

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**

**ELDORET**

**CAUSE NO. E073 OF 2024**

*(Before Hon. Lady Justice Maureen Onyango)*

**ALEX KIPROP KANGOGO.....**

**CLAIMANT**

**VERSUS**

**MOI TEACHING AND**

**REFERRAL HOSPITAL**

**BOARD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed a Statement of Claim dated 28<sup>th</sup> August 2024 against the Respondent alleging that his employment was unfairly terminated.
2. The Claimant was employed by the Respondent on 9<sup>th</sup> February 2009 as its Supply Chain Officer I. He served at different levels within the supply chain department rising through the ranks to the position of senior supply chain officer earning a gross salary of Kshs 206,683.34 as at the time of termination of his employment vide a letter dated 1<sup>st</sup> July 2022.

3. He appealed against the decision to terminate his employment by letter dated 5<sup>th</sup> August 2022, but, according to the Claimant, the appeal was dismissed without a hearing.
4. It is the Claimant's case that there was no notice or warning prior to the termination and as such the termination of his employment was unfair for want of valid reasons and fair procedure.
5. The Claimant prayed for judgment against the Respondent for:
  - a. A declaration that the reasons stated in the letter of termination do not constitute proper ground for termination.
  - b. The Respondent to withdraw the letter of termination and issue the Claimant a letter clearing him of any wrongdoing.
  - c. That the summary dismissal be declared unlawful and unfair
  - d. Damages for wrongful dismissal
  - e. Leave allowances
  - f. Interest on the monetary orders from the date of the filing of the Claim

- g. Costs of the Claim
  - h. Any other order the court may find it fit to award.
  - i. One month's salary in lieu of notice
  - j. Interest in (a) and (b) above until payment in full
  - k. Costs of the suit
  - l. Any other relief that the court may deem necessary
6. The Respondent filed a Statement of Response dated 3<sup>rd</sup> December 2024 in which it denied that the Claimant's employment was unfairly and unlawfully terminated.
7. It is the Respondent's case that in 2022, it received information from a whistleblower that a suspicious invoice had been forwarded to the Finance Department for payment without adherence to the requisite procedures. The Respondent avers that the invoice lacked mandatory supporting documentation, thereby raising concerns of irregularity.
8. It is further the Respondent's case that there was non-delivery of 56,000 units of Augmentin 1gm tablets valued at Kshs 1,108,240.

9. As a result, the Respondent conducted a special internal audit to verify the allegations in the whistle blower report and the non-delivery of the Augmentin.
10. The Audit revealed that the Claimant forwarded incomplete documentation to support the payment for the 56,000 units of Augmentin, contrary to the Respondent's established payment procedures.
11. The Respondent avers that a reconciliation conducted during the audit established that a total of 59,990 units of Augmentin 1 gm had been issued, reflecting an unexplained excess of 3,990 units.
12. The Respondent avers that audit further established that the Claimant submitted incomplete documents, including Local Purchase Order No. 03458, Invoice No. SIN2108ELD52198 and Delivery Note No. NB12108SS03723, which lacked endorsement by the IAC, yet were forwarded to facilitate payment.
13. It is the Respondent's case that the Finance Department flagged the deficiencies and returned the documents to the Claimant for rectification but the Claimant resubmitted

the same incomplete documentation without addressing the deficiencies.

14. The Respondent contends that, as a Stock Controller, the Claimant was under a duty to verify the completeness of documentation prior to forwarding the same for payment and to escalate any discrepancies to the Supply Chain Manager. The Claimant failed to discharge this duty.
15. As a result, the Claimant was issued with a Show Cause letter dated 3<sup>rd</sup> March 2022 which he responded to on 7<sup>th</sup> March 2022, denying any misconduct or negligence. Subsequently the matter was referred to the Human Resource Management Advisory Committee (HRMAC) - Discipline.
16. The Respondent avers that by a letter dated 10<sup>th</sup> June 2022, the Claimant was invited to attend a disciplinary hearing scheduled for 23<sup>rd</sup> June 2022 and was informed of his right to be accompanied by a representative.
17. The Respondent contends that the Claimant attended the hearing on 23<sup>rd</sup> June 2022 accompanied by a union representative and was accorded an opportunity to present his case.

