



**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

(ON Makau J on 19th March 2026)

CAUSE NO. 757 OF 2018

**LYNETTE NJERI MURAGA.....
.....CLAIMANT**

-VERSUS-

**KENYATTA NATIONAL HOSPITAL.....
RESPONDENT**

JUDGMENT

Introduction

1. By an Amended Memorandum of Claim dated 4th May 2022,
the Claimant sought the following reliefs:-

***a) An order that the decision to surcharge the
Claimant of the sum of Kshs. 3,555,625.82.82
without granting a fair hearing and opportunity
to be heard is unlawful.***

- b) A permanent injunction restraining the Respondent from surcharging the Claimant of the sum of Kshs. 3,555,625.17 without subjecting her to a fair disciplinary process.***
- c) Refund of the Claimant's half salary with - held during her period of interdiction totaling to Kshs. 1,000,671.00.***
- d) Interest on (c) above with interest at Court rates from March 2010.***
- e) Damages for breach of the employment contract and unfair disciplinary process.***
- f) Costs of this suit and interest at Court rates.***
- g) Any other relief that the court may deem appropriate in the circumstances.***

2. The Respondent denied liability vide its Amended Response dated 26th September 2023 and prayed for the suit to be dismissed with costs.

3. The suit came up for hearing on 3rd December 2025 when the parties agreed on the following:-

- a) Dispense with oral testimonies by witnesses and instead adopted their written statements and documents filed as their respective evidence.
- b) The parties to file written submissions to dispose of the suit within 21 days.
- c) The Claimant to file the judgment in ELRC Cause No. E6557 of 2020 to guide this court on the issue of liability.

Claimant's case

- 4. The Claimants case in brief was that she was employed by the Respondent as a Supply Chain Assistant from 2nd February 1994. She worked until 8th October 2008 when she was interdicted by the Respondent for alleged negligence in performance of her duties that resulted alleged loss of stores worth Kshs. 3,555,652.82. She was then placed on half salary during the duration of the interdiction.
- 5. She contended that the interdiction letter indicated that an inquiry by the Board into stock held during the financial years 2000 to 2008 established that there was total deficit worth Kshs. 3,555,625.82 and surplus of worth Kshs. 3,134,595.30.

She was then given 21 days to show cause why disciplinary action should not be taken against her. She was also required to report back to the Supplies and Procurement Manager for reconciliation and handing over report be done and presented to the Human Resource Manager.

6. She complied with the above directive and remained in her interdiction until it was lifted by a letter dated 24th March 2010. The letter reinstated her half salary that was withheld during the interdiction but it was never paid to her pending decision in another unspecified case. The letter also indicated that she had been warned, which she faulted because she was not given any hearing before a disciplinary committee.

7. She computed the half salary withheld as Kshs. 1,000,671 and urged the court to award interest from the date 24th March 2010 when the interdiction was lifted. She calculated the said sum based on a withheld basic salary of Kshs. 21,953 plus allowances of Kshs. 36910 totaling to Kshs. 58,863 per month from 10th November 2008 to 24th March 2010 (17 months).

8. On 15th May 2018, she received a letter from the Respondent captioned “ DISCIPLINE” informing her that she had been surcharged Kshs. 3,555,625.82 in the May 2018 being the cost of the deficit for 2007/200, and 2001/2002 financial year. She denied the validity of the said surcharge of the staggering sum of Kshs. 3,555,625.82 and described it as arbitrary, unfair and offending the right to natural justice and right to fair labour practices. She contended that the decision was made without subjecting her to the disciplinary process documented in section 10.9 in the Respondent’s Human Resource Manual, 2013.

9. She further averred that the decision to surcharge her was never subjected to the surcharge committee to enable her give her explanation in a fair process. The said sum, according to her was not supported by any documentary or other evidence. She maintained that the surcharge amounted to breach of her contract of employment whose terms included adherence to the law and the Human Resource Policy and Procedure Manual. Besides the lifting of her interdiction created a legitimate

expectation that the issue was fully settled. Therefore, she prayed for reliefs sought.

Respondent's case

10. The Respondent admitted the employment relationship with the Claimant and the impugned surcharge of Kshs, 3,555,625.82. It also admitted that it interdicted the Claimant and withheld her half salary until 24th March 2010 when the interdiction was lifted. It denied any wrong doing in the interdiction on half pay and the subsequent surcharge against the Claimant.

11. It contended that it provided the Claimant an opportunity to make her representation in strict adherence to its documented disciplinary process including hearing before the decision to surcharge her was made. Therefore, it prayed for the suit to be dismissed with costs.

