



REPUBLIC OF KENYA



**KENYA LAW**  
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**Opiyo v AAR Healthcare Kenya Limited (Civil Appeal  
E126 of 2021) [2025] KECA 1408 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KECA 1408 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL E126 OF 2021  
MSA MAKHANDIA, HA OMONDI & P NYAMWEYA, JJA  
JULY 31, 2025**

**BETWEEN**

**PAUL OMONDI OPIYO ..... APPELLANT**

**AND**

**AAR HEALTHCARE KENYA LIMITED ..... RESPONDENT**

*(Being an Appeal from the Judgment and decree of Employment & Labour Relations  
Court at Kisumu (Nderi Nduma J.) dated 28th January, 2021 in ELRC No. 249 of 2016)*

**JUDGMENT**

1. The appellant, Paul Omondi Opiyo, was an employee of AAR Healthcare Kenya Limited, “the respondent”, from 1<sup>st</sup> January 2011 to 2<sup>nd</sup> June 2016. He was employed as the Pharmacist in Charge at the respondent’s Kisumu Outpatient Centre, where his duties included dispensing medication in accordance with prescriptions issued by the respondent’s doctors, ensuring compliance with the Standard Operating Procedures (SOPs), and managing pharmaceutical operations at the clinic.
2. In the course of his employment, the appellant was summoned by the respondent to answer to charges related to alleged malpractice in dispensing drugs, failure to follow SOPs, and negligence in posting transactions. The accusations stemmed from a complaint by CIC Insurance, (“CIC”), an insurer, which alleged that the appellant had dispensed medication to a patient, Pamela Ominde Apondi, before her insurance cover had been renewed, and had later posted the transactions after renewal, creating discrepancies in the billing records. CIC also raised concerns about over-prescription of drugs and non- adherence to prescription guidelines.
3. Following these allegations, the appellant was subjected to a disciplinary hearing on 23<sup>rd</sup> May, 2016. Despite his spirited defence that he had acted in accordance with established procedures and was not responsible for verifying insurance cover, his employment was nonetheless terminated on the grounds



- that he had failed to adhere to the SOPs, engaged in malpractice, and exposed the respondent to reputational and financial risks.
4. The appellant, feeling aggrieved by the dismissal, filed suit against the respondent in the Employment and Labour Relations Court “ELRC” in Kisumu by way of a Memorandum of Claim dated 25<sup>th</sup> August 2016, seeking a declaration that the termination of his employment was wrongful, unfair, and unlawful and lacked proper justification. He then sought damages, issuance of a certificate of service, and costs of the suit.
  5. During the trial, the appellant testified that he was summoned to a disciplinary hearing following a memorandum from the manager of the facility dated 11<sup>th</sup> May 2016. He defended himself against the accusations and provided explanations regarding the transactions flagged by CIC. He testified that as the Pharmacist in Charge, his primary duty was to dispense medication based on prescriptions provided by the respondent’s doctors. He was not responsible for verifying a patient’s insurance cover, as this was handled by other departments, particularly the reception and accounts. He explained that on various occasions, he dispensed drugs to a patient, Pamela Ominde Apondi, in accordance with valid prescriptions from doctors at the Kisumu Outpatients Centre of the respondent. He stated that CIC had raised concerns regarding alleged over-prescription and discrepancies in billing, but argued that these issues were caused by system inefficiencies rather than misconduct on his part. He further contended that the respondent’s SOPs for pharmacy operations did not require him to verify patient insurance details before dispensing the medication.
  6. The appellant further clarified that drugs were prescribed by doctors at different times, but due to delays in system processing, the transactions appeared as though they had been recorded on the same dates. He stated that prescriptions were correctly filled based on medical necessity, as per directives from the respondent’s doctors, and that any inconsistencies arose from administrative delays beyond his control. The appellant also referred to the respondent’s disciplinary process, stating that his explanations were disregarded during the hearing. He expressed concerns that key individuals, such as the Health Centre Manager and treating doctors, were not questioned, making the disciplinary procedure biased and unfair. He asserted that he was being scapegoated despite having followed protocol, as there was documentary proof that the patient had insurance cover at the time, the prescriptions were issued by authorized doctors, and the respondent had previously approved treatment of the patient.
  7. Furthermore, the appellant emphasized that the accusations against him had severely impacted on his professional reputation and mental well-being. He maintained that his actions were in line with the SOPs for pharmacy staff at the facility and that he had operated within the guidelines set forth by the respondent. Given these circumstances, he sought compensation for wrongful termination, exemplary damages for the distress caused by his dismissal, issuance of a certificate of service, and costs incurred in pursuing legal redress.
  8. The respondent defended the appellant’s claim by filing a Memorandum of Defence dated 22<sup>nd</sup> September 2016 and a counterclaim. In its defence, it averred that the appellant had violated its SOPs by dispensing medication to a patient, Pamela Ominde Apondi, before her insurance cover had been renewed. It contended that the transactions were posted only after the renewal, creating the impression that the drugs had been issued all at once, which raised concerns from CIC about fraudulent practices and financial losses.
  9. The respondent further averred that the appellant had failed to ensure proper documentation and verification, as required under the SOPs for Pharmacy Staff, which mandated that prescriptions must be properly recorded before dispensation. According to the respondent, CIC flagged these acts of



