

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. 110 OF 2020**

**GEORGE NJAGI MACHUA.....**  
**.....CLAIMANT**

**VERSUS**

**HEALTHLINK MATCARE LIMITED T/A**  
**THE NAIROBI WOMEN'S**  
**HOSPITAL.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before Court is the Claimant's Memorandum of Claim dated 17<sup>th</sup> February, 2020, and filed on 24<sup>th</sup> February, 2020, where the Claimant seeks the following reliefs as against the Respondent:-
  - i. A declaration that the treatment of the Claimant at the Respondent's employment amounted to summary dismissal for which the Claimant is entitled to compensatory and general damages.
  - ii. An order for the Respondent to pay the Claimant 12 months' gross salary in compensation for the loss of employment at Kshs. 201,600/= totaling Kshs. 2,419,200.
  - iii. An order that the Respondent pay the Claimant three months' salary in lieu.

iv. An order for the Respondents to pay the Claimant general damages on account of the attendant unfair and ill-treatment covered in discrimination, mistreatment, humiliation, public embarrassment and ridicule and the trauma resultant from all the.

v. Cost and interest.

2. The Respondent filed a Memorandum of Response dated 16<sup>th</sup> September, 2022 in response to the Claimant's claim.
3. The Claimant subsequently filed a Reply to Memorandum of Response dated 24<sup>th</sup> July, 2023.
4. The Claimant's case was heard on 14<sup>th</sup> June, 2024 and further on 5<sup>th</sup> February, 2025 when he (CW1) testified in support of his case. He adopted his witness statement dated 17<sup>th</sup> February, 2020 and produced his list and bundle of documents of even date as exhibits in the matter and were marked as Claimant's exhibits Nos. 1-28.
5. The Respondent's case was heard on 19<sup>th</sup> November, 2025 when the Respondent's witness Ms. Jacqueline Zipporah Wambui (RW1) testified in support of the Respondent's case. She adopted her witness statement dated 3<sup>rd</sup> November, 2023 and produced the Respondent's list and bundle of documents dated 25<sup>th</sup> July, 2023 as exhibits in the matter and were marked as Respondent's exhibits Nos. 1-11.
6. Submissions were received from both parties.

## **The Claimant's case**

7. The Claimant's case is that he was employed by the Respondent on or about 30<sup>th</sup> April, 2014, when he was offered a contract for the position of General Ledger Accountant, which contract was to take effect from 5<sup>th</sup> May, 2014. He avers that the employment was permanent and that, at the time of employment, he was 38 years old.
8. He further states that he served a six-month probationary period, after which his employment was confirmed due to his satisfactory performance and favourable references. The Claimant states that his contract provided that termination could only occur upon three (3) months' notice or payment of three months' salary in lieu of notice.
9. The Claimant further states that his career progressed within the Respondent's organization, and that on 1<sup>st</sup> November, 2014, he was appointed to act in the position of Finance Manager, an appointment communicated through a letter of even date. It is his case that in that acting capacity, he was entitled to an allowance of Kshs. 20,117/= per month and a telephone allowance of Kshs. 5,000/=, while the other terms of employment remained unchanged.
10. The Claimant avers that by a letter dated 10th November, 2014 and effective 8th November, 2014, his employment was formally confirmed, and which confirmation made him eligible to join the Nairobi Women's Hospital Staff Medical Scheme and the Britam Provident Fund Scheme, under

which employees contributed 5% of their basic salary and matched by the employer.

11.The Claimant further avers that his remuneration was reviewed upward through a letter dated 27<sup>th</sup> April, 2015, increasing his salary to Kshs.94,500/= with effect from 1<sup>st</sup> April, 2015. He avers that by a letter dated 19<sup>th</sup> August, 2015, he was promoted to the position of Chief Accountant with effect from 1<sup>st</sup> July, 2015, subject to a three-month probation period.

12.He states that following this promotion, his salary was increased to Kshs.160,000/=, together with a transport reimbursement of Kshs.5,000/= and a telephone allowance of Kshs.5,000/=. He states that his medical cover was also enhanced to include outpatient cover of Kshs.30,000/= and inpatient cover of Kshs.250,000/=.

13.The Claimant states that a further salary adjustment was effected through a letter dated 31<sup>st</sup> July, 2017, increasing his salary to Kshs.201,600/= with effect from 1<sup>st</sup> April, 2017, and that arrears of Kshs.100,800/= were paid, and his medical benefits enhanced, with inpatient limits increased to Kshs.500,000/=: outpatient cover to Kshs.50,000/= per family or Kshs.30,000/= per single member, together with Kshs.10,000/= each for optical and dental services.

14.It is the Claimant's case that he continued performing his duties diligently until July 2019, when senior officials of the Respondent began a persistent witch-hunt against him, and

by a Notice of Suspension dated 16<sup>th</sup> July, 2019, signed by the Finance Controller James Ndegwa, he was suspended from duty pending investigations following a complaint received from Shade Net Hotel in Meru, where he had been leading a team.