18. It is the Respondent's case that following the hearing, HRMAC recommended termination of the Claimant's employment, and this decision was communicated to the Claimant by a letter dated 1<sup>st</sup> July 2022, which also informed the Claimant of his right of appeal.
19. The Respondent avers that the Claimant appealed on 5<sup>th</sup> August 2022, that the appeal was considered at the Respondent's 76<sup>th</sup> Board of Management meeting held on 18<sup>th</sup> November 2022, which upheld the decision to terminate the Claimant's employment.
20. The Respondent states that it paid the Claimant his pension dues on 3<sup>rd</sup> February 2023 and issued him with a Certificate of Service.
21. Accordingly, it is the Respondent's position that it complied with all procedural requirements and afforded the Claimant due process.
22. The Respondent thus prayed that the Claim be dismissed with costs and that the Court finds that the termination was lawful, procedural and fair.

### **The evidence**

23. The Claimant testified on 23<sup>rd</sup> June 2025 as CW1. He adopted his witness statement dated 28<sup>th</sup> August 2024 as his evidence in chief and relied on the documents he filed in support of his case.
24. The Claimant took the Court through the procedure for procurement and dispensing of drugs at the Respondent's facility. He stated that when items are received from external suppliers, they are first received in the stores section, after which the relevant documentation is forwarded to stock control. He stated that the delivery note is initially received by the stores section. While referring to the delivery note at document 8 in his bundle of documents, the Claimant testified that it related to 4,000 packs of 14 tablets of Augmentin, translating to 56,000 tablets. He maintained that the drugs were delivered and subsequently consumed by the hospital. The Claimant stated that the documentation formed part of a system-based item flow record which was produced during the disciplinary proceedings.
25. The Claimant further testified that the delivery note dated 18<sup>th</sup> August 2021 was signed by one James Webisa, a

stores officer who was also subjected to disciplinary proceedings.

26. The Claimant maintained that he served the Respondent diligently for 13 years without any warning. He denied any loss of drugs and stated that the drugs were issued to patients and billed over a period of approximately two months.
27. It was the Claimant's evidence that the allegations against him were false. The Claimant acknowledged lapses in documentation, which he attributed to the transition from a paper-based system to an electronic system, which he stated may have caused the errors.
28. The Claimant maintained that the disciplinary process failed to consider the factual position and that no loss was occasioned to the Respondent. He urged the Court to allow his claim as pleaded.
29. On cross-examination, the Claimant admitted that the documentation forwarded to the Finance Department was incomplete and lacked the Goods Received Note (GRN) and the Inspection and Acceptance Certificate.

30. The Claimant conceded that the documents he submitted did not bear all required signatures and that he failed to detect the deficiencies before forwarding them to Finance. He stated that the omission was due to workload pressure and system transition challenges. The Claimant confirmed that the Finance Department flagged the deficiencies and returned the documents for correction.
31. The Claimant further testified that although he attended the disciplinary hearing accompanied by a union representative, Andrew Chemwor, the said representative was not allowed to address the committee.
32. On re-examination, the Claimant reiterated that the drugs were delivered and issued to patients and that the discrepancies arose due to system migration and workload challenges. He maintained that the Respondent did not suffer any loss as a result of the discrepancies.
33. The Respondent called two witnesses. RW1, Iscar Anyango Owino, a Senior Human Resource Officer, testified and adopted her witness statement as her evidence in chief. She testified that the Claimant was subjected to due

disciplinary process before being terminated from employment.

34. RW1 testified that upon being issued with the show cause letter, the Claimant responded to the same but the Respondent was not satisfied with his explanation as a result of which he was subjected to a disciplinary hearing held on 23<sup>rd</sup> June 2022, which he attended alongside a union representative.
35. On cross-examination, RW1 told the court that the issue against the Claimant was not theft of the drugs in question, that he was accused of forwarding incomplete documentation to Finance. She further stated that according to the audit findings, the drugs were not reflected in the system and were not physically in stock.
36. RW1 testified that the delivery notes from the supplier, Harleys Limited, was signed and indicated that the consignment was delivered. She acknowledged that the hospital was undergoing migration to an online system and that errors could occur during such transition.

37. RW1 further acknowledged that the Claimant did not receive any personal benefit and that there was no evidence of theft or fraud against him.
38. RW2, Evans Kipchumba Kiprotich, the Respondent's Deputy Manager, Supply Chain, testified and relied on the documents filed by the Respondent in its defence. RW2 testified that the special internal audit report revealed that 56,000 units of Augmentin were not delivered yet the Claimant forwarded incomplete documentation for payment processing.
39. It was the testimony of RW2 that the delivery note in respect of the Augmentin drugs was not endorsed by the Inspection and Acceptance Committee, which is comprised of three members being the stores, user department and supply chain department. He testified that the delivery note bore the signature of James Webisa only and lacked endorsement by the other committee members. He further testified that the said James Webisa admitted that the drugs were not delivered.
40. RW2 stated that in the absence of a properly endorsed delivery note and a generated GRN, the Claimant ought to

have escalated the matter to the Supply Chain Manager for corrective action.

