



**Gichuki v Glaxosmithkline Pharmaceutical Kenya Limited (Employment and Labour Relations Cause E228 of 2021) [2025] KEELRC 691 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 691 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E228 OF 2021**

**HS WASILWA, J  
MARCH 6, 2025**

**BETWEEN**

**PAULINE WAMBUI GICHUKI ..... CLAIMANT**

**AND**

**GLAXOSMITHKLINE PHARMACEUTICAL KENYA LIMITED RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this suit by a Memorandum of Claim dated 11<sup>th</sup> March 2021, seeking redress for unlawful termination of employment by the Respondent. She was employed by the Respondent as a Medical Sales Representative on a permanent basis. She was initially engaged on 4<sup>th</sup> April 2011 under probation and was later confirmed on 5<sup>th</sup> October 2011 by a letter dated 14<sup>th</sup> December 2011.
2. She remained in the Respondent's employment until 8<sup>th</sup> August 2018, when her employment was unlawfully terminated through a letter of the same date. At the time of termination, she was earning a gross monthly salary of Kshs. 262,000. Her core responsibilities included sales of human drugs, key account management, hospital and distributor relations, project management, product detailing to doctors, people management, and CRM Veeva platform reporting.
3. Her regular duties involved calling on doctors, nurses, pharmacies, distributors, and government hospitals, specifically in ICU, theatre, wards, procurement, and tender management. She maintained a comprehensive client list for follow-ups, which was also retained by the Respondent for reference.
4. In October 2017, strong rumours emerged within the organization that two medical representatives, the Claimant and Jacqueline Marumaki, had falsified call logs for Dr. Summery Sitima, a former Kenyatta National Hospital (KNH) doctor then working at GlaxoSmithKline (GSK). In mid-December 2017, the Claimant received an email from Kevin Mutuma alleging her involvement in a call falsification scandal and directing her to appear before Human Resources (HR) for questioning.



5. She responded to Mutuma, explaining that she had met Dr. Summery Sitima on numerous occasions, including on the disputed dates of 30<sup>th</sup> January 2017 and 14<sup>th</sup> June 2017 and that she never falsified any records. The Respondent subsequently launched an internal investigation into the matter.
6. On 3<sup>rd</sup> February 2018, the Respondent summoned the Claimant to a disciplinary hearing, where she was accused of falsification of call records in the Veeva system, allegedly recording a meeting with Health Care Provider (HCP) Dr. Summery Sitima that did not take place. On 6<sup>th</sup> February 2018, she attended the disciplinary proceedings, where it was confirmed that Dr. Summery was in session at KNH on 14<sup>th</sup> June 2017, eliminating any issue on that date.
7. However, the Respondent raised further concerns regarding 30<sup>th</sup> January 2017, a period during the doctors' strike, despite the fact that all GSK Medical Sales Representatives routinely met doctors during the strike and recorded interactions. Dr. Summery claimed that she attended a burial on 30<sup>th</sup> January 2017, but investigations revealed that the actual burial of the deceased, Dr. Eunice Songa, took place on 4<sup>th</sup> February 2017.
8. During the disciplinary hearing, the Claimant also raised concerns regarding Dr. Summery Sitima's employment status, as she was allegedly working for GSK while still on a county-sponsored study program at KNH from Baringo County. The Respondent dismissed this issue despite promising to investigate. As a result of the ongoing stress, the Claimant, who was eight months pregnant at the time, sought medical attention and was advised by her doctor to take medical leave.
9. Following the disciplinary proceedings, she reported the matter to GSK UK's SpeakUp Integrity Channel, an internal whistleblowing platform, alleging procedural unfairness. However, GSK UK appointed Ane Janse Van Rensburg from GSK South Africa to investigate the case, who in turn retained Kevin Mutuma, the same HR officer leading the local investigation, creating a clear conflict of interest.
10. Between February and June 2018, while on medical and maternity leave, the Claimant continued engaging with the Respondent and provided supporting materials for the investigation. However, the Respondent disregarded the evidence and, immediately upon her return from maternity leave on 6<sup>th</sup> August 2018, she was issued a termination letter dated 8<sup>th</sup> August 2018.
11. The termination decision was based on flawed and biased investigations led by Kevin Mutuma, who manipulated Veeva system records to suit his intentions. The Claimant asserts that the disciplinary proceedings and subsequent termination were a calculated move orchestrated by senior officials, including Bridget Wachira, the then General Manager for East Africa, to eliminate her from the company for reporting unethical practices. She further contends that her appeal against the termination was deliberately sabotaged, forcing her to withdraw it.
12. The Claimant asserts that the true motivation behind the disciplinary proceedings stemmed from her prior application for a Key Accounts Manager position in 2017. Although she was the Key Accounts Champion and the Acting Key Accounts Manager, Bridget Wachira appointed Steve Mulei to block her from securing the role. Internal complaints about biased hiring practices prompted GSK UK to investigate the recruitment process, after it emerged that certain candidates were given repeat interview questions to ensure their advancement. A fellow Medical Sales Representative, Medad Birungi, was even summoned by GSK South Africa's Security Office, confirming that irregularities had occurred in the hiring process.
13. In September 2017, the Claimant encountered Dr. Summery Sitima in the corridors of GSK, realizing that she had been hired under questionable circumstances. Subsequently, in December 2017, the



Claimant's colleague, Dr. Kiprof Biwott from Baringo County, informed her that Dr. Summery had never formally resigned from Baringo County. The Claimant immediately emailed Allan Otieno and Judy Waweru, the VEEVA administrators, requesting that Dr. Summery's name be removed from her monthly Sales Line Target (SLT), alongside a list of incorrectly assigned pharmacies.

14. The Claimant argues that her involvement in these matters led to retaliatory actions from senior management, culminating in her dismissal. During her sick leave in February 2018, the Claimant observed that Elizabeth Msafiri, GSK Security Manager, was actively investigating her calls at KNH but was checking the wrong locations.
15. The Claimant requested CCTV footage to verify her whereabouts, but her request was denied. She later reported these concerns to HR Head, Daphne, during a disciplinary session in February 2018, reiterating that Dr. Summery had not formally resigned from Baringo County, but her concerns were ignored. After failing to obtain a fair hearing, the Claimant sought medical attention from her OB-GYN, Dr. Sikoila Wanyonyi at Aga Khan Hospital, who recommended she remain on leave from February to April 2018 for pregnancy-related stress management.
16. She subsequently delivered a baby via caesarean section in April 2018, underwent spinal surgery in June 2018, and was medically cleared to return to work in August 2018. However, upon resumption, she was summarily dismissed.
17. The Claimant alleges that her termination was retaliatory and politically motivated. She asserts that Bridget Wachira instructed Kevin Mutuma not to produce any exonerating evidence and that the investigations were deliberately manipulated to protect certain individuals while framing her as a scapegoat. The Claimant contends that her case was handled with bias and malice, and that unlike other employees who were given the option to resign, she was targeted, harassed, and terminated unjustly. She lodged an appeal on 8<sup>th</sup> August 2018, but quickly realized that any further submission of evidence would be sabotaged, forcing her to withdraw it.
18. Following her termination, the Claimant faced severe reputational damage, which impacted her ability to secure employment in the pharmaceutical industry. Companies such as Roche, Novartis, and Medtronic declined her applications upon discovering that her employment had been terminated by GSK. In November 2019, she secured a short-term contract with Danone Nutricia Africa, but the contract was abruptly terminated once the employer learned of her previous dismissal from GSK. She suffered psychological distress, financial hardship, and long-term career setbacks as a result.
19. The Claimant further asserted that at the time of her termination, she was earning a gross monthly salary of Kshs. 262,000. She had always expressed her desire to grow within the company and took part in various internal interviews for promotions, all aimed at career advancement. Her record remained clean, but she was victimized for standing her ground and refusing to be intimidated.
20. Throughout her employment, she faced unwarranted victimization, harassment, intimidation, and mistreatment, despite maintaining professionalism and never engaging in insubordination. The terms of her employment expressly stipulated that her position was permanent and pensionable.
21. In 2017, the Respondent advertised a Key Accounts Management position, which the Claimant, having served as Key Accounts Champion and Acting Key Accounts Manager, was qualified for. However, Bridget Wachira appointed Steve Mulei to ensure the Claimant was denied the position. Wachira had a pattern of favouritism, where she appointed select individuals to senior roles, such as Jacob Oloo, who was made Acting Marketing Director before being promoted to Director.
22. These recruitment malpractices were flagged by the UK Office, which launched an investigation into irregular hiring practices, including instances where certain candidates were allowed to repeat



interview questions to guarantee their advancement. A Medical Sales Representative, Medad Birungi, was summoned by GSK South Africa's Security Office, where he confirmed that interview processes had been compromised.

23. The Claimant further asserted that she had regular interactions with Dr. Summery Sitima in 2017, at Nairobi South Hospital, Kenyatta National Hospital (KNH) Trauma Theatre, KNH Intensive Care Unit, KNH Main Theatre, and during breakfast meetings for Jacqueline Marumaki. These interactions continued during the doctors' strike meetings at Upper Hill. During one such engagement, Dr. Summery mentioned that she was interviewing for a global position at GSK, but misled the Claimant by claiming that it was her sister, not herself, undergoing the interview process.
24. In mid-December 2017, the Claimant received an email from HR alleging her involvement in falsifying doctor call logs, a claim that also implicated Jacqueline Marumaki. In an attempt to clear her name, the Claimant met with Kevin Mutuma at the GSK offices, where she explained the true issue behind the allegations and requested CCTV footage to corroborate her movements and meetings with Dr. Summery. Mutuma declined to produce any CCTV footage, reinforcing the Claimant's belief that the allegations were orchestrated to silence her.
25. In February 2018, while eight months pregnant, the Claimant was performing her routine calls at KNH. During her lunch break, she walked towards the parking lot, where she encountered Elizabeth Msafiri, GSK's Security Manager, who appeared visibly nervous and warned the Claimant to ensure her reports were accurate. The Claimant later observed Msafiri moving around KNH, checking her reports in incorrect locations, raising suspicions of a targeted investigation against her.
26. The Claimant again requested CCTV footage, but her request was denied. In the same month, she was summoned for a disciplinary hearing at HR's boardroom, where she reiterated that Dr. Summery had not resigned from Baringo County. Despite her efforts, her concerns were ignored. Feeling overwhelmed by the intimidation and impending disciplinary action, she sought medical advice from Dr. Sikoila Wanyonyi at Aga Khan Hospital, who recommended that she take a medical leave from February to April 2018 to protect herself and her unborn child from pregnancy-related stress.
27. In a last attempt to report the bias and procedural violations, the Claimant escalated the matter to GSK UK's Brent Ford Office via the SpeakUp Integrity Channel. In response, HR in South Africa appointed Ane Janse Van Rensburg to investigate the matter, who in turn assigned Kevin Mutuma as the Lead Investigator. From February to June 2018, while on sick and maternity leave, the Claimant continued engaging with the investigators, providing documents and details to support her case. However, it became clear that her evidence was deliberately ignored. Mutuma, who had a vested interest in protecting certain individuals, refused to produce CCTV footage or verify Dr. Summery's prior employment status with Baringo County. By March 2018, GSK exonerated Jacqueline Marumaki, confirming that the investigation was targeted solely at the Claimant.
28. In April 2018, the Claimant underwent a caesarean section (CS) at Aga Khan Hospital and later underwent spinal surgery in June 2018 at Nairobi Hospital, extending her medical leave to August 2018. Upon resumption on 6<sup>th</sup> August 2018, she notified Kevin Mutuma, who immediately relayed the information to Daphne from HR, leading to an invite for a feedback session. When she arrived at the meeting, she was summarily issued a termination letter dated 8<sup>th</sup> August 2018.
29. The termination was orchestrated by Bridget Wachira, who directed Mutuma to withhold any evidence that could have cleared the Claimant. Unlike other employees who were given the option to resign, the Claimant was deliberately targeted, terminated, and humiliated. On 8<sup>th</sup> August 2018, she filed



an appeal but withdrew it three days later, realizing that any further evidence submission would be manipulated and sabotaged.

30. Following her wrongful termination, the Claimant suffered severe reputational damage, which affected her ability to secure employment. Prospective employers, including Roche, Novartis, and Medtronic, declined her applications upon discovering that her previous employment at GSK ended in termination. In November 2019, she secured a short-term contract with Danone Nutricia Africa, but the contract was terminated once the employer learned of her prior dismissal. She endured psychological distress, financial hardship, and long-term career setbacks as a result.
31. The Claimant prays for orders against the Respondent as follows:
  1. The Respondents do pay to the Claimant reasonable damages for unlawful termination of employment.
  2. Respondent to pay to the Claimant reasonable compensation and or damages for the illegal and unlawful way they handled her; i.e., victimization, harassment, mistreatment, intimidation, and humiliation, as this Honourable Court can determine.
  3. Respondent to pay the costs of this suit with interest.
  4. Any other order and/or relief that this Honourable Court may deem just and expedient to grant.

#### **Claimant's Witness Statements**

32. The Claimant filed a witness statement of even date, stating that she commenced employment with the Respondent in April 2011 and, upon successful completion of her probation, was confirmed as a Medical Sales Representative by a letter dated 14<sup>th</sup> December 2011, backdated to 5<sup>th</sup> October 2011. She remained in employment until 8<sup>th</sup> August 2018, when she was unlawfully terminated by a letter of the same date.
33. The Claimant asserted that her termination was orchestrated through a series of unfair and discriminatory actions, including a biased disciplinary process, workplace victimization, and manipulation of internal investigations, all of which were aimed at ensuring her removal from the organization.
34. In 2017, the Respondent advertised a Key Accounts Manager position, which the Claimant was qualified for, having served as Key Accounts Champion and Acting Key Accounts Manager. However, Bridget Wachira, the General Manager, actively interfered with the selection process to ensure that the Claimant was denied the position. Instead, she appointed Steve Mulei to the role, following her pattern of favouritism in internal promotions.
35. She had previously orchestrated the promotion of Jacob Oloo, appointing him as Acting Marketing Director before ultimately making him Director. This unfair recruitment process was flagged by GSK UK, which initiated an investigation into the irregularities in hiring practices. The investigation established that certain candidates had been allowed to retake interview questions to ensure their progression. A Medical Sales Representative, Medad Birungi, was summoned by GSK South Africa's Security Office, where he confirmed these irregularities.
36. The Claimant further stated that she had several engagements with Dr. Summery Sitima in 2017, at Nairobi South Hospital, Kenyatta National Hospital (KNH) Trauma Theatre, KNH Intensive Care Unit, KNH Main Theatre, and during breakfast meetings for Jacqueline Marumaki. She also engaged with her in the corridors of KNH and during doctors' strike meetings at Upper Hill. During these



- interactions, Dr. Summery confided in the Claimant that she was applying for a global position at GSK. However, she later misled the Claimant by claiming that it was her sister, not herself, undergoing the interview process.
37. In September 2017, the Claimant saw Dr. Summery inside the GSK offices, realizing that she had secured the job herself, contrary to her earlier claims. Later, in December 2017, the Claimant's colleague, Dr. Kiprop Biwott from Baringo County, informed her that the county was searching for Dr. Summery, as she had not formally resigned from her position or sponsorship with Baringo County before taking up the job at GSK.
  38. Following this revelation, the Claimant emailed VEEVA Administrators, Allan Otieno and Judy Waweru, requesting the removal of Dr. Summery from her Monthly Sales Line Target (SLT), along with 8-10 pharmacies that had been mistakenly assigned to her account. Since Dr. Summery was now a GSK employee and no longer a client, her removal from the list was a routine administrative adjustment.
  39. However, Dr. Summery appeared unsettled by the request, raising suspicions about her employment history. Shortly afterward, in mid-December 2017, the Claimant received an email from HR, accusing her of falsifying doctor call logs, implicating her and Jacqueline Marumaki in a fraudulent scheme. Seeking clarity, the Claimant attended a session with HR officer Kevin Mutuma, where she explained the true nature of her interactions with Dr. Summery. She requested CCTV footage to verify her meetings and disprove the allegations, but Mutuma refused to provide the footage, reinforcing suspicions of a targeted investigation against her.
  40. In February 2018, while eight months pregnant, the Claimant was conducting her routine calls at KNH. During her lunch break, she walked towards the parking lot, where she encountered Elizabeth Msafiri, GSK's Security Manager, who appeared visibly startled and warned her to ensure her reports were accurate. Later, the Claimant observed Msafiri moving around KNH, checking her records in the wrong locations, raising further concerns about a coordinated attempt to fabricate a case against her.
  41. The Claimant repeatedly requested CCTV footage, but her request was denied. In the same month, she was summoned for a disciplinary hearing, where she reiterated that Dr. Summery had not resigned from Baringo County. Despite her efforts, her concerns were ignored. Feeling overwhelmed by the intimidation and impending disciplinary action, she sought medical attention from her OB-GYN, Dr. Sikoila Wanyonyi at Aga Khan Hospital, who recommended that she take a medical leave from February to April 2018 to protect herself and her unborn child from pregnancy-related stress.
  42. Fearing that the internal investigation was compromised, the Claimant reported the matter to GSK UK's Brent Ford Office through the SpeakUp Integrity Channel, detailing the flawed disciplinary process, procedural unfairness, and victimization she was facing. In response, HR in South Africa appointed Ane Janse Van Rensburg to investigate the matter, who in turn assigned Kevin Mutuma as the Lead Investigator, creating a conflict of interest, as he was already involved in orchestrating the false allegations against her.
  43. From February to June 2018, while on sick and maternity leave, the Claimant provided extensive documentation to support her case, but the evidence was disregarded. Mutuma refused to provide CCTV footage or verify Dr. Summery's prior employment status with Baringo County, confirming that the investigation was deliberately sabotaged. By March 2018, GSK exonerated Jacqueline Marumaki, reinforcing the Claimant's belief that the disciplinary action was targeted at her alone.
  44. In April 2018, the Claimant underwent a caesarean section (CS) at Aga Khan Hospital and later required spinal surgery in June 2018 at Nairobi Hospital, extending her medical leave to August



2018. Upon resuming work on 6<sup>th</sup> August 2018, she notified HR, after which she was immediately summoned for a feedback session. Instead of a review of her case, she was handed a termination letter dated 8<sup>th</sup> August 2018.
45. The termination was orchestrated by Bridget Wachira, who instructed Mutuma to withhold exonerating evidence. Unlike other employees who were offered the option to resign, the Claimant was deliberately targeted, dismissed, and humiliated. On 8th August 2018, she filed an appeal, but realizing that any further evidence submission would be manipulated, she withdrew it three days later.
  46. Following her wrongful termination, the Claimant suffered severe reputational damage, making it difficult for her to secure employment in the pharmaceutical industry. Employers such as Roche, Novartis, and Medtronic rejected her applications due to her termination at GSK. In November 2019, she secured a short-term contract with Danone Nutricia Africa, but it was terminated after the employer discovered her previous dismissal.
  47. The mental, emotional, and financial toll of the termination was exacerbated by the fact that she had just undergone two major surgeries while caring for a newborn. She was unable to breastfeed her child for the recommended two years, forcing her to rely on expensive baby formula for 18 months. The industry being small and closely knit, news of her termination spread, leading to direct discrimination from potential employers.
  48. The Claimant was a permanent and pensionable employee who had no previous warnings or disciplinary records. She had expected to work until retirement, and her termination was unjust, unlawful, and a direct violation of her rights. The *Employment Act*, 2007, guarantees fair labor practices under Section 41, requiring due process before termination, which the Respondent failed to adhere to. The failure to consider evidence, denial of due process, and procedural irregularities amounted to a breach of her employment rights. The impact of her dismissal extended beyond her career and financial stability, affecting her physical and emotional well-being.
  49. The Claimant had Medad Birungi file an undated witness statement, stating that he knew the Claimant and had worked with her at GlaxoSmithKline (GSK). They were both hired by the Respondent in April 2011 as Medical Sales Representatives. Birungi initially worked in Access, alongside the Claimant, before being reassigned to Branded Generics in Nairobi, and later to Augmentin.
  50. Birungi resigned from GSK in July 2017. In 2016, GSK advertised two Key Accounts Manager positions, and both Birungi and the Claimant applied. They were among 12 shortlisted candidates. Birungi was confident that the opportunity would allow for career growth, given his strong performance record. The recruitment process consisted of three stages, the first being a case study, followed by a face-to-face interview with the Recruiting Manager (Joan Wakori) and an HR representative, and lastly, a final interview with the General Manager, Pharmaceuticals.
  51. Birungi confirmed that all candidates he knew were sent for the case study, which was a mandatory requirement to proceed to the next level. However, he was surprised to learn that some candidates were allowed to retake the case study, raising concerns about manipulation of the process. He noted that the Recruiting Manager appeared to be guiding certain candidates to ensure their progression to the next stage. Although he advanced to the second stage, he was ultimately eliminated from the process.
  52. When Birungi was called for feedback, he was informed that he had not progressed because he was “overconfident” and that GSK felt he was not adequately prepared for the position, despite having no clear explanation or justification for the decision. Birungi had served as Key Accounts Champion and demonstrated exceptional proficiency in Business Planning, which earned him an award, reinforcing that he was competent and qualified for the role.