15. He avers that the notice alleged that he had physically assaulted an employee named Brian. The Claimant further avers that he was subsequently issued with a show cause letter dated 17<sup>th</sup> July, 2019, requiring him to explain within 24 hours why disciplinary action should not be taken against him for the alleged misconduct.

16. The Claimant avers that the suspension was later extended through a letter dated 1<sup>st</sup> August, 2019, to allow further investigations and that during this extended suspension, he was not paid his salary. He further states that on 4<sup>th</sup> September, 2019, the Respondent summarily dismissed him from employment.

17. It is the Claimant's case that, dissatisfied with the decision, he lodged an appeal on 10<sup>th</sup> September, 2019, but the Respondent upheld the dismissal through a letter dated 30<sup>th</sup> September, 2019.

18. He contends that the manner in which the Respondent treated him was inhumane, unfair, and inconsistent with Article 41 of the Constitution of Kenya and the provisions of the Employment Act, which guarantee fair labour practices and fair disciplinary procedures.

19. It is therefore the Claimant's case that the Respondent's conduct amounted to constructive dismissal, arguing that the actions taken against him constituted a fundamental breach of his contract of employment. He contends that no valid cause was shown, due process was not followed, and the disciplinary process was premeditated, all of which rendered the termination unlawful.

20. On cross-examination, the Claimant told the court that petty cash expenditure was in respect of a stock taking exercise which he was in charge of and whose approval was supposed to be given by the Chief Accountant. He avers that he approved the expenditure and, in the same breath, admits that he was away and had no evidence of his approval. He further confirmed that he did not sign the petty cash voucher.

21. The Claimant stated that his dismissal letter lists flaunting of financial controls as grounds for his dismissal. He further confirmed that his vehicle did business with the Respondent.

22. It is his position that no policy of the Respondent prohibited the use of personal vehicles.

23. He stated further that he attended a disciplinary hearing and was accompanied by a witness. He avers that he was notified of the reason for his dismissal and notified of his right of appeal.

24. On re-examination, the Claimant indicated that the Respondent had a policy where one could use their personal vehicle and would get paid an allowance for work within Nairobi. However, for work outside Nairobi, the approval of the Facility Manager would be required.

25. He avers that his vehicle was approved for use outside Nairobi. He states that the show cause letter was signed by the Financial Controller, who was at the same level as himself, and that he reported to the Chief Financial Officer, who did not participate in the disciplinary proceedings.

26. The Claimant prays that his Claim be allowed as drawn.

### **The Respondent's Case**

27. The Respondent states that it employed the Claimant and confirms the details relating to his confirmation of employment, promotions, salary reviews, and employment benefits as pleaded in the Statement of Claim.

28. The Respondent denies the allegation that the Claimant was subjected to a witch-hunt by its officials, leading to his suspension. The Respondent states that the Claimant was lawfully suspended through a notice issued by James Ndegwa following a formal complaint alleging misconduct on the part of the Claimant.

29. The Respondent further admits that the Claimant was accused of physically assaulting a subordinate employee while leading a team and avers that such conduct

constituted gross misconduct under the Respondent's employee relations protocol.

30. It is the Respondent's case that the Claimant was issued with a notice to show cause and accorded an opportunity to respond to the allegations made against him.

31. It is the Respondent's further case that after conducting investigations and considering the Claimant's response to the show cause letter, the explanations given were found to be unsatisfactory, and as a result, it proceeded to summarily dismiss the Claimant in accordance with the company's policies.

32. The Respondent further states that the Claimant subsequently lodged an appeal against the decision to dismiss him, but the appeal was unsuccessful as the Claimant did not present any new evidence or information that could warrant a reversal of the decision. The Respondent maintains that the dismissal was therefore properly upheld.

33. The Respondent denies the Claimant's allegations that the disciplinary process was unfair, premeditated, or intended to frustrate him out of employment. It maintains that it is a law-abiding entity that treats its employees in accordance with the law and the terms of their employment contracts. The Respondent also contends that suspension pending investigations is lawful and does not amount to constructive dismissal.

34. On cross-examination, RW1 indicated that the Claimant's suspension was based on an assault, among other charges. He further stated that the Respondent did not pay the Claimant during the suspension and was not paid any money upon his dismissal.

35. RW1 further told the court that the Claimant did not sufficiently respond to the issues subject to the show cause letter, but he instead raised other matters that were not subject to the show cause.

36. He avers that the role of the Chief Accountant was to ensure processes were adhered to, yet there was no evidence showing that he sought authorization.

37. On re-examination, the Respondent stated that the 1<sup>st</sup> Notice to Show Cause letter was issued on 5<sup>th</sup> July, 2019, and as at 17<sup>th</sup> July, 2019, there were two matters which the Claimant was required to respond to, two of which were considered during the hearing.

38. The Respondent indicated that the Claimant was dismissed for both offences; hence, assault was not the only reason for his dismissal.

