

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT NAIROBI  
CAUSE NUMBER 158 OF 2018**

**BETWEEN**

ESTHER NAFULA JUMA .....CLAIMANT

**VERSUS**

AL GADHIR CENTRE LIMITED .....RESPONDENT

*Rika J*

-----

*Soita & Associates, Advocates for the Claimant*

*Mugambi Mungania & Company Advocates for the Respondent*

-----

**JUDGMENT**

1. The Claimant filed her Statement of Claim on 13th February 2018.
  
2. She avers that she was employed by the Respondent as a locum nurse [temporary], on or around 4th May 2017. The contract was oral. She was paid a daily capitation [wage] of Kshs. 700.
  
3. On 31st May 2017, she was placed on probation, in a 3-month contract, earning a monthly salary of Kshs. 25,000. She completed the period successfully.

4. She was confirmed through a contract dated 1st September 2017. The contract was for a renewable period of 12 months. Her salary was reviewed to Kshs. 30,000.
5. She was instructed on 11th October 2017, by administrative manager Ms. Maleeha Sheikh, to dispense drugs to patients. The resident pharmaceutical technologist was absent.
6. She explained to the administrator that she was not trained to dispense drugs. Her training as a nurse, allowed her to administer drugs to patients, in accordance with instructions of a doctor or other qualified medical practitioner.
7. The administrator took offence.
8. The Claimant continued working for the whole month of October 2017. On 30th October 2017, she was unfairly and unlawfully dismissed. The reason justifying the decision was that she “ failed to provide services as directed by the Employer.”
9. Her position is that she was not trained to dispense drugs, and did not therefore, disobey a lawful command issued by her Employer. There was no valid reason to dismiss her. She was not treated fairly under Section 41 of the Employment Act.

10. The Claimant avers that it took her 3 months after dismissal, to secure alternative job as a nurse in Nairobi.

11. She prays for: -

- a. Declaration that dismissal was unfair and unlawful.
- b. Compensation equivalent of 12 months' salary at Kshs. 360,000.
- c. Pro-rata leave of 6 months served at Kshs. 15,000  
  
Total...Kshs.375,000
- d. Certificate of Service.
- e. In alternative to compensation, damages for the remainder of the contract term.
- f. Costs.
- g. Interest.

12. The Respondent filed its Statement of Response on 26th October 2018. It is conceded that the Claimant was an Employee of the Respondent.

13. It is true that she was instructed to dispense drugs. She had been receiving training on dispensation of drugs under the guidance of the pharmaceutical technologist, as well as the use of 'med card ' system, since August, 2017.

14. She had dispensed drugs during the Respondent's free camp exercise, on 30th September 2017. There were no concerns, or complaints about her performance.
15. On 11th October 2017, she was to work with an experienced staff member at the pharmacy.
16. She responded rudely, that she would not dispense the drugs. The administrator reported her insubordination to the directors.
17. Dismissal was based on valid ground.
18. The Respondent states that her contract allowed the Respondent to terminate the contract without notice, if she fundamentally breached her obligations under the contract.
19. She was given an opportunity to explain herself.
20. Dismissal was fair and lawful. She took leave of 3 days, and was entitled to pro-rata leave of 3 months worked. The first 3 months were probationary, and did not attract annual leave days. She was paid 6.5 leave days for a period of 3 months. The Respondent urges the Court to dismiss the Claim with costs.
21. The Claimant, and Respondent's finance administration manager Samson Mwendwa, both gave evidence and closed the respective cases, on 3rd February 2026 during the Nairobi E&LRC service week.

22. The Claimant relied on her witness statement dated 9th February 2018 and documents [1-7], in her evidence-in-chief.
23. Cross-examined, she told the Court that her contract was for a period of 12 months. She claims compensation equivalent of 12 months' salary. Termination was on 30th September 2017. Her contract was effective 1st September 2017. She served for 2 months. She did not refuse to dispense drugs. She had not done so before. Pharmacists dispense drugs. She only gave instructions at the medical camp, on how drugs should be taken.
24. Redirected, she emphasized that she was not a pharmacist. Certified pharmacists dispense drugs. She refused to dispense, because she was not qualified to do so. She was not taken through a disciplinary hearing. There was no valid reason to justify termination.
25. Mwendwa adopted his witness statement dated 25th October 2018, and Respondents' documents [1-8] in his evidence-in-chief.
26. Cross-examined, he told the Court that he drafted Claimant's contract. Her job description was not specific. But she would not mop the floor. It was not her calling. She was not a qualified pharmacist. The Respondent did not have a culture, where nurses did pharmacists' work. The Claimant had dispensed drugs before. The Respondent is not a training centre for pharmacists. She was called after she refused to dispense drugs. She was given a hearing. It was not a formal invitation.