53. Birungi also stated that candidates who made it to the final stage faced hostility from the General Manager, Bridget Wachira, who rushed through the interviews and did not allow sufficient time for responses. Following this experience, Birungi lost confidence in GSK's recruitment process and decided never to participate in another interview within the company. He further observed that his manager, Duncan Mwangi, was promoted from Key Accounts Manager to First Line Sales Leader without undergoing any recruitment process, despite other employees also expressing interest in the position.
54. The First Line Sales Leader role was critical, as it contributed to approximately 60% of GSK's revenue, making it essential that the position be filled through a transparent and merit-based process. However, it became evident that recruitments at GSK were not based on competence but rather on internal favouritism and personal discretion of senior management.
55. Birungi further testified about GSK's annual sales conference, a mandatory event where business performance and projections were discussed, and where the General Manager issued strategic directives, set targets, and reinforced corporate values. During the 2016 sales conference at Leopard Beach and Jacaranda in Diani, the General Manager was expected to present the General Manager's Award, which was traditionally determined by the management team, including all sales managers and HR.
56. However, in a last-minute decision, Bridget Wachira admitted that the award was initially meant for another employee but that she had personally decided to override the selection and give it to Mr. Kirui instead. This public admission reinforced the lack of meritocracy at GSK and confirmed that promotions and recognitions were at the sole discretion of the General Manager rather than being based on objective performance assessments.
57. Birungi also confirmed that GSK professionally recorded all events, including the sales conferences, on video and photography, meaning that all the irregularities in promotions and awards were documented. He concluded that, after witnessing these biased practices firsthand, it became clear to him that performance did not matter at GSK and that career progression was determined by factors other than merit.
58. The Claimant filed Witness Statement 2 dated 15<sup>th</sup> July 2021, reiterating that she was unlawfully terminated on 8<sup>th</sup> August 2018 by a letter of the same date. She emphasized that her employment was permanent and pensionable, and she would have worked until the mandatory retirement age of 60 years. At the time of her termination, she was 32 years old, meaning she had 28 more years of active employment, which was cut short unlawfully.
59. With a gross monthly salary of Kshs. 262,460, she estimated that she would have earned Kshs. 88,186,560 if she had worked until retirement, excluding mileage allowances, family medical cover, and annual performance bonuses. Mileage allowance alone, based on a Kshs. 25,000 monthly estimates, would have amounted to Kshs. 4,200,000, assuming she travelled outside Nairobi once every two months. The family medical cover was valued at Kshs. 160,000 per year, while the annual bonus ranged between Kshs. 200,000 and Kshs. 500,000, depending on performance.
60. The Claimant asserted that her termination was not only unfair but also rooted in tribalism, favouritism, and nepotism. She cited Bridget Wachira and Merab Olang as having engaged in tribal-based hiring practices, which led to Olang being dismissed in October 2016 after being accused of recruiting her relatives and fellow tribesmen into the company. The individuals allegedly hired through tribal favouritism included Linda Omori, Catherine Rautta, George Onyango, David Swao, and Allan Otieno.



61. The Claimant further listed several GSK employees who were appointed based on tribal affiliations and favouritism, including George Onyango (General Manager Kenya and East Africa), Steven Onyango Opondo (Commercial Director Pharma Kenya), Jacob Oloo (Marketing and Commercial Excellence Director), Daphne Openda (HR Lead East and West Africa), David Swao (Legal Director), Allan Otieno (Commercial Excellence SFE Kenya, Nigeria, North Africa, and CIS Markets), Brighton Ochieng (Sight Director), Merab Olang (HR Director East Africa), Shem Otieno Otin (Commercial Trade Channel Lead), Benjamin Agina (Communications and Government Affairs Director), and Sales Managers Everlyne Alela and Godfrey Ogutu.
62. The Claimant highlighted an instance of discrimination in March 2018, when every GSK employee received a performance bonus ranging between Kshs. 200,000 and Kshs. 500,000, yet she was deliberately excluded despite being eligible. She also recounted an incident during an awards ceremony at Leopard Beach, Diani, where she was initially selected to receive the General Manager's Award, the highest employee recognition at GSK.
63. However, just before announcing her name, Bridget Wachira changed the decision on stage and awarded it to Geoffrey Kirui instead. Two managers, David Mungai and Stephen Githinji, later approached her to inquire whether she had personal conflicts with Wachira, further confirming that the decision was based on bias rather than merit.
64. Following her termination, the Claimant struggled to secure employment, receiving regrets from multiple pharmaceutical and healthcare companies, including Roche Pharma, Medtronic, Novartis, Pfizer, MedSource Group Ltd, BSV - Bharat Serum, Nature's Only, Beckton Dickson, Randox Laboratories, General Electric, ADM - Archer Daniels, Sysmex Labs Medicals, Ilara Healthcare, Colgate Palmolive, L'Oréal Paris, and Beta Healthcare. The Claimant attributed these rejections to her wrongful termination at GSK, which damaged her professional reputation in the small and closely connected pharmaceutical industry.
65. The Claimant further detailed another instance of tribal-based hiring at GSK in 2017, during the national elections, where Everlyne Alela hired individuals based on their ODM political affiliation, including Lavender Oyugi, Joshua Oroa, Shadrach Mulandi, and Zetty Nyangwara. She explained that in such an environment, innocent employees were easily targeted and dismissed for political reasons rather than performance-related issues.
66. During the same 2017 election period, the Claimant's manager, James Mbogo, attempted to set her up for insubordination by assigning her an excessive workload. He required her to cover two conferences on consecutive weekends, namely the Surgeons Workshop at Nairobi Hospital and the Obstetrician-Gynecologist Annual Conference at Pride Inn Mombasa. These assignments demanded extensive preparation while she also had to fulfill her daily medical representative duties.
67. When the Claimant attempted to negotiate a fairer workload distribution, asking that her team member assist with the Nairobi Hospital event, Mbogo refused and instead made a political remark, stating that their working relationship would be like that of Raila Odinga and Uhuru Kenyatta during the 2017 elections. She escalated the matter to Mbogo's superior, Simon Mbaye, who intervened and instructed Mbogo to distribute the workload fairly. As a result, Frederick Luvayo was assigned the Nairobi Hospital Workshop, which left Mbogo disgruntled.
68. Upon her return from Mombasa, the Claimant submitted a conference feedback report to her managers and directors via email, and she also shared highlights with her colleagues through WhatsApp. However, Mbogo and Alela attacked her on the WhatsApp group, with other medical representatives, including Jennifer Maina and Victor Juma, also joining in the toxic conversation.



69. Mbogo went as far as instructing her never to email directors again, seemingly because Steven Opondo, the Commercial Director, had positively acknowledged her report. As the situation on WhatsApp escalated, the Claimant eventually left the group. Two days later, Mbogo reached out, suggesting a one-on-one work discussion, which she agreed to. They met at Nairobi South Hospital at 7:00a.m., after which he unexpectedly invited her for breakfast at KMA Java in Upper Hill, where Everlyne Alela also showed up unannounced.
70. Alela accused the Claimant of negatively impacting teamwork by leaving the WhatsApp group. The Claimant ended the meeting abruptly and later reported the issue to Commercial Director Steven Onyango Opondo, providing WhatsApp screenshots as evidence. Around the same time, another medical representative had also reported being mistreated by Sales Manager Godfrey Ogutu, prompting GSK to hold a management training session at Crown Plaza, Upper Hill, on how to handle employees properly.
71. The Claimant also highlighted how certain employees were handpicked for promotions without proper vetting. She cited Naomi Mbugua, who was appointed to the Graduate Trainee Accelerated Growth Program despite having no significant performance record or awards as a Medical Representative. The sudden appointment led to uproar during a cycle meeting at Crown Plaza, where employees questioned how she was selected. In response, Bridget Wachira publicly admitted that she had personally recommended Mbugua. Other employees identified as part of Wachira's inner circle included Joan Wakori, Anne Karugu, Jacob Oloo, Dr. Eric Muchangi, and Benjamin Agina.
72. The Claimant emphasized that her termination was not based on performance but was instead a result of bias, political interference, and favouritism. She had consistently demonstrated exceptional professional skills and dedication to her work, yet she was systematically undermined, discriminated against, and ultimately dismissed. The termination had severe financial, emotional, and career repercussions, permanently damaging her standing in the industry.
73. The Claimant filed Witness Statement 3 dated 4<sup>th</sup> July 2022, detailing further injustices leading to her termination. She reiterated that from 5<sup>th</sup> December 2016 to mid-March/April 2017, there was a nationwide doctors' strike, during which medical representatives, including herself, adapted their approach to calling on doctors. Since doctors moved to private hospitals and locum work, she and her colleagues were required to engage them at their new workplaces, at strike meetings on the grounds of Kenyatta National Hospital (KNH) and Upper Hill area, and encourage them to prescribe GSK brands such as Zinacef and Augmentin. The strike had drastically reduced patient attendance at KNH from 2,000 to 200 patients per day, as she was informed during a visit with GSK President Sir David Prichard.
74. During this period, the Claimant recorded three calls on the VEEVA platform for Dr. Summery, the first in December 2016 and the second and third in January 2017, after meeting her at Nairobi South Hospital ICU and KNH grounds with other anaesthetist registrar doctors. She asserted that she never met Dr. Summery alone, as she was always with colleagues such as Dr. Eunice Ngatia and other classmates, including the late Dr. Eunice Songa, whose death was public knowledge. Other GSK medical representatives also continued recording calls during the doctors' strike, as doctors had simply relocated their practices.
75. The Claimant explained that doctors' calls were often conducted in informal settings, such as hospital corridors, outside theatres, outside ICUs, outside wards, parking lots, and hospital restaurants over lunch hour, since doctors were often busy and could not accommodate formal office meetings. Medical representatives recorded these interactions on the VEEVA platform, but doctors did not keep their own records as they engaged with representatives from over 100 pharmaceutical companies.



76. She recalled accompanying GSK Head of Africa, Sir David Prichard, alongside Key Accounts Manager Phiona Thaara, on a visit to KNH during the nationwide doctors' strike in February 2017. The visit was meant to assess the impact of the strike on business performance. They called on Dr. Vincent Mtongwe at the KNH casualty department, Dr. Kabeu Kamau (ENT surgeon) at the KNH Doctors' Plaza, and Dr. Roselyn (pharmacist) in the wards. This confirmed that calling on doctors during the strike was not unusual or inappropriate.
77. The Claimant recounted several encounters with Dr. Summery at GSK's Likoni Road office between mid-August and early September 2017. She noted that Dr. Summery's demeanor changed drastically, as she acted cold and distant, seemingly because she had transitioned from being a doctor she could interact with professionally to a GSK employee. At one instance, at the GSK Pharma Tea Area, the Claimant greeted Dr. Summery and Dr. Erick Mugambi, prompting Dr. Mugambi to ask how she knew Dr. Summery. When the Claimant explained that she had engaged with Dr. Summery multiple times at KNH during her Master's program, Dr. Summery later confronted her, demanding that she stop telling people she knew her from KNH.
78. During this period, the Claimant emailed Allan Otieno and Judy Waweru, requesting Dr. Summery's name be removed from her Sales Line Target (SLT) list, as she was now a GSK employee. However, the name was never removed, affecting the Claimant's performance for Quarter 3, as her report reflected 0%.
79. The Claimant described harassment and discrimination she faced, particularly from Bridget Wachira, who had systematically orchestrated her elimination from GSK. At six months pregnant, the Claimant found it difficult to apply for alternative jobs while simultaneously dealing with stress from workplace victimization. Despite Wachira being aware of the situation, she chose to protect Dr. Summery and Allan Otieno, even though Otieno had mismanaged the VEEVA system, causing performance issues for multiple medical representatives.
80. Wachira's hostility toward the Claimant was evident, including instances where she denied her a General Manager's Award at Leopard Beach in 2016, refused to acknowledge her greetings, openly made mocking comments about second wives, and excluded her from career growth opportunities. At a 2017 town hall meeting at The Dome, Wachira publicly declared that only employees who were well connected to her could advance at GSK.
81. This statement was video recorded for audit purposes, and the Claimant demanded that the footage be produced in court. At a 2018 conference in Enashipai, Naivasha, Wachira further reinforced division within GSK by referring to employees as either "Cubs" (her preferred staff) or "Poor Cousins" (the rest of the employees). The Claimant insisted that this video recording also be availed to court for scrutiny.
82. The Claimant detailed how in December 2017, she was summoned by Kevin Mutuma regarding alleged falsification of calls on the VEEVA platform. The contentious dates were 30th January 2017 and 14<sup>th</sup> June 2017, as Dr. Summery claimed she was away. However, the Claimant pointed out that she had recorded Dr. Summery on two other dates during the strike, which were never contested.
83. The 30<sup>th</sup> January 2017 dispute arose because Dr. Summery claimed to have attended a burial—that of Dr. Eunice Songa. However, the Claimant provided the obituary confirming that the burial actually took place on 4<sup>th</sup> February 2017, meaning Dr. Summery's claim was false. The 14<sup>th</sup> June 2017 date was later dropped, as it was confirmed that Dr. Summery was in session at KNH.
84. The Claimant attended a disciplinary hearing on 6<sup>th</sup> February 2018, chaired by Daphne Openda (Head of HR, GSK East Africa), Allan Otieno (Commercial Excellence Manager), James Mbogo (Sales



- Manager), and Kevin Mutuma (HR Associate). The session was audio recorded by Mutuma, and the Claimant demanded that the full recording be produced in court. She was not given adequate time to respond, and Openda silenced her when she attempted to question the investigation process.
85. The Claimant pointed out that she had provided Mutuma with information on Dr. Summery's unresolved employment status with Baringo County, but this was ignored. The panel failed to address errors in the VEEVA system, despite the Claimant's numerous concerns.
  86. The investigation was inconclusive, and Openda assured her that they would revisit the matter. However, when she returned from maternity leave on 5<sup>th</sup> August 2018, she was summoned to an HR feedback session on 8<sup>th</sup> August 2018, only to be handed a termination letter. The letter falsely quoted 18<sup>th</sup> January 2018 as the date of her alleged malpractice, rather than the 30<sup>th</sup> January 2017 date initially cited. When the Claimant questioned the inconsistency, Openda left the room and returned with a new termination letter, now omitting all dates and references to Dr. Summery.
  87. From mid-February to July 2018, the Claimant had extensively assisted Mutuma and Ane Janse Van Rensburg with their investigations into GSK Kenya's malpractices. In April 2018, she even held a video conference with Van Rensburg, detailing the favoritism and discrimination orchestrated by Wachira. Andrew Ayany, Victor Juma, and David Mungai later confirmed that Mutuma had called a meeting in April 2018 to investigate Wachira's misconduct. However, despite providing substantial evidence, the Claimant received an email from Lorraine Martin (UK Office) on 8th April 2021, stating that GSK Kenya had investigated the matter in 2018 and found no substantiated claims.
  88. The Claimant never received a written report detailing the investigation findings, despite submitting critical evidence, including emails, documents, and witness statements. She maintained that GSK intentionally ignored the facts to protect its senior executives, leading to her unjust termination and subsequent career difficulties.
  89. The Claimant filed Witness Statement 4 dated 11<sup>th</sup> March 2022, further clarifying key events leading to her termination. She recounted that on 19<sup>th</sup> December 2017, she met with Kevin Mutuma and cleared her name regarding the 30<sup>th</sup> January 2017 report on Dr. Summery, presenting an obituary confirming that the burial in question occurred on 4<sup>th</sup> February 2017. She also complied with all his requests for details.
  90. The Claimant never had a one-on-one interaction with Dr. Summery during the investigation and only responded to her claims through Mutuma, who acknowledged that her 7<sup>th</sup> December 2016 and 23<sup>rd</sup> January 2017 reports on Dr. Summery were valid, while the 30<sup>th</sup> January 2017 entry was disputed. She highlighted inconsistencies in the Respondent's list of documents, noting that Mutuma had recommended her dismissal on 20<sup>th</sup> December 2017, even though investigations were still ongoing on 22<sup>nd</sup> December 2017 and were allegedly still in progress on 6<sup>th</sup> April 2018, as per a letter on page 29 of the Respondent's documents.
  91. She emphasized that aside from the VEEVA platform, which was under the Respondent's control and could be manipulated, she had no other tools to prove she had met with a doctor. A sample of an online system-generated report showed an option to delete or edit submitted calls, a function only accessible to system administrators (pages 26–29 of Claimant's List 6).
  92. The Claimant had asked Mutuma on 14<sup>th</sup> June 2017 to confirm with Nairobi University's Anesthesia Department at KNH that Dr. Summery was in session, contradicting the Doctor's claim that she had terminated her course. She had recorded calls with Dr. Summery on 8<sup>th</sup> June 2017 and 22<sup>nd</sup> June 2017