41. On cross-examination, RW2 testified that upon delivery, goods are first received in the stores section after which the Inspection and Acceptance Committee verifies delivery and a GRN is generated. He confirmed that no GRN was generated in respect of the drugs in question.
42. RW2 further testified that the Claimant's role as Stock Controller required him to ensure that all documents, including the GRN, IAC certificate, delivery note, LPO and invoice were complete before forwarding them to Finance.
43. At the close of the hearing, the Court directed parties to file written submissions. The Claimant filed submissions dated 25<sup>th</sup> November 2025, while the Respondent filed submissions dated 16<sup>th</sup> December 2025.

### **The Claimant's submissions**

44. The Claimant identified the issues for determination to be: -
  - i. Were the 56,000 units of Augmentin Tablets 1mg supplied delivered?

- ii. Whether the show cause letter/termination letter and letter conveying the decision on Appeal are reveals fair reason to terminate.
  - iii. Whether the reliefs sought are merited.
45. On the first issue, the Claimant submitted that the Respondent, in paragraph 11 of its response, expressly stated that the 56,000 tablets were not delivered. He further submitted that this position was repeated in paragraph 9 of the statement of RW1 and paragraph 6 of the statement of RW2.
46. The Claimant submitted that RW2 testified that a special audit was conducted in March 2022 to determine non-delivery of 56,000 units of Augmentin tablets by Harleys Limited valued at Kshs 1,108,240. That the audit verified supplies from Bulk Store A between 9<sup>th</sup> July 2021 and 31<sup>st</sup> January 2022. The Claimant submits that after deduction of 59,990 units supplied on 9<sup>th</sup> July 2021, the audit concluded that 56,000 units were dispensed but not reflected in the system as captured at paragraph (v) of the audit findings which confirm continuous availability of the drugs at the pharmacy.

47. It is therefore the Claimant's submission that the 56,000 units of Augmentin drugs were delivered and dispensed.
48. The Claimant further submitted that the audit report did not make any finding of fraud or dishonesty against him. He submitted that the only fault attributed to him was forwarding incomplete documents.
49. According to the Claimant, RW1 and RW2 misrepresented the audit findings and incorrectly alleged fraud. On this basis, he submitted that the termination of his employment was not supported by evidence.
50. On the second issue, the Claimant submitted that the show cause letter only alleged forwarding of incomplete documents and failure to escalate the issue to the Manager Supply Chain. That he was not charged with fraud or dishonesty. He contended that the decision of the appeal introduced allegations of collusion and fraud which were not part of the original charges, thereby rendering the process unfair.
51. In the end, the Claimant submitted that the Respondent's findings were not supported by its own audit report and

that the termination of his employment was therefore unlawful and unfair.

52. The Respondent filed submissions dated 16<sup>th</sup> December 2025 and identified the issues for determination to be:

- i. Whether the termination of the Claimant from employment was procedurally fair
- ii. Whether the termination was valid
- iii. Whether the claimant is entitled to the reliefs sought

53. On procedural fairness, the Respondent submitted that the Claimant was subjected to a fair disciplinary process which commenced with investigations, issuance of a show cause letter and consideration of his response before his employment was terminated after the disciplinary hearing.

54. In addition, it is submitted that after being served with the termination letter by the Respondent, the Claimant exercised his right of appeal, which was considered by the Board at its 76<sup>th</sup> meeting held on 18<sup>th</sup> November 2022 and the decision to terminate the Claimant's employment was upheld.