omission or commission, prompting an internal investigation of the appellant's conduct. Following the findings, it held a disciplinary hearing in which the appellant admitted that transactions had been posted after the renewal of the insurance cover, leading to discrepancies in billing records. The respondent deemed the appellant's explanation unsatisfactory, as he failed to provide evidence justifying the delays in posting prescriptions and did not take adequate measures to rectify the issue before CIC raised the complaints.

10. As a result of the disciplinary proceedings, the respondent determined that the appellant had engaged in malpractices, violated SOPs, and exposed it to financial risks and reputational damage. Citing loss of trust, the respondent decided to terminate his employment on 2<sup>nd</sup> June 2016. Additionally, the respondent had to refund Kshs.13,150 to CIC to compensate for the disputed transactions. That the termination was thus lawful, justified, and procedurally fair. Given the circumstances, it averred that the appellant was not entitled to compensation for wrongful dismissal, as his actions amounted to gross misconduct, and that he should instead be held liable for financial damages caused to the company in the sum of Kshs.13,150/=. By way of counterclaim, the respondent sought from the appellant a refund of the aforesaid amount. Through these filings, the respondent sought the dismissal of the claim and judgment on the counterclaim.
11. During the hearing, the appellant merely reiterated what he had set out in his statement of claim. The same script was adopted by the respondent. We therefore need not rehash them.
12. After careful analysis of the facts, evidence, as well as the law, the ELRC found in favour of the respondent holding that: the respondent had justified the termination by demonstrating the appellant's breach of the respondent's SOPs in handling prescriptions and billing transactions, citing CIC's complaint and the appellant's admissions during the disciplinary hearing; the termination was lawful, and therefore, the appellant was not entitled to compensation be it general or exemplary damages; the disciplinary process was conducted fairly, with proper notice, a hearing, and an opportunity for the appellant to defend himself; given the discrepancies in billing records, the appellant had failed to follow SOPs, which resulted in reputational and financial risks for the respondent. While dismissing the appellant's claims and declining reinstatement or financial compensation, the court ordered the respondent to issue a certificate of service within 30 days, as required under Section 51 of the *Employment Act*.
13. The appellant, being aggrieved by the decision of the ELRC filed a memorandum of appeal dated 15th July 2021, citing four grounds of appeal. He contended that the ELRC erred in law and fact by failing to: properly analyze the evidence and exhibits presented before the court; take into account his evidence, which demonstrated bias against him; properly consider his submissions and evidence and lastly, the appellant claimed that the judgment was against the weight of the evidence adduced leading to an erroneous decision.
14. The appeal was canvassed by way of written submissions only.  
During the hearing, Ms. Onyango, learned counsel appeared holding brief for Mr. Yogo for the appellant whilst Mr. Mbichire, learned counsel appeared for the respondent.
15. Ms. Onyango argued that the termination of the appellant's employment did not meet the fairness test under Section 45 of the *Employment Act*, which requires both substantive justification and procedural fairness in termination proceedings. She argued that the respondent failed to prove a valid reason for termination and did not adhere to fair procedures in the process, citing the case of Walter Ogal Anuro v Teachers Service Commission [2013] KEELRC 386 (KLR), where the court held that termination must be both substantively and procedurally fair. She further relied on Article 41 of *the Constitution*, which guarantees fair labour practices, asserting that the respondent did not comply with statutory