27. Redirected, Mwendwa told the Court that the Claimant was to dispense the drugs, not prescribe them. The pharmacist was absent.

28. The issues are whether: termination of the Claimant's contract was procedurally fair; based on valid reason; and, whether the remedies sought have merit.

**The Court Finds:-**

29. The Claimant worked for the Respondent as a locum nurse for 1 month in May 2017. At the end of locum she was offered work for 3 months, on probation basis. She completed the period, and was offered a 1-year contract, beginning 1st September 2017.

30. She only worked for 2 months, in September and October 2017. She was summarily dismissed on 30th October 2017.

31. Regardless of the manner of her dismissal, the period worked of 2 months, does not warrant a dispute that lasts 8 years in the Court.

32. Parties ought to have settled at their own level, or moved the Court sooner rather than later, 8 years after the Claim was filed, to have the Claim heard and resolved.

33. From the evidence presented by the Claimant and Mwendwa, it is clear that the Claimant was not granted a hearing, after she declined to dispense

drugs. There is no record of a disciplinary hearing, held pursuant Sections 41 and 43 of the Employment Act.

34. It is also clear to the Court that the Respondent did not have a valid reason to dismiss the Claimant. She was a nurse, with barely 6 months' overall experience, at the Respondent's workplace.

35. She was not a pharmacist, and it was not shown by the Respondent, that she was qualified to dispense drugs. Without establishing that she was qualified, the instructions given to her by the Respondent, to dispense drugs in the absence of the Respondent's dispensing pharmacist, were not lawful instructions.

36. In this Court's **Dede Esi Annie Amanor-Wilks v. Action Aid International [2014] e-KLR**, It was held that Employees have an obligation to obey the lawful commands of their Employers, or of persons placed in positions of authority by their Employers. The commands have to be lawful.

37. The command to dispense the drugs was given to the Claimant by the administrator Sheikh. Sheikh, an administrator, had been placed in a position of authority, over the Claimant, by the Respondent. Her command to a fresher nurse, to dispense drugs while the pharmacist was away, was not shown to have been a lawful command. The Claimant had no legal obligation to obey it. She did not engage in the employment offence of insubordination under Section 44[4] of the Employment Act.

38. Mwendwa, who drew the Claimant's contract and her job description, told the Court that her job description was not specific. What was the basis then, for the Respondent to allege and conclude without a hearing, that the Claimant was qualified to dispense drugs, and that she declined dispensation in disobedience of a lawful command?

39. Termination was not based on valid ground, under Sections 43 and 45 of the Employment Act.

40. It was unfair on account of procedure and substantive justification.

41. On remedies, it is completely a distortion, for the Claimant to plead compensation equivalent of 12 months' salary, while she served for only 2 months. It is likewise disproportionate, to claim in the alternative, the balance of her service period, which would be 10 months' salary.

42. The Court has taken into account that she secured another nursing job, 3 months after she lost her job at the Respondent; she worked for 2 months; she expected to go on working for another 10 months; and she did not contribute to, or cause the circumstances that led to her dismissal.

**43. She is granted equivalent of 2 months' salary in compensation for unfair termination, at Kshs. 60,000.**

44. Her pay slip of October 2017, the month she left employment, confirms that she was paid notice at Kshs. 30,000 and annual leave at Kshs. 7,500.

45. She is granted costs and interest at court rate, from the date of Judgment till payment is made in full.

**IT IS ORDERED:-**

- a. *It is declared that termination was unfair.*
- b. *The Respondent shall pay to the Claimant equivalent of 2 months' salary in compensation for unfair termination, at Kshs. 60,000.*
- c. *Costs, and interest at court rate from the date of Judgment till payment is made in full, granted to the Claimant.*

Dated, signed and delivered electronically at Nairobi, under Rule 68 [5] of the E&LRC [Procedure] Rules, 2024, this 30th day of April 2026.

James Rika  
Judge

A handwritten signature in blue ink, appearing to read 'James Rika', is written over a horizontal line.