55. In this regard, the Respondent maintained that due process under Section 41 of the Employment Act was fully complied with.
56. On substantive justification, the Respondent submitted that the Claimant forwarded incomplete procurement documents and payment documentation relating to 59,990 units of Augmentin valued at Kshs 1,108,240 which documents lacked mandatory attachments, namely the Goods Received Note (GRN), Inspection and Acceptance Committee certificate, and properly endorsed delivery note.
57. It is the Respondent's submission that such omissions exposed it to financial and regulatory risk and amounted to negligence under Section 44(4)(c) of the Employment Act.
58. The Respondent submitted that the Claimant admitted forwarding incomplete documentation and failed to escalate the issue to the Supply Chain Manager as required.
59. With respect to Section 43 of the Employment Act, the Respondent submitted that the section only requires an

employer to show that it genuinely believed the reason for termination existed before terminating an employee, the Respondent cited the case of ***Gichuki v Kenya Power & Lighting Company PLC (Petition E021 of 2024) [2025] KEELRC 2578 (KLR), Nampak Corrugated Wadeville v Khoza (JA 1498) [1998] ZALAC 24 and Galgalo Jarso Jillo v Agricultural Finance Corporation [2021] eKLR.***

60. The Respondent submitted that the Claimant breached the duty of mutual trust and confidence by failing to adhere to mandatory procurement procedures and it was justified to terminate his employment.
61. On reliefs sought, the Respondent submitted that the Claimant is not entitled to any of the prayers as the termination of his employment was lawful and fair.
62. With regard to the Claimant's claim for leave allowance, the Respondent maintained that the same had been paid in advance and was not a terminal benefit
63. In the end, the Respondent urged the court to dismiss the Claimant's suit with costs.

## **Analysis and Determination**

64. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are: -
- i. Whether the termination of the Claimant's employment was justified
  - ii. Whether the Claimant was accorded a fair hearing before his employment was terminated
  - iii. Whether the reliefs sought are merited

*Whether the termination of the Claimant's employment was justified.*

65. Section 43 of the Employment Act provides: -

*"43. Proof of reason for termination*

*(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”.*

66. The Claimant’s case is that the termination of his employment was based on allegations of fraud and non-delivery of 56,000 units of Augmentin 1gm. He maintains that the said drugs were delivered and dispensed to patients and that any discrepancy that arose was as a result of system migration challenges and workload pressures.
67. The Respondent, however, contends that the Claimant forwarded incomplete procurement and payment documentation relating to 59,990 units of Augmentin valued at Kshs 1,108,240 contrary to established procedures.
68. It is the Respondent’s case that the documentation lacked mandatory supporting documents to wit, Goods Received Note (GRN), Inspection and Acceptance

Committee (IAC) certificate and a properly endorsed delivery note.

69. Further, it is the Respondent's case that the Finance Department flagged the incomplete documentation and returned it to the Claimant for rectification, but the Claimant resubmitted the same documents without correction.
70. The evidence of RW1, Iscar Anyango Owino, was that the issue against the Claimant was not theft but failure to submit complete documentation to the Finance Department. That no evidence of personal gain or fraud was established against the Claimant.
71. In his evidence, RW2, Evans Kipchumba Kiprotich stated that the delivery note with respect to the 59,990 units of Augmentin valued at Kshs 1,108,240 was only signed by James Webisa and was not endorsed by the Inspection and Acceptance Committee. RW2 further testified that no GRN was generated and that the Claimant ought to have escalated the matter to the Supply Chain Manager.
72. The Claimant, on his part, admitted that he forwarded incomplete documentation and that he did not notice

the omission of required documents at the time of submission. He attributed the lapse to workload pressure and system migration from manual to electronic processes.

73. Further, the Claimant admitted that he did not attach the GRN and Inspection and Acceptance Certificate at the time of forwarding the documents to Finance.

74. From the evidence on record, it is not disputed that the Claimant forwarded incomplete documentation for payment processing or that the documents were returned to him for completion and he resubmitted them without correcting the error. The issue in contention is whether such omission amounted to a valid ground for termination.

75. From the record, and particularly, the Claimant's pleadings, it is clear that the Claimant was employed as a Stock Controller. This position in my view requires vigilance and strict compliance with procurement and documentation procedures. Forwarding incomplete documentation, particularly in a process involving payment of public funds constituted a serious procedural

lapse, especially as the Claimant's duty was to verify documentation for payment purposes.

76. Under section 43 of the Employment Act, an employer is required to demonstrate that at the time of termination, it genuinely believed that the reason for termination existed.
77. In the present case, the Respondent relied on audit findings and internal verification processes which pointed to failure by the Claimant to adhere to mandatory documentation requirements.
78. Taking all factors into consideration, I am satisfied that the Respondent proved that the Claimant failed in his duty to ensure completeness of procurement documentation before forwarding the same for processing of payment and in forwarding them again without correcting the error when they were returned to him for correction.
79. Accordingly, I find that the Respondent has demonstrated a valid and fair reason for termination within the meaning of Section 45 of the Employment Act, 2007.