Submissions

12. It was submitted for the Claimant that Clause 10.9 (v) of the Respondents Human Resource Manual allows a surcharge any

upon recommendation by the surcharge committee appointed by Directors. The amount of the surcharge is determined by the said committee under Clause 10.9 (v) of the Human Resource Manual. However, as per the letter dated 8th May 2018, the decision to surcharge was made by the Public Investments Committee (PIC) and communicated by the Deputy Director, Human Resource.

13. It was submitted that no surcharge committee was established by the Director to inquire into the deficit or surplus and as such the decision to surcharge the Claimant Kshs. 3,555,625.82 fell short of the internal procedure for determining surcharges. For emphasis, Reliance was placed on **Maritim v. Kenyatta National Hospital (Cause E6557 of 2020) [2025] KEELRC 2133 (KLR) (17 July 2025 Judgment)** where Nduma J held found the respondent at fault in a related matter.

14. The court was urged to seek guidance from the above decision and restrain the Respondent from surcharging the Claimant the said Kshs. 3,555,625.82.

15. As regards the Claimant's half salary withheld during the interdiction period, being Kshs. 1,000,671, it was submitted that Section 17(1) of the Employment Act obliges an employer to pay the entire amount of salary payable to an employee. However, in this case the Respondent was faulted for not releasing the withheld half salary after lifting the interdiction and reinstating her to continue working. It was submitted that continuing to withhold the said salary "until" a decision was made on the other case involving deficit/surplus of stock held under the Claimant" as arbitrary because the Respondent took no steps to pursue the "other case".

16. It was submitted that after waiting for 8 years, the Claimant filed this suit to recover the half salary. It was further submitted that the failure to release the half salary constituted a continuing injury under Section 90 of the Employment Act. For emphasis, reliance was again placed on the **Maritim case**, Supra, where the court in a Ruling rendered on 8th July 2021, held:-

“ 14. It is not in dispute that the impugned surcharge and deductions of the sum of Kshs. 964,415 which commenced in June, 2012 continues in Monthly installments to date.

15. This is a classic example of continuing injury or damages within the meaning of Section 90 of the Employment Act.

16. The said injury having not ceased, the suit is not time barred within the meaning of Section 90 of the Employment Act.

17. The Preliminary Objection therefore lacks merits and is dismissed with costs...”

17. This court was urged to find that the suit herein is not time barred due to the confirmed withholding of the half salary and award the prayer for Kshs. 1,000,671 withheld during the interdiction.

18. Finally, it was submitted that the Claimant is entitled to general damages for breach of the contract for being subjected to untold suffering, economically and emotional distress, for emphasis, reliance was placed on **Ethiopian Airlines Ltd v.**

Daniel Tanui & 11 others [2019] KEHC 2329 (KLR) where the court awarded general damages for breach of contract which was not for employment. In the instant case the court was urged to award Kshs. 600,000 as general damages for breach of the Claimants contract of employment.

19. For the Respondent, It was submitted that the suit herein is time barred as it was filed on 21st May 2018, more than 8 years since the claim for the withheld half salary became due. It was submitted that under Section 90 of the Employment Act, a claim arising from contract of employment should be filed within 3 years . It was argued that the suit herein ought to have been filed by 23rd March 2013, being, being 3 years from the date when decision to withhold the salary was communicated.

20. The instant case was distinguished from the **Maritim case, Supra**, because the said case the deduction of the surcharge continued until the time of filing the suit while in the instant case the decision to continue withholding the half salary was

communicated on 24th March 2010 and the suit was filed 8 years thereafter.

21. To buttress the defence of limitation, the reliance was placed on **Kathoni Kageni Gotari v. Kenyatta National Hospital [2024] KEELRC 31 (KLR)** where Ndolo J held that the suit was time barred and dismissed.

22. In view of the foregoing matters, the court was urged to strike out the suit with costs for being time barred.

Issues for determination

23. Having considered the pleadings, evidence and submissions, the following issues fell for determination:-

a) Whether the suit is time barred.

b) Whether the Respondent should be restrained from surcharging the Claimant Kshs. 3,555,625.83.

- c) Whether the Kshs. 1,000,671 being half salary withheld during her interdiction should be released to her.
- d) Whether the Claimant is entitled to general damages for breach of her contract of employment.
- e) Who bears the costs of the suit?

Analysis

Limitation period

24. The Respondent submitted that the suit herein is time barred for having been filed 8 years after the date when the cause of action arose. However, the Claimant maintained that the suit was filed within the limitation period since it was a continuous breach.