- at KNH's Maternity and Trauma Theatres but never on 14<sup>th</sup> June 2017, and this was confirmed in the disciplinary proceedings' recorded minutes.
93. On 3<sup>rd</sup> February 2018, she sent evidence to her Gmail account proving that 14<sup>th</sup> June 2017 was a blank date, but during the 6<sup>th</sup> February 2018 disciplinary hearing, Daphne Openda silenced her when the IT Manager confirmed she had sent this evidence before the hearing. The Claimant believed that the date was dropped intentionally because it would have made it difficult to proceed with her targeted termination.
  94. After the disciplinary session, the Claimant presented the obituary for the burial Dr. Summery claimed to have attended on 30<sup>th</sup> January 2017, showing that the burial had actually taken place on 4<sup>th</sup> February 2017. This evidence had not been shared with the panel by Mutuma, and Daphne expressed surprise upon learning this, prompting further investigations. The Claimant pointed out that the Respondent's submitted documents were unfamiliar to her, as they had never been shared with her, contradicting GSK's transparency policy. She had refused to approve the minutes of the disciplinary hearing, as they did not reflect the true events of 6<sup>th</sup> February 2018. During bed rest in mid-February 2018, she went to the office only to assist Mutuma with Dr. Summery's investigation.
  95. She further asserted that the minutes of the disciplinary hearing were corrupted, and the explanations sent to her in mid-February 2018 regarding system errors were fabricated. Mutuma and Allan Otieno sent her a document addressing system errors in Word format, rather than providing system-generated reports, which had distinctive formatting and colour coding (pages 22–23 of the Respondent's bundle). She refused to approve the manipulated minutes and demanded that the Respondent present real-time, unedited email records in court.
  96. The Claimant questioned why the Respondent sent emails after the disciplinary hearing if system errors had already been addressed during the session, as claimed in their minutes. She demanded strict proof of all emails, highlighting that the email dated 22<sup>nd</sup> February 2018 in the Respondent's bundle did not show the necessary attachment print to validate the query being addressed. She insisted that the Respondent provide the court with access to their email domain for verification.
  97. The Claimant explained that GSK required all medical representatives to plan their action schedules in advance, submitting Sales Line Targets (SLTs) for each quarter. She had submitted her Q3 2017 SLT in June 2017, including Dr. Summery as a target, as she was a KNH Anesthesia doctor at the time. She was unaware that Dr. Summery intended to leave clinical work for a corporate role at GSK, and if such a transition occurred, the standard procedure was to mark her as "not a target" rather than accuse a representative of misconduct. This was done in other cases, such as with Dr. Hiram Mwangi (GSK) and Dr. Gupret Khosla (Norvatis), who had also moved to pharmaceutical roles.
  98. The Claimant outlined that on a single day, she had a target of six doctors and two hospital pharmacies but often engaged up to 15 customers across different hospitals and locations five times a week. Some days involved early morning (6:30 AM) or late evening (9:30 PM) calls, and even Saturday work for administrative tasks, conferences, and training. She emphasized that her workload was overwhelming, as highlighted in a 2016 email from Mutuma, and attending company events was compulsory, with non-attendance leading to warnings. The VEEVA platform did not allow representatives to record the exact location of doctor calls, meaning all doctors or inpatient pharmacies had to be keyed in manually. She demanded that the Respondent produce all Q3 2017 SLTs and VEEVA reports, including over 200 KNH doctors recorded during the strike period from December 2016 to March 2017.
  99. She also referenced her 23<sup>rd</sup> February 2017 meeting with GSK Vice President for Africa, Sir David Pritchard, which included lunch at UHMC Java near Nairobi Hospital, followed by his engagement



- with Medical Representative Joseph Ruto at Nairobi Hospital. This meeting aligned with his participation as a keynote speaker at the AMREF Health Africa Conference at Radisson Blu on 8th–9th March 2017, confirming that work continued as usual during the doctors’ strike.
100. The Claimant denied knowledge of the letter dated 2<sup>nd</sup> February 2018, demanding strict proof of an email sharing it with her, and noted that the letter dated 6<sup>th</sup> April 2018 was never shared with her. The only letter she received was dated 20<sup>th</sup> April 2018, confirming that investigations were complete and that feedback would be provided upon her return. She further insisted that all emails presented by the Respondent be subjected to real-time verification on their email domain to prove authenticity.
  101. She outlined the role of system administrators Allan Otieno and Judy Waweru, who were responsible for adding, deleting, monitoring, approving SLTs, and troubleshooting VEEVA issues. She demanded that any support tickets raised by her be produced in court. She refuted claims that she engaged in non-work-related activities, emphasizing that her duties included selling GSK products, business planning, organizing and conducting CMEs, key account management, project and people management, managing doctor conferences, and uploading data on the VEEVA system. These responsibilities required extensive travel across Kenya and even South Africa, and she had to take biannual exams to assess her product knowledge. She demanded that her signed job description from employee file 1084 be presented for scrutiny.
  102. The Claimant highlighted that despite excessive workload, GSK did not offer overtime pay and that responding to doctors’ queries about scholarships, sponsorships, and job opportunities was encouraged, contradicting allegations that her engagement with Dr. Summery was inappropriate. She refuted the Respondent’s claim of harassment, arguing that communication was mutual and initiated by both parties, even with Lorrain Martin and Marcel after the Speak Up complaint in February 2021.
  103. She confirmed that she had never taken any salary advance or long-term loans with GSK, and when she requested a payslip (page 30 of the Respondent’s bundle) from HR Representative Catherine Rautta, she was ignored (emails on pages 33–34 of Claimant’s List 6). The termination rendered her jobless, severely impacting her financial stability and family’s well-being.
  104. The Claimant noted that at Vipingo Ridge in February 2017, Legal Officer David Swao attempted to restore Bridget Wachira’s image following employee complaints about bias, but Wachira openly confirmed her favouritism instead. She decried the public humiliation she endured, recalling Kevin Mutuma pointing her out to Communications Director Stella Kiguta in January 2018, laughing as they identified her as an accused representative. This created a toxic work environment, leading to four months of discomfort before she went on bed rest in February 2018.
  105. Finally, she reiterated that all her complaints regarding VEEVA system manipulation and workplace harassment were reported to the UK Office in February 2018, but no formal report was ever produced.
  106. The Claimant filed Witness Statement 5 dated 1<sup>st</sup> April 2022, further detailing her professional responsibilities, work locations, and the unfair treatment she faced. She stated that in addition to her previous submissions, she covered several locations as part of her territory, including Nyeri, Msambweni-Diani, Malindi, Watamu in Kilifi, Narok, Naivasha, Kitengela, and Rongai-Kajiado. She attended GSK and doctor conferences, including the 2013 GSK sales conference in Johannesburg, South Africa.
  107. The Claimant demanded access to her employee file number 1084. She emphasized that SLT and MCCP templates were entirely different components, and the email dated 22<sup>nd</sup> February 2018 (page 28) from the support team only addressed MCCP system calculation errors and not entry system



errors, which she had raised with Mr. Kevin Mutuma and Mr. Allan Otieno. The Respondent failed to provide transparency regarding the actual reasons behind the system calculation errors.

108. The Claimant clarified that all customer IDs were system-generated from the VEEVA platform, meaning any errors were system errors that could only be corrected by system administrators through a ticket to the VEEVA support team at VEEVA HQ. A sample of a VEEVA report showing system-generated IDs was attached on page 8 of List 9. She emphasized that GSK provided all business templates, including Business Plan, SLT, MCCC, PDP, and PowerPoint presentation templates, and employees were prohibited from using their own templates.
109. The claim by Mr. Allan Otieno (page 22, email dated 15<sup>th</sup> February 2018) that medical representatives were using wrong IDs was false, as all SLT TEMPLATE IDs were system-generated from the VEEVA platform. The new SLT template was introduced to enhance efficiency and resolve system errors affecting medical representatives.
110. The Claimant further alleged that the call by Jacqueline Marumaki, captured in the email dated 15<sup>th</sup> February 2018 (page 22), was fabricated or edited by the Respondent, as Marumaki had already attended a disciplinary hearing on 6<sup>th</sup> February 2018, and at that time, they claimed she had already submitted her call. The Respondent's position later changed to indicate that the call was saved instead of submitted, raising serious inconsistencies in their claims.
111. She clarified that call data could be accessed both offline and online, contradicting the Respondent's claim in Kevin Mutuma's witness statement (line 6/16 c) and Mr. Allan Otieno's statement in the disciplinary minutes (Respondent's bundle, page 19). Offline and online VEEVA samples, including screenshots from Dr. John's data, were attached on pages 6, 7, and 8 of List 9.  

The Claimant further questioned the priority ticket (UKIM20008533094), referenced by Mr. Allan Otieno in the email dated 15<sup>th</sup> February 2018 (page 22), as having resolved additional contacts, noting that she was unaware of it.
112. The Claimant reiterated that all additional contacts were handled by Otieno and other system administrators, as they were the owners of the VEEVA system. Tickets to VEEVA support were raised by administrators using medical representatives' IDs (evidenced by the email dated 22<sup>nd</sup> February 2018, page 28). She confirmed that she would visit system administrators in person to resolve technical issues, the same way IT issues were resolved through in-office visits with IT staff such as Kennedy, Arnold, or Mr. Marime.
113. The Claimant further reiterated that during the disciplinary session on 6<sup>th</sup> February 2018, she had raised rumors at KNH and in the pharmaceutical industry that Dr. Summery was expected to travel abroad with her husband instead of taking a local GSK assignment. Dr. Kiprop Biwott confirmed that Baringo County was seeking Dr. Summery, as she had not officially resigned from her position there. She confirmed that they agreed to investigate Dr. Summery's employment status further and later met with Kevin Mutuma in the HR Boardroom around 19<sup>th</sup> February 2018, where Mutuma promised to take over the investigations.
114. The Claimant highlighted inconsistencies in the Respondent's reports regarding the 14<sup>th</sup> June 2017 date. The date was omitted in the October and December 2017 investigation report and in their defense but acknowledged in the disciplinary minutes of 6<sup>th</sup> February 2018, raising serious concerns about the accuracy of their findings. She further accused GSK's management team of remaining silent while General Manager Bridget Wachira harassed and mocked her during board meetings and even took away her award in 2016. Even the Legal Director, Mr. David Swao, witnessed these injustices during the



- 2016 sales conference in Diani but failed to take action. She pointed out that the manipulation of the VEEVA system occurred under his watch, yet no one spoke up.
115. The Claimant confirmed that as of 2014, Business Plan KPIs and VEEVA CRM KPIs had not been included in the PDP template (2014 PDP template attached). However, by 2016, new KPIs had been introduced, including events, meetings, VEEVA CRM calls, sales line targets, promotional meetings, round-table meetings, pharmacy/laboratory audits, customer-facing time, business development, and GSK expectations. She reiterated that business plans were prepared, presented, implemented, and then rated.
  116. She challenged Mr. Mutuma's claim (statement 6) that VEEVA offline was only for saving calls before synchronization, asserting that both online and offline functions could be used for reporting and accessing records. The online version provided access to all doctor-related events, including interactions with other medical representatives, while offline mostly displayed the user's own account records (screenshots attached on pages 6, 7, and 8 of List 9). She reiterated that VEEVA's erratic system sometimes allowed users to see other representatives' calls offline (page 21, List 9).
  117. The Claimant explained that VEEVA offline was used for inputting calls, viewing call history, weekly planners, and SLT calculations, while VEEVA online provided access to all calls, including those recorded by other representatives or medical advisors. This meant that she could have accessed call histories for Dr. Kiprof Biwott and Dr. Caroline Mwangi, contradicting the Respondent's claim that she could not. However, VEEVA system errors sometimes prevented access to certain functions, such as reporting, adding new doctors, viewing SLT progress, or synchronizing data.
  118. She revealed that her online function was disabled from December 2017, requiring her to rely on Allan Otieno to generate system reports for her. She demanded that the Respondent provide system-generated reports for verification. She also refuted Mr. Mutuma's claim (statement 16c, page 3) that VEEVA dates could not be changed, asserting that system administrators had the ability to edit call dates if requested via email.
  119. The Claimant questioned how Jacqueline Marumaki's call status had been changed from submitted to saved and demanded transparency in the manipulation of data. She recalled that Daphne Openda confirmed the change just as she was signing the termination letter but left it at that, as the UK office had taken over investigations.
  120. She explained that as a junior employee, she had to be cautious when dealing with GSK leadership, as challenging them directly could result in accusations of insubordination. She clarified that during her interaction with Dr. Summery, she had presented GSK product details, after which Dr. Summery and Dr. Eunice Ngatia inquired about job opportunities at GSK. She responded appropriately, and Dr. Summery misleadingly claimed it was her sister looking for a job.
  121. The Claimant asserted that GSK representatives were expected to discuss topics beyond just product sales, including promotional materials, scholarships, sponsorships, doctor honorariums, medical camp sponsorships, and conference venues. She provided examples, such as delivering honorarium cheques to Dr. Jackson Atina (KMA), discussing meeting venues with Dr. Gatheru Anthony, Dr. Alex Muturi, and Dr. Chimmy Olende, and engaging ENT registrars on sponsorship opportunities.
  122. She reiterated that doctors were not always in hospitals for official duties but could still engage in business discussions. She demanded the recorded version of the disciplinary minutes (page 19), refuting claims that she had accused Dr. Summery of locum work. She insisted that the email drafted on 15th February 2018 was not based on true facts, and the Respondent deliberately fabricated statements during the disciplinary session to justify her termination.



123. The Claimant accused Mr. Mutuma and Mr. Mbogo of making false claims about medical representatives working together, contradicting GSK's team-based work culture. She refuted Daphne's claim that David Pritchard's visit to KNH occurred on 6th March 2017, confirming that she had personally picked him up from Radisson Blu on 22<sup>nd</sup> February 2017, during the AMREF conference, and accompanied him to KNH for doctor calls.
124. The Claimant filed Witness Statement 6 dated 20<sup>th</sup> April 2022 in response to the Respondent's witness statement, particularly paragraph 20(a), disputing the Respondent's claims regarding correspondence and interactions with Dr. Summery Sitima. The Claimant clarified that the email on page 56 of their statement was sent on 19<sup>th</sup> August 2018, after the termination had already occurred, and was meant to explain the possibility of seeing a doctor at Kenyatta National Hospital (KNH) during the strike period.
125. The Claimant contested the Respondent's assertion that KNH was non-operational due to the strike, as indicated in the Respondent's investigation report dated 20<sup>th</sup> December 2017. The Claimant denied confessing to having called on Dr. Summery only once during the strike meetings, as alleged in the witness statement of Mr. Kevin Mutuma, but maintained that they had called on her multiple times at different locations, including KNH staff quarters, where doctors gathered before strike meetings, and at Nairobi South Hospital ICU with her colleagues.
126. The Claimant further contended that the Respondent's investigation team lacked field experience and therefore misinterpreted the context of field operations. The Claimant argued that the Respondent's whistleblower policy denied them the opportunity to confront Dr. Summery directly regarding the allegations against them. Instead, the policy required that all communication be channeled through Mr. Kevin Mutuma, who failed to revert on critical issues raised, including those in the Claimant's 6<sup>th</sup> January 2018 response.
127. The Respondent's assertion that the speak-up report was received on 17<sup>th</sup> October 2017 and handed over to HR on 31<sup>st</sup> October 2017 conflicted with minutes showing that the matter had been discussed in the RMCB meeting before being formally lodged in the speak-up channel, raising doubts about the anonymity and independence of the process.
128. The Claimant challenged the Respondent's claim that doctors were inaccessible due to the strike, asserting that the strike did not prevent doctors from being present at hospitals for personal, professional, or administrative reasons. Doctors continued engaging in activities such as following up on payments, attending conferences, and performing locums.
129. The Claimant highlighted their attendance at two medical conferences during the strike period: the KOGS conference at Pride Inn Mombasa from 13<sup>th</sup> to 17<sup>th</sup> February 2017 and the KPA conference from 13<sup>th</sup> to 16<sup>th</sup> March 2017, where they interacted with over forty KNH doctors. These interactions were recorded on VEEVA and in the GSK visitors' book, which the Respondent could produce in court.
130. The Claimant questioned why it took over eight months for the Respondent to challenge a call logged in the VEEVA system if reporting a doctor during the strike was considered misconduct, arguing that normal business operations continued throughout the strike.
131. Regarding the disciplinary proceedings held on 6<sup>th</sup> February 2018, the Claimant stated that critical details were omitted from the minutes. During the hearing, Ms. Daphne had claimed that Dr. Summery was out of Nairobi and could not have been at KNH. However, the Respondent later



produced an email indicating that Dr. Summery had changed her location to Nairobi (Loresho) from Kitale on 22<sup>nd</sup> December 2017.