- requirements. Counsel submitted that the respondent did not provide sufficient evidence to support the allegations against the appellant. The appellant had denied engaging in malpractices and argued that the CIC's complaint was based on administrative delays rather than misconduct on his part. Counsel cited the case of *Hahn v Singh* [1985] KECA 129 (KLR), to assert that the ELRC wrongly accepted the respondent's claims without critically evaluating the evidence in support thereof. She further submitted that the disciplinary process was flawed, as the respondent failed to rely on SOPs, which were the guiding documents for his role.
16. Lastly, counsel contended that the respondent did not establish any financial loss directly attributable to the appellant. She argued that the alleged loss of KSh.13,150.53, which the respondent refunded to CIC, was unjustified and did not result from his actions. Counsel maintained that the appellant's role was limited to dispensing medication based on prescriptions issued by doctors and that any discrepancies in billing were beyond his control. She therefore urged this Court to interfere with the ELRC's decision and grant the appellant reliefs sought in the statement of claim, citing the case of *Ken Freight (EA) Ltd v Benson K Nguti SC Pet No. 37 of 2018 [2019] eKLR*, where the Supreme Court held that courts must determine appropriate remedies once termination is found wrongful.
  17. In opposing the appeal, Mr. Mbichire submitted that the trial court had correctly dismissed the appellant's claim, having found that his termination was lawful, fair, and justified. He argued that the appellant was subjected to a proper disciplinary process in compliance with Sections 41, 43, 44, and 45 of the *Employment Act*, as regards procedural fairness, burden of proof, and valid reasons for termination. Counsel maintained that CIC had raised serious concerns regarding malpractices, specifically that the appellant dispensed medication before the renewal of the insurance cover and later posted the transactions, creating the impression that the drugs had been issued all at once.
  18. Counsel further contended that the appellant admitted to the malpractice during the disciplinary hearing and attempted to shift blame to the centre's Manager, which was deemed inappropriate given his role as the Pharmacist in Charge. That the trial court had properly evaluated the evidence and reached a sound conclusion.
  19. On the issue of wrongful termination, counsel submitted that the appellant's dismissal was based on valid reasons and was conducted in accordance with the law. He submitted that dispensing drugs is a professional responsibility that requires strict adherence to ethical and regulatory standards, and any deviation, such as unauthorized supply or mismanagement, warrants disciplinary action. He maintained that the appellant's actions amounted to gross dereliction of duty, justifying his termination.
  20. In conclusion, counsel urged this Court to uphold the trial court's decision by dismissing this appeal with costs.
  21. This is a first appeal against the judgment and decree of the ELRC. As such the duty of this Court is to re-evaluate, re-analyze, and reconsider the evidence presented before the ELRC and arrive at its own independent conclusions. However, in doing so, it must be alive to the fact that it did not have the advantage of seeing and hearing the witnesses firsthand as was the ELRC and therefore make due allowance for that fact, in particular when it comes to the ELRC's assessment of the demeanor of witnesses. See the case of *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123,
  22. Having considered the record of appeal, the submissions made by both counsel and the authorities cited, we identify the following issues for resolution in this appeal whether: the termination of the appellant's employment was wrongful, unfair, and unlawful; the respondent proved the allegations