25. Section 89 of the Employment (formerly Section 90 of the Act) states as follows:-

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this act or a contract of service in general shall lie or be instituted unless it is commenced within three

years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

26. The above section provides for limitation period of a cause of action with a definite accrual date as well as a cause of action involving a continuing breach. With respect to the former category, the limitation period is three years from the date when the cause of action accrued. In the second category, the limitation period is twelve months from the date when the continuing breach or injury ceases.

27. The question that begs for answer is whether or not the causes of action herein involved a continuous breach/injury. The first cause of action was the claim for half salary withheld during her interdiction period. The decision to lift the interdiction was communicated by the letter dated 24th March 2010, which is copied below:-

“ RE: LIFTING OF INTERDICTION/WARNING

Further to this office letter re. No. KNH/530180//A/76 dated 8th October 2009 and

your subsequent response dated 2nd November 2009, your representations have not been accepted

The Hospital Management has established that you submitted an incomplete handing/taking over report at the Private Wing stores. You failed to hand - over the bin card balances against the physical stock. As the storeman in - charge of Private Wing stores, you did not keep proper records as required leading to your inability to do a proper and an acceptable handing/taking over report. Negligence of duty and failure to exercise proper care of Hospital property under your custody constitute gross misconduct that cannot be condoned in the service.

In view of the above and considering the seriousness of the offence, severe disciplinary action was contemplated against you. However, it was decided that you should be accorded another chance to improve on your conduct. Accordingly, it was decided that:-

i) The interdiction hitherto imposed on you with effect from 10th November 2008 should be lifted. Your withheld half (1/2) salary during the period of interdiction should be kept on hold until a decision is made on the other case involving deficits/surplus of stock held under you as indicated in our letter under reference above.

ii) You should be and are hereby warned against negligence of duty noted on your part during your tenure as the storeman in-charge, Private Wing stores.

You should resume duties immediately upon receipt of this letter and by a copy of the same, the Head, Comprehensive Care Center is requested to confirm the date of your reporting to facilitate release of your salary. You are also required to acknowledge receipt of this letter confirming within a period of

three (3) days from the date hereof, that you have read and understood the contents herein.

Yours faithfully,

Signed

P. Ndungu

For: HUMAN RESOURCE MANAGER

c.c The Chief Shopstewars

KUDHEIHA Works Committee - KNH.”

28. The up shot of the above letter is that the Claimant was found to have performed her duties negligently and she was given a warning. Her interdiction was then lifted but her half salary withheld during the interdiction was to continue being kept until a decision was made on “the other case involving deficits/surplus of stock” held under her. Which case was that, and was any decision ever made?

29. The Claimant contended that she waited for 8 years until 21st May 2018 when she filed this suit. The Late filing was

occasioned by the delay by the Respondent to make a decision on the “other case” about deficit/surplus of stock held under her. In the circumstances, I find that as long as the intended decision remained in abeyance, the Claimant’s right to file suit remained alive. The continued withholding of the half salary after the lifting of the interdiction constituted a continuing breach/injury. The suit is therefore not time barred since it was filed before the promised decision on the “other unspecified case” of deficit/surplus of stock.

30. The court also notes that a decision to surcharge her Kshs. 3,555,625.82 being cost of the stock deficit she failed to account for was communicated vide the letter dated 8th March 2018. If the court was to assume that the said decision was the one contemplated in the letter dated 24th March 2010, which has not been proved by the Respondent, then the said letter further validated the Claimant’s suit for the withheld half salary since it was filed barely two weeks after the said decision was made.

31. The respondent relied on **Kathoni Kageni Gitari v. Kenyatta National Hospital [2024] KEELRC 31 (KLR)** where Ndolo J held that:-

“31. The Claimant’s case of complaint as stated in her Memorandum of Claim is the Respondent’s decision to surcharge her for the sum of Kshs. 2,501,433.

Reading from the documents filed in court, the impugned decision was made sometimes in August 2015, which constituted the accrual date of the cause of action.

32. According to the court record, the Claimants claim was filed on December 2020 more than five (5) years after the accrual date. This being the case, the claim was filed out of time and the court has no jurisdiction to entertain it.”

32. However, the facts of this case are distinguishable from the above case because in the said case the suit did not involve a claim for half salary withheld during interdiction. Consequently, I find that the claim for Kshs. 1,000,671, being half salary withheld during interdiction is not time barred.