132. The Claimant further alleged that at the beginning of the hearing, Ms. Daphne informed them that the 14<sup>th</sup> June 2017 date had been dropped from the disciplinary charges, yet it had been included in the disciplinary invite. The Claimant requested the audio recording of the session to confirm inconsistencies. Additionally, Ms. Daphne had acknowledged during the proceedings that further investigations were necessary regarding issues raised by the Claimant on 19<sup>th</sup> December 2017. However, the Respondent failed to address these concerns during the disciplinary process and instead responded through emails on 15<sup>th</sup> February 2018.
133. The Claimant raised concerns over amendments made to the disciplinary invite letter dated 2<sup>nd</sup> February 2018, stating that the original document had referenced 30<sup>th</sup> January 2017 and 14<sup>th</sup> June 2017 as the basis for the disciplinary hearing. The Claimant also noted that in an email dated 22<sup>nd</sup> February 2018, the Respondent admitted to system calculation errors, which were not addressed, further questioning the credibility of the allegations. The Claimant rejected the minutes of the disciplinary hearing on these grounds.
134. The Claimant further asserted that the Kshs. 70,000 global award payment was initiated by Mr. Kevin Mutuma, who sent them an email confirming the same. The Product Marketing Manager had also provided a link for printing the certificate for the Yammer Award 2017 champion. The Claimant demanded that the Respondent produce all relevant documents and emails related to the award for court scrutiny.
135. The Claimant challenged the Respondent's investigation report dated 20<sup>th</sup> December 2017, pointing out inconsistencies regarding Dr. Summery's location on 30<sup>th</sup> January 2017. While Mr. Mutuma had previously stated that she was attending a burial on that date, Ms. Daphne had later claimed during the disciplinary hearing that Dr. Summery was out of Nairobi.
136. The Claimant further observed that although the Respondent had stated in their witness statement that investigations were completed on 20<sup>th</sup> December 2017, on 2<sup>nd</sup> February 2018, during lunch hour, Ms. Elizabeth Msafiri was still at KNH conducting investigations, contradicting the claim that the matter had been finalized.
137. Regarding the 2018 and 2021 speak-up reports, the Claimant stated that they had engaged GSK UK in 2021 after previously raising the matter in 2018, where they highlighted concerns regarding Mr. Kevin Mutuma, Dr. Summery Sitima, Mr. Allan Otieno, and Ms. Bridget Wachira in the investigation and proceedings. Despite providing evidence and requesting assistance in obtaining further documentation related to Dr. Summery, the Respondent claimed that no wrongdoing was substantiated.
138. The Claimant noted that no investigation reports were provided for either the 2018 or 2021 complaints, despite the Respondent's stated commitment to integrity, transparency, and respect for people. The Claimant asserted that they had been asked to provide detailed information on both occasions, only for the issues to remain unresolved.
139. The Claimant further stated that the respondent had alleged that she did not report the system manipulation issue, yet all issues she reported, including the system manipulation, were downplayed and termed unsubstantiated. She reported the issue of Jacqueline Marumaki's call system manipulation to Ane Janse while giving reasons for her appeal withdrawal, as evidenced on pages 47 and 48 of the claimant's list of documents.



140. The investigation report dated 20<sup>th</sup> December 2017 concluded that January and July calls were inaccurate. The 14<sup>th</sup> June 2017 call was included in the invite to the disciplinary hearing on 2<sup>nd</sup> February 2018 but was dropped at the beginning of the session. On 15<sup>th</sup> February 2018, as evidenced on page 23 of the respondent's bundle, Mr. Allan Otieno claimed that medical representatives submitted Monthly Planners (MCCP/SLT), which was untrue, as company policy had changed to quarterly submissions when VEEVA was launched after IJSFA.
141. The Claimant asserted that she copied her manager, Mr. James Mbogo, in quarterly submissions or sent them directly to him for submission to Mr. Allan. Emails regarding this are in the respondent's domain. She further stated that Mr. Allan's issues and system issues were raised with Ane Janse when she was conducting other investigations between February and July 2018. During this period, the claimant informed her about issues involving Mr. Allan Otieno and the system's failure to implement SLT request changes, which affected medical representatives' performance.
142. The Claimant noted that medical representatives later confessed how Mr. Allan had changed after the Speak Up report in 2018, as he started implementing VEEVA requests for all medical representatives only after she reported the issue to South African HR, Ane Janse. She added that VEEVA only allowed one address input per doctor or healthcare provider (HCP), meaning all doctors had one registered address in the system, such as Kenyatta National Hospital (KNH) for Dr. Summery, but could practice in multiple hospitals. As such, Dr. Summery could be called upon in various hospital institutions, yet VEEVA would only reflect one address.
143. The Claimant further stated that the respondent's claim that 13 accounts were erroneously added to her SLT was not factual. The correct number was between eight to ten, plus Dr. Summery on the Q3 SLT. Additionally, contrary to Mr. Allan's claims that no extra accounts were reflected on her SLT, her ClickView displayed them. She noted that similar errors were common among many medical representatives, but Mr. Allan routinely ignored them. She also stated that during the disciplinary hearing, when Daphne commented that the call with David Pritchard occurred on 6<sup>th</sup> March 2017, Mr. Allan corrected her with the actual date in February, but this was missing from the minutes.
144. The Claimant further stated that she had submitted all details regarding the CCTV footage to Mr. Kevin Mutuma on 19<sup>th</sup> December 2017 and to the respondent's security team in January and February 2018 during the statement invite and follow-up emails. However, Mr. Mutuma failed to assist, insisting that the footage had no sound. Despite also engaging Ms. Msafiri and describing everything, she dismissed it as impossible and refused further engagement.
145. The Claimant maintained that while the GSK CCTV footage lacked sound, body language could still indicate a confrontational mood, which should have prompted HR to question Dr. Summery further. She also stated that Dr. Eric Mugambi had left GSK around November 2017 and was based at KMA Building, Upper Hill, during the investigation and disciplinary process. When she requested Kevin Mutuma to allow Dr. Mugambi as a witness, he refused, just as he declined to retrieve or use the CCTV footage for internal decision-making. The HR team made no effort to request Dr. Mugambi's attendance.
146. The Claimant further stated that she frequently walked to Judy Waweru's desk at Nivina Westlands or sent emails to request changes to the VEEVA system without raising IT tickets. An email was sufficient for simple operations such as adding, deleting, or editing calls. IT tickets were only raised for complex issues like offline/online functionality failures or ClickView malfunctions.
147. These were handled by the administrator using VEEVA/company IDs upon email notification or physical request. A sample email from 2015 to Judy Waweru and Joan Wakori is attached to the



- claimant's list of documents. She denied the respondent's claim that she raised a ticket and closed it to her satisfaction, stating that sorting out VEEVA SLT issues was Mr. Allan's duty. Furthermore, the system administrator had the rights to raise tickets with her account without her knowledge.
148. The Claimant further stated that after the respondent disregarded her obituary evidence on 19<sup>th</sup> December 2017, she highlighted all VEEVA issues to Ane Janse during a teleconference in April 2018 and via emails in August 2018 concerning the system manipulation of Jacqueline Marumaki's call. An email regarding this is on page 47 of the claimant's list of bundles.
149. The investigation report dated 20<sup>th</sup> December 2017 concluded that January and July calls were inaccurate, while the 14<sup>th</sup> June 2017 call was initially included in the disciplinary invite on 2<sup>nd</sup> February 2018 but was later dropped at the beginning of the session. She asked Kevin Mutuma to visit KNH to confirm whether Dr. Summery was in session in June 2017, but they failed to do so, instead dropping the date at the start of the disciplinary session and excluding it from the investigation report.
150. The Claimant withdrew her appeal due to frustrations caused by Mr. Kevin Mutuma and his team, who refused to produce evidence to support her defense, denied witness opportunities, and sabotaged investigations. This was despite Dr. Summery's issue being in the public domain. She also claimed that the minutes of 19<sup>th</sup> December 2017 and the disciplinary proceedings of 6<sup>th</sup> February 2018 were corruptly written, constituting harassment, intimidation, victimization, and discrimination against an employee in a global organization. She argued that submitting additional evidence during the appeal would have been futile, as they would still have sabotaged the appeal, as reflected in an email dated 13<sup>th</sup> August 2018 on pages 47 and 48 of the claimant's list of documents.
151. The Claimant further stated that the respondent falsely claimed that she was responsible for providing evidence regarding Dr. Summery and that they had conducted investigations into the said employee. She believed the investigations were sabotaged both before and after the disciplinary process to protect certain individuals. On 6<sup>th</sup> January 2018, she asked Mr. Mutuma to engage Dr. Summery regarding the possibility that she had been present in hospitals on unofficial duty, as was common among doctors waiting for Nairobi University KNH Medical Department to resume operations.
152. However, Mr. Mutuma never responded or investigated the probable reasons for Dr. Summery's presence at KNH. She also requested Mr. Mutuma to amend the 19<sup>th</sup> December 2017 statement minutes after he shared them for her approval in mid-January 2018. However, he later re-shared the same minutes without making any amendments. The investigation report dated 20<sup>th</sup> December 2017, on page 2, statement 9, confirms that witness statements were uploaded onto the CIT platform on 20<sup>th</sup> December 2017 before she approved them in mid-January 2018. She stated that she did not approve these minutes and did not recall signing them.
153. The Claimant further stated that the email from Dr. Summery to Kevin Mutuma dated 22<sup>nd</sup> December 2017 was strange, as Kevin only changed Dr. Summery's location in February or March 2018 when they met to address her investigation in Baringo County. At that time, the claimant was on bed rest, and during their discussions, Mr. Mutuma informed her that Dr. Summery had changed her location from Kitale to Nairobi, Loresho, as the investigations had resumed. However, during the disciplinary hearing, Daphne claimed that Dr. Summery was out of Nairobi and could not have been seen near KNH. None of the evidence mentioned in the said email was presented to her.
154. The Claimant filed Witness Statement 7 dated 20<sup>th</sup> October 2022 and stated that, in addition to her earlier statements, she wished to clarify that while some of her communications with Elizabeth Msafiri, Kevin Mutuma, Dr. David Chiuri, Samson Kikui, Stephen Onyango Opondo, James Mbogo, and Benson Gikandi took place face-to-face in meetings, others occurred over the phone.



155. Due to the nature of these communications, she filed ELRC Misc. E067 of 2022 against Safaricom PLC, seeking court orders to retrieve the call records. The court granted the orders; however, upon presenting them to Safaricom PLC, she was informed that the company retains communication records for only three months, after which call data is automatically deleted from its systems.
156. The Claimant filed Witness Statement 8 dated 13<sup>th</sup> April 2023 and stated that all her duties as the respondent's employee were clearly outlined in the claimant's statements 4 and 5, as well as in Lists 6 and 7 of her documents, to avoid misrepresentation by the legal director. She reiterated that her termination from employment was unlawful and unfair, asserting that she had presented evidence confirming that it was possible to work during the doctors' strike of 2016-2017, despite the respondent's claim that she or the doctor could not have been working.
157. She noted that the Respondent had borne the costs for her to attend doctor conferences at Pride Inn Paradise Mombasa and had paid salaries throughout the period. The Claimant further stated that she had presented tax invoices and Ministry of Health portal captions attached in List 10 of her documents, confirming that the doctors' strike ended on 14<sup>th</sup> -15<sup>th</sup> March 2017, while the respondent's own minutes confirmed that she worked with their African President, Mr. Pritchard, on 6<sup>th</sup> March 2017, during the strike.
158. The Claimant denied any dishonesty, as alleged by the Respondent's legal director. She clarified that the burial date in question was 4<sup>th</sup> February 2017 and not 30<sup>th</sup> January 2017, as stated by Dr. Summery before the 19<sup>th</sup> December 2019 statement when she cleared her name from the allegations.
159. The Claimant further stated that the respondent had changed their narrative, indicating that an email to change Dr. Summery's location from Nairobi was supposedly sent on 22<sup>nd</sup> December 2017, yet during the disciplinary hearing, Daphne Openda had stated that Dr. Summery was out of Nairobi and could not be seen anywhere near the city. She asserted that attempts to validate this email through a forensic expert were met with resistance from the respondent's team, as their documents and facts contained inconsistencies.
160. No email logs had been presented to validate or question the integrity of the Respondent's documents. The Claimant further stated that her attempts to obtain the 19<sup>th</sup> December 2017 statement, where she had exonerated herself from misconduct allegations raised by Mr. Kevin Mutuma, the respondent's Human Resource representative, were met with resistance.
161. On 23<sup>rd</sup> February 2022, the Respondent stated that the statement was available upon request. However, when an application dated 4<sup>th</sup> April 2022 was filed in court to compel the respondent to produce the statement, the respondent's legal director, in a replying affidavit dated 6<sup>th</sup> June 2022, stated that the document was no longer available. The Claimant contended that this demonstrated the Respondent's shifting positions and contradictions.
162. The Claimant reiterated that rumours had circulated among the Respondent's employees about medical representatives falsifying calls on Veeva, following an incident where Dr. Summery attacked her at the tea area on Likoni Road, Nairobi, alleging that she should not reveal her past associations with Kenyatta National Hospital and Baringo County. A text message to her then manager, Mr. James Mbogo, clarifying the issue, was dated 12<sup>th</sup> October 2017 and was attached in List 10 of her documents.
163. The Claimant further stated that the respondent had confirmed in their defense that the "speak up" report was filed on 17<sup>th</sup> October 2017, after the SMS on 12<sup>th</sup> October 2017, the attack at the tea area, and an email to Judy and Allan requesting the removal of Dr. Summery from the doctors' list. The Claimant stated that the respondent failed to investigate the integrity concerns regarding the



- whistleblower, and on 8<sup>th</sup> April 2021, Lorrain Martin of the UK office confirmed that investigations had been conducted in 2018 and nothing was substantiated.
164. She further stated that on 8<sup>th</sup> August 2018, before her termination, Daphne Openda and Kevin Mutuma confirmed that investigations were conducted and no wrongdoing was found. A report from Baringo County, attached in List 12 of the claimant's documents, indicated that Dr. Summery had a pending disciplinary issue due to a breach of her employment contract. The Claimant asserted that the respondent's witnesses, Kevin Mutuma and David Swao, claimed that all investigations were concluded by December 2017 before the disciplinary matter against her was instituted, yet Lorrain of the UK office confirmed that investigations into Dr. Summery were conducted in 2018.
165. The Claimant reiterated that the whistleblowing report to the UK office in 2018 was regarding malpractices at the respondent's offices, including favouritism and biased leadership by Bridget Wachira, the then General Manager, and issues concerning key account interviews and investigations into Dr. Summery's case against her. She stated that Allan Otieno was in charge of the Veeva system and could manipulate it at will, as clearly stated in her Statement 1, contrary to claims made by the respondent's legal director that Kevin Mutuma could manipulate Veeva, in ELRC E228/2021, to misrepresent facts and malign her name.
166. The Claimant stated that she was a person of good character and that her three witnesses were individuals directly involved in the GlaxoSmithKline Pharmaceuticals case regarding the doctors' strike, doctor conferences in 2017, and favouritism in the respondent's organization. She clarified that these witnesses were not brought to validate her character but rather to provide factual evidence.
167. The Claimant stated that she had presented email logs for forensic auditing to confirm the authenticity of all her emails filed in court and not just a witness statement, as alleged by the legal director. She denied using defamatory or disparaging language against her former colleagues and workmates. She further stated that court documents and proceedings are public records that can be accessed by media houses or individuals with an interest in the case, just as the respondent had accessed documents in ELRC E226/2021.
168. The Claimant asserted that she had no control over information published by media houses and that there was no gag order regarding ELRC E228/2021, meaning the media and the public were free to follow the proceedings. She stated that the respondent had accessed and attached case documents from ELRC E226/2021 involving Tropical Brands Danone to misrepresent facts without supporting documentation.
169. The Claimant argued that the respondent's evolving accusations and contradictions necessitated forensic validation of their documents to confirm authenticity and credibility. She further stated that the respondent had disobeyed an order to validate their documents and termination process on their IT systems. She denied any involvement with bloggers or media houses that had published information related to the case, stating that their efforts to suppress media coverage had led to public exchanges for which she should not be held responsible.
170. The Claimant asserted that the Respondent's continued association of her with media publications amounted to harassment, as it was baseless and lacked factual grounding. She noted that other media houses were following the proceedings, yet the respondent selectively omitted this fact to misrepresent issues in ELRC E228/2021. The Claimant stated that she had reported threats from the Respondent's advocate to the Kilimani Police Station, where she was issued with OB No. 20/04/03/2023. She also informed her family, former colleagues, and friends, fearing for her security.



171. The Claimant further stated that her then advocate had mistakenly filed an application in the wrong court, which lacked jurisdiction to grant the prayers sought, and that she could not be held responsible for his professional mistake. She stated that applications in the Tax and Commercial Court under Misc. 068/2023 and in the Labour Court under Misc. E023/2023 were filed due to the Respondent's advocate failing to respond to emails and an order by the trial judge requiring a written report on the respondent's status in Kenya.
172. The Claimant stated that the winding-up process had been ongoing since 11<sup>th</sup> October 2022. The claimant stated that she had been applying for jobs since her termination but had received rejections from potential employers, who initially engaged her but went silent after investigating her employment history with the respondent. She stated that she had encountered numerous challenges in securing employment due to previous employers and managers, including George Kiongo, the Country Manager at Tropical Brands Danone, who vowed to sabotage her career, citing her termination from GlaxoSmithKline Pharmaceuticals.
173. The Claimant stated that Kiongo had blackmailed her to assist him with his medical operations, and after she refused, he sabotaged a job opportunity she had received through Linus Gitahi, Chairman of Tropical Brands. She stated that this interference had significantly affected her career and necessitated the present suit to claim damages, as her termination had left her with a "tainted image," affecting her employability. She reiterated that she had acted transparently by filing ELRC E226/2023 and ELRC E228/2023 in the same month, through the same law firm, and approved on the same date by the same court.
174. The Claimant maintained that the circumstances in ELRC E226/2023 and ELRC E228/2021 were different and that employees were entitled to a conducive work environment, free from harassment. She asserted her right to seek justice in the Employment and Labour Relations Court and to present all necessary evidence. She contended that the Respondent's legal director, Mr. David Swao, had misrepresented facts to enable the respondent to evade liability and invited the court to scrutinize the inconsistencies in his statements. She stated that she had instituted the suit in the proper forum, with a valid cause of action concerning her unlawful termination, and prayed that her prayers be granted.
175. The Claimant, through Medad Birungi, filed a 2<sup>nd</sup> undated witness statement confirming that during the nationwide doctors' strike from December 2016 to April 2017, she, like every other medical representative at GlaxoSmithKline (GSK) and within the entire pharmaceutical industry, continued to meet doctors and report on VEEVA as usual. She stated that all GSK sales representatives engaged doctors who were operating in private hospitals within Nairobi, including the casualty, theatre, ICU, and the Doctors' Plaza at Kenyatta National Hospital (KNH), Nairobi Hospital, Aga Khan Hospital, and MP Shah Hospital.
176. Medad Birungi further stated that all doctors' strike meetings in Nairobi took place at the KNH Grounds and Upper Hill Area. She emphasized that 100% of the registrars and lecturers at the University of Nairobi Medical School, who are based at KNH, continued to practice in hospitals around Nairobi during the school-based program, including Nairobi South Hospital, Nairobi West Hospital, Meridian Equator Hospital, MP Shah Hospital, Coptic Hospital, Nairobi Women's Hospital, Aga Khan Hospital, Karen Hospital, various mission hospitals, and Nairobi Hospital in Hurlingham.
177. She further confirmed that medical representatives in upcountry regions also continued calling on doctors and reporting, as doctors had moved to private hospitals. The Claimant reiterated that no medical representative went on leave due to the nationwide strike, as it was possible to call on doctors, and all GSK medical representatives were reporting through the GSK VEEVA platform.