- against the appellant; actual financial loss was established by the respondent; and whether the appellant was entitled to compensation.
23. The appellant argued that his dismissal did not meet the fairness test set out under Section 45 of the *Employment Act*, which requires both substantive justification and procedural fairness in termination decisions. He contended that the respondent failed to prove a valid reason for termination, did not adhere to due process, and unfairly relied on CIC complaints instead of conducting an independent investigation.
  24. Conversely, the respondent maintained that the termination was lawful, fair, and justified, citing Sections 41, 43, and 44 of the *Employment Act*, which outline procedural fairness, the burden of proof, and valid reasons for termination.
  25. Upon reviewing the evidence, procedural steps, and relevant legal framework, we are satisfied just like the ELRC that the respondent followed due process in terminating the appellant's employment. The appellant was informed of the charges against him, attended a disciplinary hearing, and was granted the chance to explain himself. This is as how it should be in terms of Section 41 of the *Employment Act*. This provision in mandatory terms requires an employer to inform an employee, that he is being considered for termination and give reasons for termination, allow him to respond, and ensure a fair hearing before making a final decision. In this case, the appellant's intended termination and the reasons thereof were communicated to him in good time. It was backed by concerns raised by CIC and his failure to provide satisfactory explanations for the irregular postings of transactions. He was given opportunity to defend himself but his defence was found wanting. It is also not lost on us that during the disciplinary hearing, he owned up to some of the indiscretions complained of. Accordingly, we are satisfied that the termination was procedurally fair and justified, and we have no basis to declare it wrongful or unfair.
  26. As to whether the respondent proved the allegations against the appellant, the appellant denied the allegations of misconduct, arguing that CIC's concerns were based on system inefficiencies rather than fraudulent practices. He asserted that the trial court wrongly accepted the respondent's claims without critically evaluating his counter arguments. He maintained that as the Pharmacist in Charge, he acted in accordance with SOPs and was not responsible for verifying insurance cover.
  27. On the other hand, the respondent argued that the appellant admitted to irregular postings during the disciplinary hearing, acknowledging that transactions were recorded after the renewal of the insurance cover rather than at the time of dispensing medication which was mischievous.
  28. From the onset, we state that the respondent provided documentary evidence, including CIC's complaint and the appellant's admissions during the disciplinary hearing, which sufficiently established the allegations against him. On our part, having independently re-evaluated the ELRC's factual findings, we are satisfied that the respondent proved the allegations against the appellant. CIC Insurance's complaint was well-substantiated, and the appellant's explanations failed to effectively rebut the concerns raised regarding improper record-keeping and the falsifications thereof.
  29. Turning to whether actual financial loss was established by the respondent, the appellant contended that the respondent failed to demonstrate actual loss, arguing that the disputed amount of KSh.13,150.53, refunded to CIC, did not result from his actions.
  30. The respondent on the other submitted that dispensing drugs is a professional responsibility, requiring strict adherence to ethical and regulatory standards. It argued that any deviation, such as unauthorized supply or mismanagement, constitutes gross misconduct, justifying disciplinary action. The respondent relied on *Ken Freight (EA) Ltd v Benson K Nguti* (supra), where the Supreme Court



held that financial loss must be assessed in its totality, including reputational harm caused to an employer.

31. Upon reviewing the documentary evidence presented, disciplinary proceedings, and CIC's concerns, we agree with the ELRC that the respondent established financial and reputational risks resulting from the appellant's misconduct. We agree that financial loss must be assessed in its totality, including reputational harm caused to an employer. As stated in the case of *Ken Freight (EA) Ltd v Benson K Nguti* (supra), financial loss is not limited to direct monetary damages but extends to reputational risks that may affect an employer's credibility and business operations. In the present case, the respondent demonstrated that the appellant's actions exposed it to reputational and financial risks, necessitating but not limited to a refund to CIC. The refund which was not challenged at all by the appellant was directly linked to the appellant's improper transaction handling, and his actions posed a threat to the company's credibility and reputation. In our view therefore, actual loss was sufficiently demonstrated by the respondent.
32. Lastly, as to whether the appellant was entitled to compensation whether general or, exemplary damages, and costs of the suit, the appellant argued that Section 49 of the *Employment Act* provides remedies for wrongful dismissal, including reinstatement, compensation, and damages. He again cited *Ken Freight (EA) Ltd v Benson K Nguti* (supra) where the Supreme Court held that courts must determine appropriate compensation when termination is found wrongful.
33. The respondent opposed any award of compensation, maintaining that the termination was lawful and procedurally fair, thereby disqualifying the appellant from any financial remedies.
34. In the present case, the appellant's termination was found to be lawful and procedurally fair, as he was subjected to a disciplinary process, informed of the charges, and given an opportunity to defend himself. The respondent demonstrated valid reasons for the termination of the appellant's employment. Therefore, the appellant did not qualify for compensation in damages be it general or exemplary under Section 49, as his termination was justified and procedurally sound.
35. The ELRC therefore correctly dismissed his claims. Having carefully reconsidered the evidence, legal arguments, and relevant statutory provisions, we are satisfied that the appellant failed to prove wrongful termination. The ELRC's judgment was sound, well-reasoned, and legally justified, and we have no basis to interfere with it. Consequently, this appeal is dismissed with costs to the respondent.

**DATED AND DELIVERED AT KISUMU THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**H.A. OMONDI**

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**JUDGE OF APPEAL**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed



**DEPUTY REGISTRAR**

