loss of income vide non-payment by discharged patients. Whether or not the money was paid by CIC insurance as alleged by claimant is immaterial in the instant case. The respondent had basis of suspicion that it lost money on account of the claimant's conduct. The evidence of respondent that the insurer did not undertake to pay the claim at admission or guarantee payment before discharge was unshaken.

29. On procedural fairness, I find there was compliance with section 41 of the *Employment Act*.

    The challenge of notice of less than 2 days was unmerited. That was sufficient notice as the claimants were aware of the allegation against them. The investigation report was produced by Christine Mbukuli Ondieni as R. Exh.7. RW3 was the internal auditor who on reliance on records found Irene Kibet did not adhere to procedures and admitted a patient Kavita with fake NHIF number and without NHIF notification.RW3 told the court the hospital lost KShs.219,311 due to conduct of Irene,CW2. The court confirmed that the claimants had signed documents which had instructions on admissions and which the court found they flouted(R-exhibit 5). The disciplinary hearing minutes were produced. There was substantive compliance with section 41 of the *Employment Act*.

30. The court found the conduct of the claimant to have been negligent and posed a risk of financial loss to the employer, which is in the business of a hospital, for non-payment of inpatient costs. That conduct fits the description of gross misconduct under section 44(4) of the *Employment Act*. In the upshot, the court found the termination was justified and fair.

Whether the claimant is entitled to Reliefs sought

31. The only relevant relief having found fair termination was salaries. At cross-examination , the witness RW1 was unshaken that their filed evidence of the collection of cheques by the claimant, and there was no evidence before the court that the cheques had not cleared. The court believed the salary and leave days if any were paid as per the termination letters.

32. In the upshot, I find no merit in the claim, which is dismissed with costs to the Respondent. This being a test suit, the other suits, namely Cause No. 251,250 and 247, all of 2021, are dismissed with costs to the respondent.

33. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2026.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Claimant: Kiluva

Applicant /Respondent: Sigei holding brief Kamotho