33. As regards the claim for injunction against the intended surcharge of Kshs. 3,555,623.82 I equally find that it is not time barred since the decision was made vide the letter dated 8th May 2018 and the suit was brought on 21st May 2018. If anything, it is the surcharge which was done out of time and most probably that is why the Respondent never filed any Counter Claim or a suit to recover the said Kshs. 3,555,625.82. I say so because the infraction by the claimant is alleged to have been committed between the year 2001 and 2008 and the surcharge was imposed on 8th May 2018.

34. As regards the claim for general damages, the same was also not time barred because as regards the withheld half salary, the breach was continuous with respect to the decision to surcharge, the cause of action arose on 8th May 2018 and the suit was filed on 21st May 2018, just two weeks after the said decision.

35. In view of the foregoing analysis, I find and hold that the suit herein is not time barred and the defense of limitation fails. Consequently, I proceed to determine the suit on its merits.

Withheld half Salary

36. The Claimant computed her salary arrears in paragraph 6 of her Amended Memorandum of Claim. The Claimant produced her pay slip for January and February 2018 showing a basic salary of Kshs. 43,906 plus allowances totaling to gross salary of Kshs. 80816. Clause 10.5 of the Human Resource manual provides that:

“ An employee who is interdicted shall receive half salary and all other allowances except office related allowances.”

37. The Claimant did not produce any pay slip for period she was on interdiction to prove that she was not paid her due allowances. The Respondent also never adduced any evidence to rebut the claim for withheld half salary nor did it submit on it. Consequently, I find that she is only entitled to payment of half basic salary being Kshs. 21953 for 17 months, from 10th November 2008 to 24th March 2010 equaling to Kshs. 373,201.

Injunction against surcharge

38. As regards the prayer for injunction to restrain the Respondent from surcharging the Claimant, the reason given was that there was no evidence to substantiate the surcharge of Kshs. 3,555,625.82 and that the decision to surcharge was made without due process. Besides the Claimant contended that she had reasonable expectation that the warning given to her and the lifting of interdiction vide the letter dated 24th March 2010 fully resolved the allegations contained in the interdiction letter. I agree with the Claimant because Clause 10.3 (vii) of the Human Resource Manual provides that:-

“ Where a case of misconduct is established against an employee and the nature of offence warrants no more than a written warning, the employee will be given a written warning by his immediate supervisor stating the precise nature of the offence, what improvement is required within the given period. A copy of the warning letter will be placed in the employees personal file”.

39. I have carefully considered the evidence on record. The letter dated 8th October 2009 accused the Claimant of failing to avail missing Bin Cards (S5's) and undertaking a reconciliation

of the same. The letter also gave her 21 days to report back to the Supplies and Procurement Manager for reconciliation and handing over report. It follows that the surcharge was based on unverified report made by a Board of Inquiry.

40. The said report has not been produced as an exhibit. All that is before the court is the letter dated 8th October 2009 which indicates total deficit for the year 2001 - 2008 as Kshs. 3,555,625.82 and a total surplus of Kshs. 3,134,594.30. Logically, the net deficit from the above figures was Kshs. 421,031.52. One wonders why the Respondent ignored the total surplus, and only picked on the total deficit without reconciliation.

41. Having said that, I must reiterate that the Respondent did not adduce any evidence to support the surcharge of Kshs. 3,555,625.82. The burden was upon it to prove the alleged deficit by documentary evidence as well as statements from the members of the Board of Inquiry who came up with alleged deficit in the stock held by the Claimant.

42. In addition, the Respondent had the burden of proving that the Claimant, had the custody of the alleged stock and she willfully or negligently caused the same to be lost. The only way to do so was through disciplinary hearing conducted under the Human Resource procedure manual and the Employment Act. Clause 10.3 provides that investigation shall be done, the employee be informed the charges against him, the employee be entitled to the evidence against him/her, and the employee be entitled to defend himself/herself before a disciplinary committee after which a disciplinary action may be recommended including warning or in the worst scenario, summary dismissal.

43. The Claimant's evidence that she was never accorded a hearing before a disciplinary committee was not rebutted by the Respondent. No evidence was placed before the court to prove that the Claimant was invited to appear before a disciplinary committee to defend herself against the charge of negligent performance of her duties. This further reinforces my earlier finding that the alleged deficit of Kshs. 3,555,625.82 was never established as the matter was never proved through

the documented procedure under the Respondents Human Resource Manual.

44. As regards the decision to surcharge the Claimant the Kshs. 3,555,625.82, Clause 10.9 (v) & (vi) of the Human Resource Manual provides that:-

“ (v) Any surcharge effected under this Regulation will be only be made on recommendation of the Surcharge Committee appointed by the Director Surcharge under this Regulation may be made in addition to other disciplinary action being taken against the employee.