80. On the second issue regarding procedural fairness, Section 41 of the Employment Act provides: -

*“Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”*

81. It is the Claimant’s case that the termination of his employment was unfair on account of lack of prior warning and failure to accord him a fair hearing. The Claimant further avers that the appeal process was conducted without a hearing.

82. The Respondent, on the other hand contends that the Claimant was subjected to due process, including issuance of a show cause letter dated 3<sup>rd</sup> March 2022, invitation to a disciplinary hearing and an opportunity to appeal to the Board of Management.

83. It is not in dispute that the Claimant was issued with a show cause letter dated 3<sup>rd</sup> March 2022 which he responded to on 7<sup>th</sup> March 2022 denying the allegations.
84. It is further not contested that by a letter dated 10<sup>th</sup> June 2022, the Claimant was invited to appear before the Human Resource Management Advisory Committee (HRMAC) – Discipline on 23<sup>rd</sup> June 2022 and was informed of his right to be accompanied by a representative.
85. The record shows that the Claimant attended the disciplinary hearing on 23<sup>rd</sup> June 2022 and was accompanied by a union representative, one Andrew Chemwor.
86. It is also not in dispute that following the hearing, HRMAC recommended termination, which was communicated to the Claimant vide letter dated 1<sup>st</sup> July 2022. It is further not in contest that the Claimant lodged an appeal via his letter dated 5<sup>th</sup> August 2022.
87. The Claimant’s bone of contention is that his appeal was not heard or duly considered and that the appellate process was conducted in breach of his right to a fair

hearing as it was determined without his participation or an oral hearing.

88. The Respondent's terms and conditions of employment did not specify the mode of hearing of appeals. In my view, the fact that the appeal was determined on the basis of written submissions does not amount to a breach of the right to a fair hearing, particularly where the terms of service do not specifically provide for a physical hearing and no request was made by the Claimant for a physical hearing. Further, the letter communicating the decision of the Board on the appeal clearly states that the appeal was considered by the Board at the meeting held on 18<sup>th</sup> November, 2022.

89. In the circumstances, the Court finds that the Respondent complied with the mandatory procedural requirements under Section 41 of the Employment Act, 2007.

*Whether the reliefs sought are merited*

90. Having found that the termination was both procedurally and substantively fair, the Court finds that the reliefs

sought by the Claimant, being damages for unlawful termination and declaratory orders, are not merited.

91. With respect to leave allowance, the Respondent's evidence is that leave allowance is paid in advance at the beginning of the leave year together with salary. There was no evidence adduced by the Claimant that he was entitled to any further unpaid leave allowance at the time of termination.

92. On the prayer for notice, it is the court's finding that the Claimant's employment having been terminated, he is entitled to notice or pay in lieu thereof. The only instant when an employee is not entitled to notice is in the case of summary dismissal as provided in section 44(1) of the Employment Act which provides:

*(1) Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.*

93. On the other hand section 35 section 35(1) provides:

*(1) A contract of service not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be—*

*(a) where the contract is to pay wages daily, a contract terminable by either party at the close of any day without notice;*

*(b) where the contract is to pay wages periodically at intervals of less than one month, a contract terminable by either party at the end of the period next following the giving of notice in writing; or*

*(c) where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.*

94. In the instant case the Claimant's contract provided for payment of wages at the end of every month. Since the separation of the Claimant was by letter stating that it

was a termination of employment and not a summary dismissal, the court is inclined to apply the provisions of section 35(1) of the Employment Act which provides for the minimum terms of employment. The court thus awards the Claimant one months salary in lieu of notice.

95. The claim for general damages fails in view of the finding that the termination was lawful and justified.
96. The prayer for withdrawal of the termination letter and issuance of a clearance letter is also not sustainable in the circumstances of this case as the court found that the termination was lawful and justified.
97. In the final analysis, judgment is entered in following terms:
  - i. The termination of the Claimant's employment was procedurally and substantively fair;
  - ii. The Claimant's prayer for pay in lieu of notice is granted and the Claimant is awarded Kshs. 206,683.34 being one months' gross salary in lieu of notice;
  - iii. All other prayers in the Claim are dismissed;
  - iv. Each party shall bear its own costs.

98. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON  
THIS 30<sup>TH</sup> DAY OF APRIL, 2026**

**MAUREEN ONYANGO  
JUDGE**