178. Medad Birungi further stated that she was contacted by GSK South Africa's Head of Security, who inquired about hiring malpractices at GSK Kenya. She detailed that during the key accounts interview process, candidates had been moved to the next level without receiving results from the case study. Some candidates were called by the recruiting manager during the interview process and given an opportunity to correct their responses to align with expected answers before proceeding to the next level. However, she and others were not given the same opportunity, creating an unfair and biased recruitment process.
179. The Claimant, through Dr. Martha Wanjiku Mwangi, filed a witness statement dated 15<sup>th</sup> July 2022, stating that between 2014 and 2018, she was at the University of Nairobi and Kenyatta National Hospital (KNH) pursuing her Master's Degree in Medicine. She is currently a lecturer and undertakes part-time locums at Nairobi Hospital Plaza. She confirmed that she had known Pauline Gichuki since 2013 when the Claimant worked as a medical sales representative for GlaxoSmithKline (GSK) at Nairobi Hospital.
180. She stated that the Claimant later moved to KNH, where she continued to call on her with GSK products while Dr. Mwangi pursued her studies. She affirmed that during the doctors' strikes of 2017 and 2018, she continued with her locum duties at Nairobi Hospital Plaza uninterrupted while waiting to resume her studies. She further stated that KNH remained operational in the casualty, pharmacy, stores, and wards, and consultant doctors and registrars performing locums at the plaza and private wing continued to attend to patients.
181. Dr. Mwangi confirmed that during the doctors' strike period of 2017, she met GSK medical representatives at Nairobi Hospital, including Mr. Daniel Gathu and Mr. Samuel Opar, as they continued engaging doctors as usual. She further stated that all other medical representatives from the pharmaceutical industry continued working as normal during the strike period.

### **Claimant's Submissions**

182. The Claimant filed written submissions dated 10<sup>th</sup> January 2025, seeking judgment against the Respondent for damages arising from unlawful termination of employment, compensation for alleged victimization, harassment, mistreatment, intimidation, and humiliation, costs of the suit with interest, and any other relief the court may deem fit. The Respondent, in its Statement of Response dated 10<sup>th</sup> December 2021, prayed for the Claimant's claim to be struck out or dismissed with costs.
183. The Claimant was employed by the Respondent as a Medical Sales Representative from 4<sup>th</sup> April 2011 until her termination on 8<sup>th</sup> August 2018. At the time of her termination, she was earning a gross monthly income of Kshs. 262,460. The dispute arose from allegations that the Claimant had falsified calls for Dr. Summery Sitima in October 2017, an issue she addressed via SMS to her manager, Mr. James Mbogo, on 12<sup>th</sup> October 2017.
184. Despite this, on 19<sup>th</sup> December 2017, the Respondent's Human Resource Manager, Mr. Kevin Mutuma, invited the Claimant to respond to allegations of falsified calls allegedly recorded on 30<sup>th</sup> January 2017 and 14<sup>th</sup> June 2017. A report was generated on 20<sup>th</sup> December 2017, with Mr. Mutuma claiming he had contacted all relevant parties, a claim the Claimant disputes as there is no evidence of such an investigation before the court.
185. The Claimant denied falsifying any calls, asserting that the Respondent's position on the matter kept shifting. Initially, the Respondent alleged the falsified call could not have been valid due to a doctor's strike, later changing its stance to claim the doctor was attending a burial. A disciplinary hearing was held on 6<sup>th</sup> February 2018, after which the Claimant proceeded on sick leave and later maternity leave.



186. She resumed duty on 6<sup>th</sup> August 2018 and was handed a termination letter on 8<sup>th</sup> August 2018. The Claimant, who had received various awards throughout her employment, including a Yammer Global Award of Kshs. 70,000 in 2017 and a 2016 annual bonus award of Kshs. 497,000, contends that her termination was unjustified.
187. During trial, the Claimant testified on 15<sup>th</sup> October 2024, adopting her witness statements and documents. Her witnesses testified on 4<sup>th</sup> December 2024, adopting their statements. The Respondent's witnesses, Mr. Mutuma and Mr. David Swao, testified on the same day. The Claimant submits that the Respondent's witnesses presented contradictory and misleading evidence, demonstrating a lack of integrity.
188. Mr. Mutuma falsely claimed that an investigation report from Kenyatta National Hospital had been filed in court, yet no such record exists. He also misrepresented that documents attached to an email dated 15<sup>th</sup> February 2018 were Outlook documents rather than VEEVA documents, despite his own witness statement describing VEEVA's components, which do not include Outlook. The Respondent's bundle dated 23<sup>rd</sup> February 2022 contains emails on VEEVA documents that were allegedly edited and manipulated.
189. Further, Mr. Mutuma stated in paragraph 19 of his witness statement that neither management nor any employee could alter VEEVA system entries. However, the Claimant's witness, Medad Birungi, testified that system administrators could indeed make such changes. Page 24 of the Respondent's bundle shows edit and delete options on the VEEVA system's call report section, and an email from the Claimant requesting changes, dated 4<sup>th</sup> January 2022, confirms that administrators Judy Waweru and Allan Otieno could modify records.
190. Additionally, Mr. Swao stated in his Replying Affidavit dated 6<sup>th</sup> June 2022 that witness statements were unavailable, contradicting the Respondent's own investigation report at page 2, which states that all witness statements had been uploaded and were available upon request. Despite a court order directing the Respondent to provide the documents, they refused to do so, as evidenced by the court order on page 464 of the Claimant's bundle. Mr. Swao also alleged that the Claimant had not disclosed her employment with Danone, yet this information was included the Memorandum of Claim.
191. The Claimant maintained that malice was evident, as the Respondent raised the falsification allegation ten months after the call was recorded. Other calls made during the doctor's strike were not questioned, despite company operations continuing uninterrupted. The Claimant relied on Section 45(1) and (2) and Section 47(1)(5) of the Employment Act, 2007.
192. In *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, Ndolo, J. held that a termination must meet the test of substantive justification and procedural fairness. The Court of Appeal in *Naima Khamis v Oxford University Press (EA) Limited* [2017] eKLR emphasized that an employer must justify termination reasons under Section 43(1) of the Act and adhere to fair procedures under Section 45(2)(c), failing which termination is deemed unfair.
193. The Claimant submitted that her termination lacked a valid basis. The termination letter dated 8<sup>th</sup> August 2018 cited falsification of calls on VEEVA but did not specify the call or calls leading to termination. On 19<sup>th</sup> December 2017, when the Claimant was invited for questioning, she was informed that the calls under scrutiny were from 30<sup>th</sup> January 2017 and 14<sup>th</sup> June 2017.
194. Mr. Mutuma initially alleged that the 30<sup>th</sup> January 2017 call was invalid due to a doctor's strike, later changing his reasoning to claim that the doctor was attending a burial in Kitale that day. The Claimant presented an obituary showing the burial of Dr. Eunice Songa occurred on 4<sup>th</sup> February 2017, not



- 30<sup>th</sup> January 2017, contradicting the Respondent's claim. Subsequently, the Respondent altered its investigation report dated 20<sup>th</sup> December 2017, relying on an email dated 22<sup>nd</sup> December 2017 from Dr. Summery stating she was in Loresho, not Kitale.
195. This shift in position, occurring only after the Claimant's interview on 19<sup>th</sup> December 2017, raises doubts about the credibility of the Respondent's investigation. The Claimant submits that the Respondent manipulated material evidence, particularly concerning the alleged falsification of VEEVA records. The Respondent's inconsistencies in the investigation report and reliance on the email from Dr. Summery after the Claimant's interview highlight procedural flaws.
196. In *New Kenya Co-operative Creameries v Sigei (Appeal E002 of 2022)* [2024], the Court of Appeal held that disciplinary proceedings must comply with Article 47 of *the Constitution*, Section 4 of the *Fair Administrative Action Act*, and the *Employment Act*. The email from Dr. Summery on page 21 of the Respondent's bundle raises questions about its authenticity, as it is dated 22<sup>nd</sup> December 2017, while the investigation report states she was in Kitale on 27<sup>th</sup> January 2017, returning to Nairobi on 30<sup>th</sup> January 2017.
197. Efforts to verify the authenticity of this email and VEEVA documents through forensic examination were blocked by the Respondent despite a court order issued on 7<sup>th</sup> December 2022 (pages 366-367 and 464 of the CLAIMANT's bundle). The Claimant therefore argues that the court should declare these documents unreliable.
198. In *Denis Wahome Muriithi v Kenyatta University* [2021] eKLR, the court, citing *The State of Rajasthan v Heem Singh*, Civil Appeal No. 3340 of 2020 from the Supreme Court of India, recognized that disciplinary proceedings require adherence to natural justice but need not follow strict rules of evidence. However, courts may intervene where findings are based on no evidence or suffer from perversity, including failure to consider vital evidence. Proportionality is a key principle, allowing courts to interfere where a penalty is disproportionate to the weight of the evidence or misconduct. The Claimant submits that the Respondent's shifting justifications, failure to provide documents as ordered, and obstruction of forensic verification undermine the fairness of her dismissal.
199. The Claimant further submitted that the Respondent's refusal to cooperate in the validation of key documents contravened the principle of procedural fairness. On 6<sup>th</sup> February 2018, the Respondent informed the Claimant that they had dropped the 14<sup>th</sup> June 2017 call since Kenyatta National Hospital had confirmed that Dr. Summery was in session for her studies at the time. However, this call did not exist on VEEVA as evidenced at pages 174-175 of the trial bundle and was fabricated by the Respondent.
200. During trial on 4<sup>th</sup> December 2024, Kevin Mutuma changed the narrative, stating that he had dropped the 14<sup>th</sup> June 2017 call since Dr. Summery did not confirm its details. The Respondent's facts kept on changing. The Claimant demonstrated that no proper investigations were conducted regarding the alleged falsified calls. Key witnesses, including Dr. Summery and Allan Otieno, were not cross-examined, and forensic validation of crucial evidence such as emails and VEEVA records was deliberately obstructed by the Respondent despite a court order issued on 7<sup>th</sup> December 2022.
201. The Respondent violated their Whistle Blowing Policy by not conducting proper investigations. The Policy, as contained at pages 446-448 of the Claimant's bundle, at clause 3, provides that it is the Respondent's policy that any genuine concerns raised about misconduct or unlawful conduct must be thoroughly investigated and appropriate actions taken to deal with the outcome of that investigation.



202. The Respondent further provides that feedback shall be given to the individual who raised the concern to the extent that is appropriate and does not infringe legal requirements or other duties of confidence. The Respondent failed to adhere to its own policies while conducting investigations on the Claimant. The Court of Appeal in *Kenfreight (E.A.) Limited v. Benson K. Nguti* [2016] eKLR stressed the importance of a fair and thorough investigation before effecting disciplinary actions. The Respondent's actions herein fell short of this requirement.
203. Section 41 of the *Employment Act*, 2007, provides the procedure for disciplinary processes, requiring that an employee be given a fair hearing and an opportunity to present their case. Despite the Claimant's requests for clarification of facts and investigations into the VEEVA entries, as well as requests for witness statements and relevant evidence from Mr. Mutuma's report dated 20<sup>th</sup> December 2017, the Respondent failed to provide adequate responses or investigate the issues comprehensively. The court in *Alphonse Maghanga Mwachanya v. Operation 680 Limited* [2013] eKLR held that procedural fairness is a mandatory requirement, irrespective of the employer's reasons for termination.
204. The Claimant did not at any time admit that she observed Dr. Summery working during the doctor's strike. The Claimant clarified that Dr. Summery could have been at Kenyatta National Hospital or its environs during the strike for various legitimate reasons, such as attending strike meetings, residing or visiting KNH staff quarters, or personal engagements. The Claimant encountered Dr. Summery at KNH and Nairobi South ICU on specific dates but did not confirm her activities or duties at those times.
205. It was presented before the court that there was a doctor's strike that lasted from December 2016 to April 2017. The Respondent claimed that it was not possible for doctors to work during the strike. This was countered by the Claimant and her witnesses, who all confirmed that indeed doctors were working during the strike period.
206. The Respondent sponsored conferences during the doctor's strike at Vipingo Ridge, Kilifi from 31<sup>st</sup> January 2017 to 4<sup>th</sup> February 2017 and in March 2017 at Pride Inn, Shanzu. This was evidenced with photos at pages 253-255 and 443, and the invoices for the said hotels at pages 441-442. The Respondent's investigation was flawed and incomplete. Despite the Claimant's request for verification with third parties such as Kenyatta National Hospital and Baringo County, no proper inquiries were conducted. Notably, Mr. Kevin Mutuma recommended summary dismissal in his report dated 20<sup>th</sup> December 2017, only a day after the Claimant's interview on 19<sup>th</sup> December 2017, without engaging necessary parties or completing a thorough investigation.
207. The Respondent introduced inconsistent evidence, including a fabricated call on 14<sup>th</sup> June 2017, which was absent from initial investigation reports but included in disciplinary hearing minutes, as well as edited investigation documents, including altered timelines and narratives, without allowing forensic validation. The Claimant repeatedly raised concerns regarding inaccuracies in her Sales Line Target and VEEVA records, including the presence of non-customers like Dr. Summery in her portfolio.
208. The Respondent failed to resolve these issues, negatively impacting her performance evaluation. Evidence confirms that the Claimant sought corrections but was ignored, as evidenced at pages 165-166 of the Claimant's bundle, where the Claimant requested Allan Otieno to remove Dr. Summery from her SLT.
209. The Respondent failed to provide critical evidence to substantiate the grounds for termination, including documentation supporting allegations against the Claimant, investigation reports from Kenyatta National Hospital or Baringo County regarding Dr. Summery, validation of disciplinary hearing minutes and other disputed records, and forensic analysis of altered emails and call records.



210. Mr. Mutuma claimed that CCTV footage was discarded after 30 days and did not present it to corroborate their claims, despite using CCTV for other operational purposes. The Respondent has not produced any policy or affidavit to confirm this position. Further, the Respondent used CCTV to monitor other company operations but declined to examine the Claimant's issue.
211. During trial, Mr. Mutuma admitted that certain claims, such as the 14<sup>th</sup> June 2017 call, were unsubstantiated and dropped. This contradicted the disciplinary hearing narrative and further demonstrated the lack of integrity in the Respondent's case. Evidence at pages 345, 350, and 365 shows that reports were also generated offline and indicate when calls were made. The Respondent alleged a "speak-up" report but failed to produce any verifiable records despite the Claimant presenting her own report as evidence that such records could be accessed.
212. Evidence of a sample speak-up report is at pages 71-85 of the Claimant's bundle, which clearly shows that it could be accessed by the Respondent since they own the systems. The Respondent presented altered disciplinary minutes and letters during the trial, and efforts by the Claimant to validate these documents via forensic experts were obstructed.
213. The Claimant informed the Respondent that Dr. Summery had not resigned from her previous employment before joining the Respondent. Upon further investigations, it was discovered that Dr. Summery had prior disciplinary and integrity concerns, including falsifying a medical report for her resignation from Baringo County.
214. The Respondent failed to investigate or address these allegations, as evidenced at pages 419-424 of the Claimant's bundle. The Claimant has demonstrated that her dismissal was procedurally and substantively unfair. The Respondent failed to conduct a thorough investigation, presented inconsistent and fabricated evidence, and neglected to address legitimate issues raised by the Claimant.
215. Section 41 of the *Employment Act*, 2007, provides that an employer shall, before terminating the employment of an employee on grounds of misconduct, poor performance, or physical incapacity, explain to the employee, in a language they understand, the reason for which termination is being considered. The employee shall be entitled to have another employee or a shop floor union representative of their choice present during this explanation. The employer is also required to hear and consider any representations made by the employee before termination. Section 45(5)(a) of the *Employment Act* provides that in deciding whether it was just and equitable for an employer to terminate an employee's contract, the court shall consider the procedure adopted by the employer, the communication of that decision, and the hearing of any appeal.
216. The Respondent failed to disclose investigation reports to the Claimant before or during the disciplinary hearing, thereby denying her a fair opportunity to prepare her defense. The Supreme Court in *Evans Odhiambo Kidero & 4 others v. Ferdinand Ndungu Waititu & 4 others* Petition No. 18 of 2014 as consolidated with Petition No. 20 of 2014 [2014] eKLR elaborated on the right to a fair hearing, emphasizing the principles of audi alteram partem and nemo judex in causa sua.
217. The Respondent's failure to provide essential documents, coupled with the presentation of altered disciplinary minutes, amounted to a denial of this right. Section 43 of the *Employment Act*, 2007, provides that in any claim arising out of termination, the employer must prove the reasons for termination, and failure to do so renders the termination unfair within the meaning of Section 45.
218. The Claimant further submitted that the Veeva platform was acquired to digitize and streamline reporting. However, the Respondent's system administrators, Allan and Judy Waweru, had significant control, including the ability to alter reports and remove clients without transparency, as evidenced in the Claimant's Bundle at page 3. A 2016 request to Judy underscores the potential for manipulation.