39. The Respondent finally maintains that the Claimant's dismissal was lawful and justified and therefore prays that the claim be dismissed with costs.

## **Analysis and Determination**

40. The following issues crystallize for determination: -

- i. Whether the Claimant's employment was unfairly terminated.
- ii. Whether the remedies sought by the Claimant are merited.

**Whether the Claimant's employment was unfairly terminated.**

41. The Claimant contends that he was unfairly dismissed from the service of the Respondent, owing to the manner in which the Respondent treated him, which he asserts was inhumane, unfair, and inconsistent with Article 41 of the Constitution of Kenya and the provisions of the Employment Act, which guarantee fair labour practices and fair disciplinary procedures.

42. The Claimant maintains that actions taken against him constituted a fundamental breach of his contract of employment, contending that no valid cause was shown, and due process was not followed, and the disciplinary process was premeditated, all of which rendered the termination unlawful.

43. On its part, the Respondent contends that it is a law abiding entity and that the Claimant's dismissal was procedural. It avers that the reasons for the Claimant's dismissal were physical assault of a subordinate employee, irregular petty cash authorization, breach of financial controls, and conflict of interest through use of his personal vehicle for company business.

44. A dismissal is wrongful and unfair when the employer fails to adhere to the twin tenets of substantive and procedural fairness espoused under Sections 41, 43, and 45 of the Employment Act, 2007. Section 44(4) of the same Act further lists grounds that may justify summary dismissal, including gross misconduct or breach of trust.

45. In ***Loice Otieno v Kenya Commercial Bank Limited (2013) eKLR***, the court emphasized that an employer must satisfy both substantive justification and procedural fairness.

46. On whether the Respondent adhered to the tenets of fair process, Section 41 of the Employment Act demands that an employee must be informed of the allegations against him/her, and allowed an opportunity to respond and to defend himself/herself in the company or a colleague or union representative where the employee is a member of a union.

47. The evidence before court shows that the Claimant received several show cause letters, to which he submitted written responses and attended a disciplinary hearing in the company of a witness of his choice. It is also evident that he lodged an appeal, which was considered, and the Respondent's decision to dismiss him was upheld.

48. Further, the Claimant admitted these facts during cross-examination. The Court of Appeal in ***CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona (2015)***

**eKLR** held that where an employee is informed of charges against him, heard, and allowed an opportunity to appeal, the requirements of Section 41 are satisfied.

49. In light of the foregoing, I find and hold that the Claimant's dismissal from the service of the Respondent met the procedural fairness test.

50. On substantive fairness, assault against a subordinate may constitute gross misconduct under Section 44(4) of the Employment Act. The Respondent admitted that assault was only one of several charges leveled against the Claimant, and there is limited indication in the court record that the assault allegation was independently proved.

51. Where an employer fails to demonstrate that the alleged misconduct occurred, the termination may be deemed unfair under Section 43 of the Employment Act, 2007.

52. The Respondent, however, further argued that the Claimant authorized Kshs. 87,000 petty cash expenditure without approval and that he failed to follow internal approval procedures. The Claimant, on his part, admitted that he did not sign the petty cash voucher and had no evidence of having approved the expenditure.

53. As Chief Accountant, the Claimant had a fiduciary duty requiring strict adherence to financial procedures. Courts have consistently held that breach of financial trust by senior financial officers constitutes valid grounds for

dismissal. This principle was affirmed in ***Evans Kamadi Misango v Barclays Bank of Kenya Limited (2015) eKLR***, where the dismissal of a senior officer was upheld on the basis of a loss of trust in the officer's financial oversight.

54. On the issue of conflict of interest, the court was told that the Claimant's private vehicle was used to conduct business with the Respondent while he approved related expenditures.

55. In my view, even if the use of personal vehicles were permitted, the combination of financial control and personal benefit raises legitimate concerns of conflict of interest. Further, given the Claimant's senior financial role, the employer had reasonable grounds to conclude that trust had been compromised.

56. In light of the foregoing, I find that the Respondent had on a balance of probabilities a reasonable and valid basis to question the Claimant's conduct, particularly regarding financial controls and conflict of interest.

### **Whether the Claimant is entitled to the remedies sought**

57. Under Section 49 of the Employment Act, compensation is only awarded where termination is unfair.

58. The court has found that the Respondent had valid reasons to dismiss the Claimant, and has substantially complied with procedural requirements.

59. Consequently, the claims for 12 months' salary in compensation, 3 months' salary in lieu of notice, and general damages for discrimination or humiliation must fail, and are hereby dismissed.

60. In conclusion, I find and hold that the Claimant's summary dismissal was lawful, justified, and procedurally fair.

61. The Claimant's Claim is therefore devoid of merit and is hereby dismissed in its entirety.

62. Parties shall bear their own costs of the suit.

63. It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Odindo present for the Claimant

Ms. Okach h/b for Mr. Ngira for the Respondent

Ms. Esther S- C/A