(vi) The amount of surcharge shall be determined by the Surcharge Committee taking into account the costs of damage caused or loss incurred. An employee who dissatisfied with the surcharge imposed on him may appeal to the Director...”

45. In the case of **Maritim v. Kenyatta National Hospital (Cause E6557 of 2020) [2025] KEELRC 2133 (KLR) (17 July 2025 Judgment)** Nduma J held:-

“ 19. From the letter dated 12th June 2012 which the Claimant was surcharged and warned, the surcharge was established by a Board of Inquiry into stocks held during financial year 2010/2011.

There is no indication that a surcharge committee was established in terms of Clause 10.9 (v) appointed by the Director to determine this matter of surcharge applicable to the Claimant having been found by the Board of Enquiry which established that there were unreconciled shortage/surplus amounting to Kshs, 964,415.

20. The Claimant was not provided with an opportunity to appeal to the Director in terms of Clause 10.9 (v) but instead an Enquiry Appeals Committee was established to review his case. Clause 10.9 (v) and (vi) do not provide for that procedure.

21. Accordingly the Claimant was not surcharged following the established policy and procedure manual. The Respondent violated its own internal documents in this respect.”

46. Likewise, in this case there is no evidence adduced to prove that a Surcharge Committee was established by the Director to determine the surcharge against the Claimant. Evidently, the surcharge of Kshs. 3,555,625.82 was imposed by the Public Investment Committee (PIC) as the cost of the stock deficit for the financial year 2001/2002 and 2007/2008. The procedure

adopted to determine the surcharge was obviously in breach of the said Clause 10.9 (v) & (vi) of the Respondent's own Human Resource Manual and it denied the Claimant an opportunity defend herself and the right of appeal to the Director. Therefore, the surcharge was irregular, unfair and unlawful for violating the right to fair labour practices and rules of natural justice. Accordingly, the prayer for permanent injunction to restrain the Respondent from surcharging the Claimant Kshs. 3,555,625.82 is merited and I grant it.

General damages and interest from March 2010

47. The Claimant averred that the breach of the contract by the Respondent had caused her to suffer economic hardship, social and emotional distress. She prayed for general damages of Kshs. 600000. The Respondent did not submit on this claim nor did its witness say anything in response the same.

48. There is no doubt that the court has the jurisdiction to award compensation by way of general damages if it is proved that the employee suffered injury as a result of violation by the employer. In this case the Respondent lifted the Claimant's

interdiction and warned her, but then deliberately continued keeping her half salary for 17 months which was withheld during the period of suspension. After waiting for 8 years, the Claimant filed recovery suit and sought general damages for breach of her contract of employment and unfair disciplinary process. She also sought interest on the withheld salary from March 2010 at court rates.

49. Clause 10.5 (v) of the Respondent's Manual provides that any salary withheld during interdiction or suspension shall be restored to the employee upon reinstatement. The employer breached its own Human Resource Manual by continuing to withhold the Claimant's half salary after reinstating her citing another pending case.

50. Considering the circumstances of this case, I find that an awarding both interest from 24th March 2010 and general damages for breach of the contract of employment as prayed would amount to double compensation for the delayed payment. Consequently, I decline to award general damages and instead award interest on the withheld half salary at court

rates with effect from 24th March 2010 when she was reinstated from the interdiction.

Conclusion

51. I have found that the Claimant's suit is not time barred. I have further found that the Claimant is entitled to payment of the withheld half salary for the 17 months she was interdicted. I have also found that the decision to surcharge the Claimant Kshs. 3,555,625.82 was unfair and unlawful and restrained the Respondent from proceeding with the same. Finally, I have found that an award of interest on the withheld half salary at court rates from 24th March 2010, when, the Claimant was reinstated, would adequately compensate her for the delayed payment and therefore declined to award general damages. Accordingly, I enter Judgment for the Claimant against the Respondent as follows:-

- a) Declaration that decision to surcharge the Claimant Kshs. 3,555,625.82 without granting her an opportunity to be heard is unlawful.

- b) A permanent injunction restraining the Respondent from surcharging the Claimant the sum of Kshs. 3,555,625.82 without subjecting her to fair disciplinary hearing.
- c) Payment of Kshs. 373,201 being half salary withheld from the Claimant during her interdiction period.
- d) Interest on (c) above at court rates from 24th March 2010.
- e) Costs of the suit plus interest at court rates from the date of filing suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 19TH DAY OF MARCH, 2026.

ONESMUS MAKAU

JUDGE

Appearance:

Nguma for the Claimant

Anyangu for the Respondent