- The Respondent failed to disprove the Claimant's evidence of a call made on 14<sup>th</sup> June 2017, claiming it was generated offline.
219. Despite having access to Veeva's online system, the Respondent provided no counter-evidence, suggesting possible fabrication. The Claimant's trial bundle at pages 166, 168, 171, 236, 237, 238, 239, and 325 contains Veeva documents that bear distinct characteristics such as the Veeva logo (VCRM), timestamps, date, time, colour codes, and logs showing when a report or document was captured or generated.
  220. The Respondent's Veeva documents lack these features, and efforts to validate them through a forensic expert were met with resistance. The Q3 performance report (Claimant's Bundle, pages 165-166) unfairly penalized the Claimant with a zero-percent entry for Dr. Summary, despite evidence that the doctor was on-premises. Unlike other cases where corrections were made, the Respondent failed to delete this doctor from the cycle plan, indicating selective application of system corrections to disadvantage the Claimant.
  221. The Respondent asserted that Veeva issues were resolved earlier, but this was contradicted by unresolved problems as late as December 2017, evidenced in an email sent on December 19, 2017, to Kevin Mutuma (Claimant's Bundle, page 165). A report run in December still contained unresolved issues, and the cited IT ticket (UKIM20008533094) did not align with the timeline, further discrediting the Respondent's claims (Respondent's Bundle, page 23). The ticket number was not validated by a forensic expert, despite the existence of logs and timelines for ticket generation.
  222. Veeva documents in the Claimant's trial bundle exhibit distinct features such as logos, timestamps, and colour codes, absent in the Respondent's submissions. Attempts to validate the Respondent's documents through forensic review were resisted, and Mr. Mutuma admitted that some documents were Outlook-generated, contradicting earlier claims that they originated from Veeva. The Respondent persistently resisted attempts to authenticate critical logs and emails, undermining the reliability of their evidence.
  223. Edited emails, such as those on page 28 of the Respondent's Bundle, and manipulated call data, including Jacqueline Marumaki's saved status, exemplify this pattern of resistance and inconsistency. The report dated 20<sup>th</sup> December 2017, at page 2, initially implicated both the Claimant and Jacqueline Marumaki in reporting falsified calls. However, on February 15, 2018, after the disciplinary hearing, the Respondent's stance changed, as seen at page 23 of their bundle, where they stated that Marumaki had planned a call but never submitted it, resulting in a green color code indication.
  224. At page 24, the call status changed from "REPORTED" to "SAVED," demonstrating inconsistencies and manipulation of the Veeva platform to implicate and exonerate employees selectively. Key disciplinary documents were neither properly delivered to the Claimant nor authenticated. The disciplinary invite dated 2<sup>nd</sup> February 2018, remains unverified, and the Respondent's letter dated 6<sup>th</sup> April 2018 (Respondent's Bundle, page 29), along with the investigation report, lacks logs confirming delivery. The disciplinary minutes, purportedly signed by the Claimant, were finalized long after the hearing date of March 5, 2018, despite her being on medical leave. During the trial, Mr. Mutuma could not specify when the minutes were sent and received or whether the Claimant actually signed them.
  225. The Respondent failed to validate the fairness of the 2016/17 hiring process despite having access to relevant server logs and emails. Forensic access to verify these claims was denied, reflecting a lack of transparency and a possible attempt to conceal irregularities. The Respondent denied appointing the South African office to investigate the Claimant's assertions, but the Claimant's witness, Medad,



- confirmed receiving communication from the South African office, and an email to Ann Janse (Claimant's Bundle, pages 433-435) verifies this appointment.
226. The Claimant's speak-up in 2018 was necessitated by the Respondent's failure to investigate issues related to Dr. Summary and other malpractices. The 2021 speak-up report from the UK (Claimant's Bundle, page 179) shows that the Respondent downplayed the Claimant's concerns, mirroring its approach in 2018. The Respondent's inconsistent narratives, refusal to provide forensic access, and reliance on unauthenticated documents demonstrate systemic manipulation and misrepresentation. The Claimant's evidence, supported by detailed logs and contemporaneous records, establishes a pattern of unfair treatment necessitating judicial intervention.
227. In *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, Ndolo, J stated: "It is not in contest that the Claimant was taken through some form of a disciplinary process. However, upon analysis of both the investigation and the disciplinary processes, the Court formed the opinion that the Respondent failed the test of procedural fairness in that it did not take its investigations full circle. In the light of the seriousness of the allegations against the Claimant and the resultant consequences, the Respondent should have done more, but it took the easy option and placed the Claimant and the impostor on the same chopping block. For this reason, I find the termination of the Claimant's employment by way of summary dismissal unfair for want of due procedure." The Claimant submitted that while the Respondent subjected her to a disciplinary process, the investigations lacked procedural fairness.
228. The Claimant further submitted that Article 27 of *the Constitution* of Kenya, 2010, guarantees equality and freedom from discrimination, explicitly prohibiting discrimination on various grounds, including sex and health status. The Claimant faced undue pressure and harassment while pregnant, leading to health complications, prolonged bed rest, and spinal surgery. Despite these challenges, she provided evidence during the investigation, which the Respondent allegedly twisted and sabotaged.
229. In *Miriti v Co-operative Bank Kenya Limited*, Justice Rika held that "Pregnancy discrimination amounts to another form of discrimination, which is prohibited under *the Constitution* and the *Employment Act* – discrimination on account of one's sex. The European Court of Human Rights in *Jurcic v. Croatia*, Application Number 54711/15, underscored that pregnancy discrimination is sex discrimination." The Claimant's termination was used by subsequent employers to blackmail and tarnish her reputation, obstructing her career prospects.
230. The Respondent's refusal to validate critical documents and deliberate sabotage of opportunities demonstrated discrimination. The Claimant received her termination letter while on maternity leave, citing investigative conclusions that were allegedly incomplete or manipulated. The termination, issued two days after her return from maternity leave, denied her the opportunity to review or respond to the investigation's findings. The resultant emotional distress and health issues, including high blood pressure, affected her ability to breastfeed and recover post-surgery.
231. The Respondent's actions, including evidence manipulation and refusal to address grievances, resulted in the Claimant's blacklisting in the pharmaceutical industry. The Respondent's interference with job offers, including a position at Tropical Brands Africa, and subsequent employer blackmail, forced the Claimant to accept significantly lower-paying roles with reduced benefits. Pages 472 S, T, and I of the Claimant's Bundle contain communication with Linus, Chairman of Tropical Brands Africa, indicating that job offers were contingent on George's approval.
232. The Claimant submitted that she is entitled to compensation under Section 49 of the *Employment Act* for wrongful termination. Section 49(4) lists considerations such as the circumstances of termination, the employee's length of service, and loss of future employment prospects. The Claimant prayed for the



following remedies: a declaration that her termination was unlawful, wrongful, and unfair; reasonable damages for unlawful termination; compensation for discrimination, victimization, harassment, mistreatment, intimidation, and humiliation; compensation for her inability to secure employment in the pharmaceutical industry; costs of the suit with interest; and any other relief the court deems just. The Claimant so prayed.

### **Claimant's Supplementary Submissions**

233. The Claimant filed written supplementary submissions dated 18<sup>th</sup> February 2025 in response to the Respondent's submissions dated 10<sup>th</sup> February 2025, addressing various contentious issues raised therein. The Claimant contends that the termination letter dated 8<sup>th</sup> August 2018 does not specify which call led to her dismissal, despite the fact that she had already cleared her name concerning the calls of 30<sup>th</sup> January and 14<sup>th</sup> June 2017.
234. The termination letter fails to identify the alleged falsified call that purportedly amounted to gross misconduct, thereby violating Section 41 of the *Employment Act*, 2007, which mandates an employer to explain to the employee, in a language they understand, the reasons for which they are considering termination. The Claimant asserts that all compliance issues regarding document filing were addressed before the hearing and that if the Respondent had any concerns, they should have raised them at the preliminary stage.
235. The Respondent did not object to any document production during the hearing on 15<sup>th</sup> October 2024, as confirmed by their counsel's response to the Honourable Court. The Court of Appeal in *Kenneth Nyaga Mwigye v Austin Kiguta & 2 Others (2015) eKLR* held that a document becomes part of the judicial record only when it is admitted into evidence, and its proof or disproof is determined when the court applies its judicial mind to assess its veracity.
236. The Claimant states that the List of Documents 11, filed on 20<sup>th</sup> January 2023, contains email logs that were submitted to the Honourable Court as evidence of the existence and verifiability of the said emails. Despite being challenged, the Respondent failed to produce corresponding logs for the emails they filed in court.
237. It is a well-established principle that emails generate digital footprints, which manifest as logs, serving as proof of their existence and authenticity. The Respondent's failure to produce their email and VEEVA logs raises concerns regarding the integrity of their records, and the Honourable Court is urged to reject the Respondent's email and VEEVA documents as accurate and reliable records.
238. The Claimant further states that the documents in both List 4 and List 5, filed on 6<sup>th</sup> September 2021, are included in the Claimant's Bundle (CB), with List 4 occupying pages 162–176 and List 5 spanning pages 163–186. List 5b, filed on 10<sup>th</sup> January 2022, is accessible on the Judiciary Portal and included in the CB.
239. The Respondent failed to produce logs for their emails and VEEVA documents despite being challenged on this issue and also failed to comply with the Claimant's request vide the Application dated 4<sup>th</sup> April 2022 to provide their email and VEEVA logs. Section 74 of the *Employment Act*, 2007, requires employers to keep records of all employees, including details of work hours and related documents, and the Respondent's failure to produce these records upon request undermines their credibility.
240. The documents necessary for the Honourable Court to make an informed decision, including email logs, CCTV footage, recorded disciplinary sessions, and VEEVA logs, remain in the Respondent's possession. The Claimant could not access them even as an employee since they require administrative



rights, and the Respondent has refused to produce them. The court is left only with the Respondent's narrative of a falsified call, yet there is no hard evidence to show when the calls were input or whether they were tampered with. The Respondent had rights to edit, add, and delete calls, as indicated on RB page 24 of the call report.

241. The Claimant contends that she exposed malpractices within the Respondent's premises, leading local employees to escalate concerns to the parent office in the United Kingdom, as detailed on pages 182–183 of the CB. Witness testimony confirms bias by business leaders, notably Bridget Wachira, who once took credit for the Claimant's award. There is no evidence that the Claimant used social media to disseminate the allegations cited by the Respondent, and court documents are public and accessible by any interested party, just as the Respondent accessed the Claimant's previous case, E226/2021, and filed related documents in the present case.
242. The Respondent's Commercial Excellence Team, including Allan Otieno and Judy, failed to remove Dr. Summery and eight other pharmacy contacts from the system despite a request from the Claimant in September 2017. This negatively impacted the Claimant's performance, as her performance was evaluated in comparison to her colleagues'. The issue remained unresolved despite assurances, and the Claimant raised it again on 19<sup>th</sup> December 2017 in her meeting with PW1, but her requests were ignored.
243. The Claimant suffered victimization and discrimination during pregnancy, including prolonged bed rest, which caused mental anguish and distress, eventually leading to neck pain and arm weakness requiring surgery in June 2018. Dr. Musau's letter confirms the surgery, as evidenced on CB page 47, and that between June and September 2018, she was under his care.
244. The operational use of the VEEVA platform contains significant gaps, and the Respondent denied access to the system, preventing both the Claimant and the court from verifying crucial details, despite the application dated 4<sup>th</sup> April 2022 to have forensic experts examine the system. The Respondent continues to withhold key evidence, including email logs, CCTV footage, and VEEVA records, which the Claimant could not access even as an employee. Despite multiple requests, the Respondent has failed to produce them, leaving the claim of falsified calls unsubstantiated.
245. The application dated 4<sup>th</sup> April 2022 sought to validate documents, but on 7<sup>th</sup> December 2022, the trial judge, Lady Justice Ann Mwaure, directed that the matter proceeds to trial instead of delaying validation. Despite this court order, the Respondent denied access to the requested documents on 17<sup>th</sup> December 2022 and 10<sup>th</sup> January 2023, citing the need to print additional documents.
246. The Respondent only applied for a stay order on 20<sup>th</sup> January 2023 after the Claimant had requested a hearing date. The Respondent has repeatedly misrepresented facts, including the investigation report and the availability of key statements. An affidavit by David Swao, signed on 6<sup>th</sup> June 2022, contradicts the Respondent's claim that all statements are available upon request. The Respondent refused to produce Mr. Allan Otieno for examination by a forensic expert despite a court request and resisted the Claimant's request for Dr. Summery's presence, even though she was central to the dispute.
247. The Claimant asserts that her admission of logging a call does not constitute gross misconduct, as she acted within her employment mandate, and the VEEVA system allowed for post-entry edits by administrators. The Respondent failed to demonstrate that the Claimant breached her contract, as they did not allow forensic validation of the calls in question or produce supporting logs. Instead, they sought to shield Dr. Summery and prevent scrutiny of her statements.
248. The Claimant's record of integrity and high performance is evident from her eight-year tenure, multiple awards, and significant bonuses, including a near-maximum payout of Kshs. 497,000 in 2016.



- The Claimant's termination was based on fabricated evidence, as the Respondent flagged the issue ten months after the alleged incident, relying on internal rumours rather than substantive proof.
249. The Respondent violated its whistleblowing policy by protecting Dr. Summery despite concerns regarding her credibility. If the Speak Up report of 17<sup>th</sup> October 2017 exists, the Respondent should have presented its log records, and their failure to do so casts doubt on its authenticity. The Respondent's continued refusal to allow forensic validation suggests deliberate concealment of evidence, and their actions have severely impacted the Claimant's career, as potential employers have cited her termination as a red flag.
  250. The Claimant requested the investigation report as she was invited to a meeting where she was supposed to be given the report, but instead, Daphne handed her a termination letter while casually stating that nothing was found to be substantiated. Despite holding BSc and MBA qualifications, the Claimant was compelled to take low-paying jobs to maintain relevance in the job market.
  251. Many organizations and industry professionals acknowledged her competence and strong work ethics but refrained from hiring her due to unfavourable background checks linked to the unfair termination by the Respondent. The Claimant salary disputed the payslip presented in court by the Respondent at RB page 30, stating that she was earning Kshs. 262,460, which was confirmed by RW1 on cross-examination and also in the Respondent's defense, showing contradictions in their evidence.
  252. The Respondent violated their disciplinary code, which requires full investigations before disciplinary action, as outlined on page 6 of the Respondent's bundle. The Respondent failed to follow their own policy, as evidenced by their handling of the Claimant's case. The Claimant has established that her termination was unfair and based on fabricated evidence.
  253. The Respondent failed to conduct a proper investigation, selectively protected certain employees, and denied the Claimant access to evidence crucial to her defense. Given the procedural irregularities, the Claimant seeks appropriate relief from this Honourable Court as prayed.

### **Respondent's Case**

254. The Respondent filed a Statement of Response dated 10<sup>th</sup> December 2021, denying each and every allegation contained in the claimant's Memorandum of Claim dated 24<sup>th</sup> May 2021, except where expressly admitted. The Respondent admitted paragraphs 1 and 2 of the claim, save to clarify that its registered office is only in Kenya and that its address for service in these proceedings is care of Hamilton Harrison & Mathews Advocates.
255. The Respondent admitted paragraphs 3 and 4 of the claim. Paragraph 5 was admitted only to the extent that it described the tasks assigned to the Claimant per her job description. The respondent admitted that, at the time of termination, the Claimant was earning a gross monthly salary of Kshs. 260,000.
256. In response to paragraphs 7 and 8 of the claim, the Respondent stated that the Claimant, as a medical sales representative, was responsible for selling its products to various customers, including hospitals, doctors, nurses, and pharmacies. Once clients were onboarded, they were recorded under the claimant's sales line target, and she was required to conduct regular follow-ups and log calls with clients on the respondent's Veeva platform, a cloud-based content management system used by life sciences companies to input data in real time. This platform enabled the respondent to continuously monitor employee performance.
257. In response to paragraphs 9 to 12, the respondent stated that on 17<sup>th</sup> October 2017, a report was made through the respondent's Speak-Up channel alleging that false call records had been entered into the Veeva platform. On 31<sup>st</sup> October 2017, the Respondent's Ethics and Compliance Manager confirmed



receipt of the allegation and initiated investigations. The investigation revealed that two employees, including the Claimant, had recorded false calls in January and July 2017.

258. It was established that the doctor allegedly contacted was unavailable in January due to a nationwide doctors' strike and was also absent in July 2017. The Respondent found that this conduct breached Clause 2.4.2 of its disciplinary code, which prohibits falsifying company records or dishonestly obtaining money or property from the company, its customers, or suppliers, constituting gross misconduct.
259. Following the investigation, the Respondent initiated disciplinary proceedings against the Claimant and invited her to a disciplinary hearing via a letter dated 2<sup>nd</sup> February 2018, which set out the allegations and provided details of the hearing. The Claimant was informed that she could be accompanied by a colleague. The disciplinary hearing was conducted on 6<sup>th</sup> February 2018, during which the Claimant was afforded adequate time to respond to the allegations.
260. The Respondent established that there were no entry errors on the Veeva system and that the doctor in question was unavailable on 30<sup>th</sup> January 2017, contradicting the Claimant's call logs. The Claimant raised concerns regarding the Veeva system, and the Respondent provided clarification on 22<sup>nd</sup> February 2018, after which the Claimant admitted that the issue had been resolved. The Claimant also made allegations against another employee, Dr. Summery, but failed to provide supporting evidence.
261. The Claimant's employment was terminated on 8<sup>th</sup> August 2018. She initially chose to appeal but later withdrew the appeal, bringing the matter to an end. Despite this, she continued to write to the respondent's South Africa office, which found no basis to reopen the case. In February and March 2021, the Claimant reported the matter to GlaxoSmithKline Pharmaceuticals, United Kingdom, which conducted an independent investigation and found her allegations unfounded.
262. The Respondent denied that the Claimant was on maternity leave from the date of the disciplinary hearing until her termination, stating that she returned to work on 6<sup>th</sup> August 2018 and was terminated on 8<sup>th</sup> August 2018. While the investigations had been concluded before the Claimant proceeded on maternity leave, the Respondent waited until her return from maternity and sick leave to communicate the outcome of the disciplinary proceedings.
263. The Respondent admitted that GlaxoSmithKline South Africa appointed a team to investigate the Claimant's complaints but denied the allegations in paragraph 15 of the claim, putting the Claimant to strict proof.
264. The Respondent denied the allegations in paragraphs 16 and 17, reiterating that investigations were conducted, a disciplinary hearing was held, and the Claimant's contract was lawfully terminated. The Respondent also denied the allegations in paragraph 18, putting the Claimant to strict proof. It was noted that the Claimant admitted that doctors were on strike on 30<sup>th</sup> January 2017 and that she had only met the doctor in question once during the strike period.
265. Further, the Claimant admitted that some of her engagements with the doctor were unrelated to selling the Respondent's products. The Respondent rejected the Claimant's allegations against Dr. Summery, stating that any alleged failure by Dr. Summery to notify the County Government of Baringo about her study leave was irrelevant to the dispute.
266. The Respondent denied that the Claimant failed to secure alternate employment due to reputational damage, asserting that she had not produced any supporting evidence. The Respondent further stated that the Claimant was offered a short-term contract with another employer but later responded to a



- show-cause letter dated 21<sup>st</sup> September 2020 from her new employer. The reasons for her departure from that role were unknown to the Respondent.
267. In response to paragraphs 19 to 29, the Respondent reiterated that the Claimant was employed as a medical sales representative from 5<sup>th</sup> October 2011 until her termination on 8<sup>th</sup> August 2018 due to misconduct. The Claimant was engaged under a contract of employment and was duly remunerated for her services.
268. The Respondent maintained that it was entitled to commence disciplinary action for breach of contract and subsequently terminate the Claimant's employment when her conduct warranted such action. The Claimant had applied for various roles within the company but was unsuccessful because other candidates were better suited for the positions. The Respondent denied that the Claimant was victimized, harassed, intimidated, or mistreated.
269. Paragraph 30 of the claim was a repetition of paragraph 18, with additional sub-paragraphs, to which the Respondent reiterated that it had the right to initiate disciplinary action and terminate the claimant's employment for cause. The Claimant had not specified what CCTV footage she required, and the Respondent noted that its CCTV system did not have audio capabilities and could not verify any discussions between the Claimant and Dr. Summery. Moreover, the CCTV at Kenyatta National Hospital was outside the Respondent's control.
270. The Respondent denied the allegations in paragraph 31 and put the Claimant to strict proof. It stated that the claim for salary until retirement was baseless, as the contract was terminable for cause and did not guarantee lifetime remuneration. The Claimant was interviewed for the role of Key Account Manager but was not appointed as there were better-suited candidates. The Respondent denied that it curtailed the Claimant's career growth, reiterating that her employment was lawfully terminated due to misconduct and that any alleged loss was a result of her actions.
271. The Respondent denied paragraph 32, asserting that the claimant's contributions were acknowledged and rewarded, with her last award received in 2016, two years before her termination. The respondent reiterated that the claimant's misconduct was addressed in the show-cause letter, investigated, and discussed at the disciplinary hearing. The Respondent maintained compliance with the law and stated that the claimant was not entitled to damages.
272. The Respondent further denied preventing the Claimant from resigning if she so wished. The Respondent clarified that the Claimant was not terminated while on maternity or sick leave; rather, she went on bed rest, maternity leave, and sick leave, and only after her return was the disciplinary process concluded. The Claimant was paid her terminal dues.
273. The Respondent denied that the Claimant was entitled to any of the reliefs sought. It asserted that the Claimant had no cause of action against it and that her termination was valid and lawful. The claim for compensation for unlawful termination was unfounded, and the claimant had failed to demonstrate any form of victimization, harassment, mistreatment, or intimidation. Consequently, the respondent prayed that the claim be dismissed with costs.

### **Reply to Statement of Response**

274. The Claimant filed a reply to the statement of response dated 4<sup>th</sup> January 2022, joining issues with the Respondent on its statement of response. In answer to paragraph 4 of the response, the Claimant reiterated the contents of paragraph 5 of the claim entirely. In response to paragraph 5 of the response, the Claimant reiterated the contents of paragraphs 5 and 6 of the claim and further stated that her monthly salary was Kshs. 262,460 as per documentation.



275. In reply to paragraph 6 of the response, the Claimant reiterated the contents of paragraphs 7 and 8 of the claim and maintained that she was tasked with various duties, including sales of human drugs, key account management for hospitals and distributors, project management, product detailing to doctors, people management, managing CRM VEEVA Platform reports, and organizing annual doctor conferences/CMEs. She contended that the Veeva System was under the control of the Respondent's System Administrator for East and West Africa, Allan Otieno, who had the ability to manipulate it by adding or deleting information, including calls posted by employees.
276. The Claimant further stated that the Veeva System recorded errors on different occasions, including erroneous loading of sales line targets (SLTs) for medical representatives, citing her own experience in Quarter 3 of 2017 where nine contacts were erroneously loaded. The Claimant also raised concerns about missing calls for Dr. Caroline Mwangi, a Lecturer Anaesthetist at Kenyatta Hospital, and errors regarding visits to Dr. Kiprop Biwott, which the system reflected inaccurately despite real-time reporting.
277. The Claimant stated that employees could only post information on the Veeva System but had no further control over it without intervention from the System Administrators. She further asserted that the "Speak-Up" reporting system, allegedly used against her, did not disclose the identity of the person making the report, and she insisted on strict proof of the alleged report.
278. In response to paragraph 7 of the statement of response, the Claimant reiterated the contents of paragraphs 9, 10, 11, and 12 of the claim. She stated that the report dated 17<sup>th</sup> October 2017 through the Speak-Up Channel may have been made, but the respondent was unable to identify the individual who made it. She noted that this report was generated after she had emailed Allan Otieno and Judy Waweru, System Administrators at GSK, requesting the removal of Dr. Summery's name from the Quarter 3 SLT 2017, as Dr. Summery had become an employee of GSK and was no longer a client.
279. This request followed an incident where Dr. Summery confronted her at the tea area in the GSK offices in Industrial Area. The Claimant stated that she was invited to give a statement for investigation purposes in mid-December 2017 through an email from Kevin Mutuma and that during her appearance in the HR Board Room, she highlighted all the issues related to Dr. Summery.
280. The Claimant questioned Kevin Mutuma about two other entries during the doctors' strike on 7<sup>th</sup> December 2016 and 23<sup>rd</sup> January 2017 in the Veeva Platform, to which he responded that those dates were acceptable based on Dr. Summery's statement, but she disputed the entry for 30<sup>th</sup> January 2017, claiming she was attending a burial that day. The Claimant stated that she provided an obituary to confirm that she had seen the doctor on 30<sup>th</sup> January 2017.
281. The Claimant further asserted that the Respondent's investigation initially focused on two dates: 30<sup>th</sup> January 2017 and 14<sup>th</sup> June 2017 - but the Respondent later dropped the 14<sup>th</sup> June 2017 entry after confirming that Dr. Summery was engaged in a session at the Nairobi University anaesthesia program at Kenyatta National Hospital (KNH) on that date.
282. The Claimant noted that the Respondent remained silent on the fact that VEEVA was under its control and could be manipulated at will. She also stated that VEEVA was incapable of showing the location where a doctor was seen or contacted since a single doctor might practice at multiple hospitals. The Claimant alleged that she was never furnished with any investigative report but was only invited for a disciplinary session. She requested that three colleagues—Joseph Ruto, Patricia Sadera, and Fredrick Luvayo—accompany her to the disciplinary session, but they declined, citing fear of victimization by the General Manager and her associates.



283. The Claimant stated that her disciplinary session lasted from 2:00 PM to 3:00 PM and was immediately followed by that of Jackline Marumaki from 3:00 PM to 4:00 PM, as the accusations were against both of them. She further alleged that after the disciplinary process, Kevin Mutuma established that she had made a Speak-Up report to the UK Office through Ane Janse, the appointed lead investigator. Mutuma allegedly informed the leadership team about the malpractices exposed to the UK Office, after which the respondent purportedly exonerated Jackline Marumaki by claiming that her call had been saved but not submitted.
284. In reply to paragraph 8 of the response, the Claimant reiterated the contents of paragraph 13 of the claim and further averred that the respondent had audio recorded the disciplinary proceedings, which she requested to be made available for court analysis. She stated that the disciplinary meeting was attended by Daphne Openda (Head of HR, GSK East Africa), Allan Otieno (Commercial Excellence Manager), James Mbogo (her Sales Manager), Kevin Mutuma (HR Associate), and herself, Pauline Gichuki. She noted that at the beginning of the session, she was informed that the proceedings were being audio recorded by Kevin Mutuma.
285. The Claimant alleged that she was not given adequate time to respond and was silenced by Daphne Openda when she sought clarification about the 14<sup>th</sup> June 2017 entry. She reiterated that her concerns about VEEVA system errors were never addressed during the disciplinary session, despite her raising them. Instead, the discussion focused on specific dates when she had conducted accompanied calls with GSK Head of Africa Sir David Prichard and Manager Phiona Thaara during the doctors' strike from December 2016 to April 2017.
286. The Claimant further asserted that despite reporting meetings with Dr. Summery on 7<sup>th</sup> December 2016 and 23<sup>rd</sup> January 2017 on the Veeva Platform in real time, only the 30<sup>th</sup> January 2017 entry was disputed. She emphasized that the Respondent had failed to address the issues she had raised regarding the Veeva System and that the disciplinary process had been unfairly conducted. She claimed that the Respondent later extracted minutes from the audio recording and sent them to her for approval, but she declined to approve them as they were allegedly corrupted.
287. The Claimant demanded that the full audio recording, which remained in the Respondent's possession, be availed in court. She denied admitting that the issues had been clarified and insisted that the allegations against Dr. Summery were fully evidenced. The Claimant stated that she chose to withdraw her appeal because she was not receiving any support from the Respondent, which had already decided to terminate her employment.
288. In response to paragraphs 9 and 10 of the statement of response, the Claimant reiterated the contents of paragraph 14 of the claim. She stated that she was pregnant during the disciplinary proceedings and that the stress led her to seek medical attention at Aga Khan Hospital, where Dr. Wanyonyi put her on bed rest. She asserted that, contrary to the respondent's claim, she had proceeded on medical leave two months before maternity leave. She further alleged that she was never furnished with the UK investigation report, as the respondent claimed that investigations had been completed in Kenya in 2018.
289. The Claimant continued to reiterate the contents of various paragraphs of her claim in response to the remaining paragraphs of the respondent's statement. She maintained that the allegations against her were fabricated, that she had been an award-winning employee, and that her termination was unjustified. She further asserted that she had been openly victimized for being outspoken and had been denied opportunities for career advancement despite her outstanding performance.



290. The Claimant insisted that the Respondent had CCTV footage and biometric log-in data that could confirm her limited presence at GSK offices, which she requested to be produced. She also reiterated that the allegations against Dr. Summery formed the basis of her case and that her engagement with Dr. Summery had been in line with her professional duties. She contended that the claim for salary until retirement was justified, as the termination lacked valid grounds.
291. The Claimant concluded by insisting that the Respondent had no valid reason to terminate her, that she had a legitimate claim against it, and that she had been victimized, harassed, mistreated, intimidated, and humiliated. She stated that she would prove these claims in court and maintained her entitlement to all reliefs sought.

### **Respondent's Witness Statement**

292. The Respondent filed a witness statement dated 23<sup>rd</sup> February 2022 through Kevin Mutuma, who is employed as the Human Resource Manager – Employee Relations. He stated that the Claimant was employed as a medical sales representative effective 4<sup>th</sup> April 2011 until 8<sup>th</sup> August 2018, when her employment was terminated for cause. The Claimant's role involved selling the Respondent's products to various customers, including hospitals, doctors, nurses, and pharmacies.
293. Upon onboarding clients, their details were recorded on the Claimant's sales line target, and she was required to make follow-ups and log calls on the Respondent's Veeva platform. Veeva is a cloud-based content management system that allows employees to input data both offline and in real time, capturing engagement details. It is used for monitoring employee performance and includes an analytics component known as Qlikview, which tracks employees' scores against set targets.
294. On 17<sup>th</sup> October 2017, a complaint was reported on the Respondent's Speak-Up channel, alleging that false call records had been input into the Veeva platform. The Speak-Up channel is a confidential platform for employees to raise concerns, which are then investigated. The Ethics and Compliance Manager received the complaint and forwarded it to the Human Resource Department on 31<sup>st</sup> October 2017 for further action.
295. The Respondent commenced investigations, and Kevin Mutuma was appointed as the investigator. The investigation entailed interviewing the personnel mentioned in the complaint, other relevant employees, and reviewing the local disciplinary policy. The findings established that two employees, including the Claimant, had falsified call records in January 2017 and July 2017. The alleged calls involved a doctor who was not at work in January 2017 due to a nationwide doctor's strike and was also unavailable in July 2017.
296. The false entries constituted a breach of the Respondent's Code of Conduct and a violation of Clause 2.4.2 of the disciplinary code, which prohibits falsifying time records or company documents or dishonestly obtaining money or property from the company, customers, or suppliers, amounting to gross misconduct. The investigation report was produced at pages 1 to 2 of the Respondent's bundle, in a redacted version for confidentiality.
297. Based on the findings, it was recommended that disciplinary proceedings be instituted against the Claimant. Under Clause 2.2.6 of the disciplinary code, the appropriate sanction for gross misconduct was dismissal. The Claimant was invited to a disciplinary hearing via a letter dated 2<sup>nd</sup> February 2018, which set out the allegations and informed her of the date, time, and venue of the hearing. She was also advised that she could be accompanied by a staff member.
298. The disciplinary hearing took place on 6<sup>th</sup> February 2018, with the Claimant being accorded adequate time to respond. It was established that there were no entry errors on the Veeva system and that



- the doctor in question was not available on 30<sup>th</sup> January 2017 and could not have been seen by the Claimant.
299. The minutes of the disciplinary hearing are at pages 17 to 20 of the Respondent's bundle. In the course of the investigation, the doctor confirmed via email dated 22<sup>nd</sup> December 2017 that she was not at the hospital on 30<sup>th</sup> January 2017 as she was attending to funeral preparations for a friend. She also reiterated that she was not at work due to the ongoing doctors' strike.
300. During the hearing, the Claimant raised concerns about the Veeva system, which were addressed by Allan Otieno, the Commercial Excellence Manager. Mr. Otieno explained that where calls were recorded but did not appear in the system, the likely cause was incomplete synchronization due to poor network connections. He clarified that once a call entry was correctly submitted, the system's colour code changed from red to blue, confirming submission. He further stated that it was not possible to record an entry on one date and have it reflect on another.
301. Some records may not have been visible to the claimant when using the offline platform, but all records were maintained on the online system. He also stated that while calculation errors could occur, entry errors could not. The Respondent further investigated the Claimant's concerns and shared the feedback. Mr. Otieno prepared a report, which was forwarded via an email dated 15<sup>th</sup> February 2018, and is produced at pages 22 to 27 of the Respondent's bundle. The report confirmed that all calls made by the Claimant had been accurately logged in the Veeva system. The Claimant admitted that the issue had been clarified in an email dated 22<sup>nd</sup> February 2018, produced at page 28 of the Respondent's bundle.
302. The Respondent stated that neither management nor any other employee could alter entries in the Veeva system. If an issue arose, employees were required to raise an IT ticket, which the claimant did not do regarding her allegations of manipulation. Further, the Claimant admitted that doctors were on strike on 30<sup>th</sup> January 2017 but still logged a call for that date. She also admitted that she only saw the doctor in question on one occasion during the entire strike period.
303. The Claimant further conceded that some of her engagements with the doctor were unrelated to selling the Respondent's products. Correspondence to this effect is at page 56 of the Claimant's bundle. The Claimant also made allegations against another employee, Dr. Summery. The Respondent investigated these allegations but was not obligated to disclose details of an investigation against another employee.
304. Following the disciplinary hearing, the Respondent was placed on bed rest and thereafter proceeded on maternity leave, returning to work on 6<sup>th</sup> August 2018. Although the investigation was concluded in December 2017 and the disciplinary hearing in February 2018, the Respondent did not immediately terminate the Claimant's employment. Instead, she was allowed to rest and proceed on maternity leave.
305. The Claimant was informed of this by a letter dated 6<sup>th</sup> April 2018, produced at page 29 of the Respondent's bundle. Upon review of the case, the Respondent was satisfied that the Claimant's conduct amounted to gross misconduct. Her employment was terminated through a letter dated 8<sup>th</sup> August 2018, which is at page 33 of the Claimant's bundle. The Claimant initially appealed the termination via a letter dated 8<sup>th</sup> August 2018 but later withdrew the appeal. The appeal letter is at page 49 of the Claimant's bundle.
306. The Respondent asserted that following the withdrawal of the appeal, the matter was considered closed. However, the Claimant continued corresponding with the GlaxoSmithKline South Africa office, which informed her that the case could not be reopened months after she had withdrawn her appeal. Correspondence between the Claimant and the South Africa office is at page 62 of the Claimant's bundle.



307. In February and March 2021, the Claimant lodged further complaints with GlaxoSmithKline Pharmaceuticals in the United Kingdom, making various allegations against the Respondent. The Respondent contended that these allegations were unsubstantiated and that the Claimant had persisted in making baseless claims. Among other things, she alleged that the recruitment process at the Respondent company was flawed. However, she did not provide evidence for this claim.
308. The Respondent maintained that its recruitment process was rigorous and thorough to ensure the best candidates were selected. The Claimant applied for the role of Key Account Manager but was unsuccessful as there were better-suited candidates, and due process was followed.
309. The Respondent further stated that the allegations were investigated and found to be unfounded. The Claimant's continued reports to the Respondent's global offices were deemed to constitute harassment. The Respondent stated that it had no knowledge of the Claimant's applications for new roles or the reasons she was not offered any positions.
310. The Respondent maintained that it had valid reasons for terminating the Claimant's employment, acted in compliance with the law, and afforded the Claimant due process. The Claimant was not victimized, harassed, mistreated, intimidated, or humiliated, and any claims for damages were without basis. The Respondent also asserted that the Claimant's terminal dues were computed and paid, with a copy of her final payslip at page 30 of the Respondent's bundle. The Respondent therefore urged the Court to dismiss the Claimant's claim with costs.

### **Respondent's Written Submissions**

311. The Respondent filed written submissions dated 10<sup>th</sup> February 2025, opposing the Claimant's claim for damages for unlawful termination and compensation for alleged mistreatment. The Claimant filed a 20-page statement of claim dated 11<sup>th</sup> March 2021, supported by nine witness statements and 13 bundles of documents, later consolidated into a single bundle filed on 26<sup>th</sup> February 2024. The consolidated bundle, however, contains inconsistencies with earlier filed documents, including missing or inserted lists and varying dates.
312. The Claimant also filed documents after the close of pleadings without the leave of the court, attempting to cure weaknesses in her claim after the Respondent had filed its response and supporting documents. The Respondent contends that such conduct constitutes an abuse of court process. The consolidated bundle of 26<sup>th</sup> February 2024 varies from the individual bundles in several respects, such as the misplacement of documents and the introduction of a previously unfiled list dated 10<sup>th</sup> January 2022 at page 206. The Claimant also submitted documents labelled as "original event logs," which contain undecipherable content meant to challenge the authenticity of the Respondent's documents.
313. The Respondent argued that the Claimant's conduct extended to the witness statements, which contain false, malicious, and defamatory allegations against the Respondent and its employees, none of whom are parties to the suit. The Claimant's allegations of corruption, fraud, nepotism, and tribalism are unsubstantiated and demonstrate her character rather than any valid claim.
314. The Claimant further repeated these allegations on social media and in sworn testimony. The Respondent invoked Section 55(2) of the *Evidence Act* and submitted that the court should consider the Claimant an unreliable witness, placing little probative value on her evidence. The witness statement of David Swao [RW2] dated 3<sup>rd</sup> April 2023 and the supplementary bundle filed on 4<sup>th</sup> April 2023 [SRB I – 133] provide evidence of sustained attacks by the Claimant against various persons, including the Respondent's counsel, whom she accused of bribing court officers and issuing threats.



These allegations, evidenced in SRB pages 49, 53, 67, 68, and 70–73, further call into question the credibility and bona fides of the Claimant’s suit.

315. The Respondent maintained that the Claimant had artificially multiplied claims and reliefs, seeking double compensation and unjust enrichment. The claims include compensation for unfair termination, damages under a separate head, and salary up to retirement, among others. The allegations of victimization, harassment, mistreatment, and intimidation, if at all proved, would form part of an unfair labour practices claim and would be subject to the statutory cap under Section 49 of the *Employment Act*.
316. Splitting heads of claim is mischievous and an abuse of process. The respondent relied on the judgment in ELRC No. 1189 of 2014, *Alfred Muthomi Malivia & 2 Others v National Bank of Kenya Limited* (2018) KEELRC 1501 (KLR), where the court held that awarding general damages for violations already compensated under Section 49(1) of the *Employment Act* amounts to double compensation and unjust enrichment. The Respondent submitted that the only issue for determination is whether the Claimant’s employment was fairly terminated, as no particulars of victimization, discrimination, harassment, or intimidation were specifically pleaded, particularized, or proved.
317. The Respondent submitted that in determining the fairness of the termination, the court must assess the validity of the reasons given and whether due process was followed. Under Section 45(2) of the *Employment Act*, a termination is fair if it relates to the employee’s conduct, capacity, compatibility, or the operational requirements of the employer. Section 47(5) places the burden on the employee to prove unfair termination, while the employer bears the burden of justifying the grounds for termination.
318. Section 43 provides that the reasons for termination are those the employer genuinely believed to exist at the time of termination. The Claimant must provide cogent evidence to prove unfair termination, yet she has relied on allegations and opinions without discharging this burden. The Respondent has demonstrated that the Claimant falsified records and that due process was followed in terminating her employment.
319. The Claimant’s employment as a medical representative required her to record sales and engagement data accurately on the respondent’s Veeva platform, which was used for performance evaluation. False data entries could result in incorrect scores and undeserved remuneration, violating the fundamental terms of the Claimant’s contract. The respondent’s “Speak Up” channel, which the claimant acknowledged using, allows employees to report concerns.
320. A complaint was lodged on 17<sup>th</sup> October 2017 about false records entered into the Veeva system, which was forwarded to the Human Resource Department on 31<sup>st</sup> October 2017 for investigation. The investigation, conducted by RW1, found that the claimant and one Jacqueline Murakami had recorded false calls. The Claimant disputed the timing of Dr. Sitima’s email [RB21] relative to the investigation report.
321. However, RW1 clarified that the investigation involved multiple interviews, and Dr. Sitima’s email was a follow-up to earlier discussions. The investigation covered calls recorded on 30<sup>th</sup> January 2017 and 14<sup>th</sup> June 2017. On 19<sup>th</sup> December 2017, RW1 met with the claimant to hear her explanation. Dr. Sitima later clarified on 22<sup>nd</sup> December 2017 that she had confused funeral dates but confirmed she did not meet the claimant on 30<sup>th</sup> January 2017.
322. The Respondent gave the Claimant the benefit of the doubt regarding the 14<sup>th</sup> June 2017 call, meaning no disciplinary action was taken on that date. The Claimant’s reference to screenshots from CB pages



- 174–175 to argue that the call did not exist is misleading, as the images are from a calendar view rather than a log of submitted calls.
323. The Claimant’s attacks on Dr. Sitima, alleging personal conflicts and corruption, are unfounded. Witnesses CW2, CW3, and CW4 did not support the Claimant’s claims. CW2, not a doctor, merely confirmed meeting the Claimant at a 2017 Kenya Association of Obstetricians and Gynaecologists Conference. CW3 and CW4 never worked for the Respondent and were unaware of the Claimant’s disciplinary issues. CW4, a doctor, confirmed that while some doctors worked during the strike, others did not, and she did not know whether Dr. Sitima worked during that period. No evidence was presented to contradict Dr. Sitima’s confirmation that she did not meet the Claimant on 30<sup>th</sup> January 2017 [RB21].
324. The Claimant’s allegation of favouritism toward Jacqueline Murakami is incorrect. RW1 confirmed that while a complaint was made against Murakami, she was exonerated as she had only logged a planned call rather than submitting a false record. The Claimant, in contrast, logged the call as completed. Under Section 43 of the *Employment Act* and Clause 2.4.2 of the respondent’s disciplinary code [RB9], falsifying records constituted gross misconduct.
325. The Court of Appeal in *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 Others* (2019) eKLR held that a court must not substitute its own views for those of the employer when assessing the validity of a termination but should consider whether a reasonable employer could have dismissed the employee based on the facts. The Employment and Labour Relations Court in *Robert Kenga & Another v Ocean Sports Resort* [2015] eKLR held that the standard for proving the reason for termination is subjective, based on what the employer genuinely perceived at the time.
326. The Respondent further submitted that the Claimant’s allegations of document fabrication are unsupported. The claimant sought an order on 4<sup>th</sup> April 2022 for a forensic expert to access the Veeva system, retrieve reports and emails, and obtain recordings of the disciplinary hearing. The application was allowed on 7<sup>th</sup> December 2022, but the respondent was granted leave to appeal. A Notice of Appeal was filed on 16<sup>th</sup> December 2022, followed by an application for a stay of proceedings on 20<sup>th</sup> January 2023.
327. When the stay application was heard on 6<sup>th</sup> February 2023, the Claimant’s counsel abandoned the request for analysis and system access, effectively conceding to the appeal. The claimant cannot now claim that the respondent failed to provide documents. Allegations in paragraphs 32, 34, 36, 47, 51, 58, 72, and 77 of her submissions regarding contempt or unfair treatment are misleading and made in bad faith.
328. The Respondent further submitted that the Claimant’s allegations regarding due process lacked merit. The claimant had taken issue with the process on three grounds: failure to clarify facts and provide adequate responses, failure to conduct comprehensive investigations, and failure to provide the evidence relied upon, including witness statements and the investigation report by RW1.
329. The Respondent argued that no breach of its disciplinary policy had been demonstrated. The claimant had failed to request for key witnesses, including Dr. Sitima and Allan Otieno, to be summoned for cross-examination as provided under Clause 2.2.4 of the respondent’s Disciplinary Action and Procedure and could not now fault the respondent for not doing so. Further, the respondent was not required to conduct a forensic examination of the facts, as held by the Court of Appeal in *Reuwel Waithaka Gitahi & another v Attorney General & 2 others* (Civil Appeal 98 of 2019) [2022] KECA 486 (KLR).



330. Regarding the alleged failure to clarify facts, the Respondent submitted that the Claimant had not specified what facts required clarification. The disciplinary process pertained to the falsification of a call with Dr. Sitima when the doctor was still part of the claimant's SLTs. The claim that the Respondent failed to remove Dr. Sitima from the Claimant's portfolio was irrelevant.
331. Further, the allegation that the Respondent declined to examine the claimant's issue despite monitoring company operations was unfounded, as the CCTV footage had already been deleted pursuant to the respondent's 30-day retention policy. The respondent urged the court to take judicial notice that CCTV data is not retained indefinitely, as recognized in *Republic v Njoroge & 2 others (Criminal Case 13 of 2018)* [2023] KEHC 2837 (KLR).
332. On the issue of inadequate investigations, the Respondent submitted that the claimant had failed to establish how the alleged failure to investigate Dr. Sitima's previous employment status was connected to the charge of falsifying records. The respondent's Forensic Accounting Specialist, Corporate Investigations, had informed the claimant via an email dated 9<sup>th</sup> April 2021 that the matter had been investigated and found unsubstantiated. The allegation that there was malice due to the delay of ten months in raising the issue of falsification was incorrect.
333. No limitation period exists for an employer to investigate employee misconduct. In any case, the investigation was initiated on 17<sup>th</sup> October 2017 and referred to RW1 by the Ethics and Compliance Manager on 31<sup>st</sup> October 2017, demonstrating prompt action. The claim that the claimant's complaints were downplayed was also refuted, as documents on record confirmed that the HR Transactions and Effectiveness Manager, Ane Janse, had forwarded the claimant's concerns to the investigation team and followed up on the matter.
334. The respondent also contended that the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] KEELRC 386 (KLR), cited by the claimant, was inapplicable. In that case, the employer failed to act on a letter alleging impropriety. By contrast, in the present case, the complaint was investigated and action was taken.
335. Concerning the failure to provide evidence, the Respondent submitted that the Claimant's allegations were unfounded. The Speak Up platform was confidential and anonymous, and the disciplinary process followed an independent investigation. The Respondent did not blindly act on an anonymous complaint. The Claimant did not request a copy of the investigation report before or during the disciplinary hearing and could not raise the issue after the fact.
336. The court in *Wilson Mutabari Mworira v Barclays Bank of Kenya Limited* [2021] KEELRC 541 (KLR) held that the critical test in determining the fairness of a disciplinary process is whether the employee was sufficiently informed of the allegations against them. The Claimant was aware of the allegations, participated in the disciplinary process, and was not prejudiced by the absence of the investigation report. Similar principles were upheld in *Sidika v Judicial Service Commission (Cause E039 of 2023)* [2024] KEELRC 13348 (KLR).
337. The Respondent further submitted that the Claimant was duly invited to the disciplinary hearing and informed of the charges against her. Before the hearing, she met with RW1 and was given an opportunity to present her side. The claim that the process was flawed due to the non-disclosure of the investigation report was thus baseless. The Claimant also failed to demonstrate the relevance of investigation reports from Kenyatta National Hospital and Baringo County Government to her disciplinary case. These reports were sought to establish alleged hostility between her and Dr. Sitima, which was immaterial to the charge of falsifying records.



338. The Respondent dismissed the claimant's allegations that RW2 denied the existence of witness statements. RW2's affidavit, sworn on 6<sup>th</sup> June 2022, did not state that the witness statements were unavailable. The claim that access to the statements was refused despite a court order was a misrepresentation. In *Joseph Onyango Asere v Brookside Dairy Limited* [2016] eKLR, the court held that internal disciplinary proceedings are not akin to a court trial requiring witness testimony beyond reasonable doubt but rather ensuring that an employee is given a reasonable hearing.
339. The Respondent also relied on *Fredrick Oduor Lamba v Kenya Electricity Generating Company PLC* (Civil Appeal E126 of 2021) [2023] KECA 118 (KLR), where the Court of Appeal affirmed that the fairness of a disciplinary process is context-dependent. It held that while cross-examination of witnesses may be warranted in some cases, most labour disputes do not require oral hearings.
340. The Claimant had an opportunity to present her case and did not request that witnesses be summoned. Allan Otieno attended the hearing, addressed the issues raised by the claimant, and subsequently clarified how the Veeva system worked. The Claimant engaged Otieno in further correspondence, sought clarifications, and ultimately confirmed that she was satisfied with his responses. It was, therefore, disingenuous for the claimant to allege that she was denied the opportunity to cross-examine him.
341. The Respondent further relied on *Joseph Mwangi Gioche v Gatamaiyu Dairy Farmer's Cooperative Society Limited* [2019] eKLR, where the court held that an employee who is aware of the allegations, is given an opportunity to respond, and is subsequently dismissed cannot insist on a mechanical process of disciplinary action. The Claimant was given reasonable notice of the allegations, answered questions during the disciplinary hearing, and was accorded due process.
342. The Claimant's allegation that the minutes of the disciplinary hearing were fabricated was also unsubstantiated. She admitted receiving the minutes and did not challenge their accuracy at the time. The claim that she later denounced the minutes lacked supporting evidence. The Respondent invited the court to accept the minutes as an accurate record, as there was no evidence of misrepresentation, undue influence, or coercion. The Claimant further admitted that she was aware that investigations were ongoing after the hearing. Clause 2.2.4 of the respondent's Disciplinary Action and Procedure permitted further investigations to clarify any unresolved facts.
343. The Respondent also noted that the claimant went on sick leave and later maternity leave after the disciplinary hearing. The respondent allowed her to complete her leave before issuing a termination letter dated 9<sup>th</sup> August 2018, clearly stating the reasons for dismissal. The Claimant appealed the decision but later withdrew the appeal, citing delays in its resolution. The claim that she withdrew due to perceived bias within the company was unsubstantiated. Clause 2.2.7 of the respondent's Disciplinary Action and Procedure provided that appeals were handled by independent management, and the claimant failed to prove that the appeal panel would have been biased.
344. The Respondent submitted that due process was followed, citing *Winnie Mbeti Mutua v Brackenhurst Kenya Limited* [2021] eKLR. Investigations revealed that the claimant falsified call records, which constituted gross misconduct. She was informed of the charges, given a chance to respond, attended the disciplinary hearing, and was aware of her right to representation but opted not to have one. She was also informed of the hearing's outcome and given an opportunity to appeal.
345. The Court of Appeal in *Bett Francis Barngetuny & another v Teachers Service Commission & another* [2015] eKLR held that courts should exercise caution before interfering with an employer's disciplinary findings if the process was fair. The respondent maintained that there were valid grounds for dismissal and that the disciplinary process was conducted in accordance with due process.



346. The Respondent submitted that the claims of victimization, harassment, mistreatment, intimidation, and humiliation had not been proved against it. The Claimant's assertion that she was discriminated against during and after her pregnancy was raised for the first time in her submissions and was therefore inadmissible, as held in *Bernard Muriithi Wanjira v CREC No.10 Engineering Group Co. Limited* [2020] eKLR. The Respondent pointed out that the only reference to pregnancy in the claimant's pleadings was that she had undergone medical tests and was advised to take bed rest, as stated in paragraphs 18(xiv) and 30(xiv) of the Memorandum of Claim.
347. The court in *GM V v Bank of Africa Kenya Limited* [2013] eKLR held that for a claim of discrimination on account of pregnancy to be sustained, a claimant must prove that she suffered adverse employment action directly due to her pregnancy and that the employer's explanations were pretextual. The claimant had not established a prima facie case of discrimination, as the medical reports produced did not support her allegations of undue pressure and harassment. The report by Dr. C.K. Musau indicated that the claimant had a history of neck pain and weakness in the right hand, which bore no correlation to her claims.
348. The Respondent denied that the termination of the Claimant's employment led to her losing future job opportunities. The Claimant's CV showed that between August 2018 and February 2019, she was a consultant engaged in online sales while recuperating from surgery and spending time with her children. From March 2019 to May 2019, she worked as a market survey representative, and from November 2019 to March 2020, she was a medical nutrition sales specialist, followed by a position as a key accounts representative at Danone Nutricia Africa.
349. The Claimant had therefore been employable, and any unemployment she faced was not due to the Respondent's actions. The allegation that the respondent interfered with her job offers was unsubstantiated and malicious. The circumstances of her departure from Tropikal Brands Africa, as evidenced in documents before the court, contradicted her claims. In paragraph 29 of her Memorandum of Claim against Tropikal Brands, she alleged that she was targeted by members of the pharmacy team for assisting employees who had sabotaged an earlier plan, leading to financial losses. She further stated that the Country Manager informed her that she was not ready for career growth and vowed to block her advancement.
350. The Respondent submitted that the Claimant's allegation regarding its failure to validate certain documents was baseless, as no specific documents were identified, nor was evidence adduced to show their impact on her future employment. The Claimant's attempt to impute malice in the timing of her termination letter, which was issued two days after she resumed from maternity leave, was misguided.
351. The Respondent deferred the disciplinary process out of consideration for her maternity leave and could have concluded it in February 2018. Her claim that she was denied an opportunity to review or respond to the investigation findings was incorrect, as she had the option to appeal the decision, which she exercised through her appeal letter dated 8<sup>th</sup> August 2018. The Claimant's assertion that her termination severely affected her health was unproven.
352. The Respondent further submitted that the Claimant's extensive attack on the findings from Veeva was an attempt to create a false narrative that the respondent's system administrators manipulated reports. No evidence of such manipulation was presented. The Claimant's assertion that her quarter 3 performance was affected because the respondent failed to delete Dr. Sitima from her SLT was irrelevant, as performance issues were not raised in the disciplinary proceedings.
353. The Claimant also alleged that a report produced at page 23 of the Respondent's bundle was fabricated, but RW1 confirmed during cross-examination that the logs in Allan Otieno's email to the claimant



- were system-generated extracts addressing her concerns. The Claimant's grievance regarding the hiring process for the Key Accounts Manager role was extraneous, as it had no bearing on her termination.
354. She and her witness confirmed that they had no proof of malpractice in the recruitment process. During cross-examination, the claimant admitted that she had no evidence to support her claim that Brigit Wachira, who oversaw the appointment, selected an unqualified candidate to lock her out of the position.
355. The Respondent contended that the Claimant was not entitled to the reliefs sought. The claim for reasonable damages for unlawful termination was denied, as the termination was procedural and based on valid grounds. The Claimant admitted during cross-examination that her termination letter set out her terminal dues, which she received, including one month's pay in lieu of notice, as evidenced by her payslip at RB 30. If the court were inclined to award compensation, the respondent urged it to consider Section 49 of the *Employment Act*, 2007, particularly given that the claimant did not dispute recording the call of 30<sup>th</sup> January 2017 on Veeva.
356. An award of one month's pay would be sufficient compensation. The court in *Robert Kimutai Rutto v Hotel Cathay Limited* [2018] eKLR declined to award compensation where serious gross misconduct was proved, citing Section 45(5) of the *Employment Act*. Similarly, in *Kiambaa Dairy Farmers Co-Operative Society Limited v Rhoda Njeri & 3 others* [2018] eKLR, the Court of Appeal held that compensatory damages for unfair dismissal were not automatic and must be assessed within a range of zero to twelve months.
357. The claim for compensation for victimization, harassment, mistreatment, intimidation, and humiliation was also denied, as no evidence was presented to support it. Instead, it was the Claimant who engaged in acts of harassment and intimidation, including unfounded attacks on the Respondent's employees. She named individuals in her pleadings and disclosed their private information despite their lack of involvement in her disciplinary case. Her actions led to scathing attacks on the Respondent's employees and lawyer through the Cyprian Nyakundi blog.
358. While the Claimant denied being the source of the information, some reports quoted her directly. She also admitted to making a police report, which she later withdrew. The Claimant filed multiple applications seeking substantial sums, which were ultimately unsuccessful but were evidence of her intent to humiliate the respondent, its employees, and its legal representatives.
359. The claim for Kshs. 88,186,560 as salary until retirement was defective, as it was introduced through a witness statement dated 5<sup>th</sup> July 2021, contrary to the requirement that claims be pleaded. The court in *Vishva Stone Suppliers Company Ltd v RSR Stone 2006 Limited* [2018] eKLR held that pleadings cannot be amended through a witness statement.
360. Additionally, the claim had no legal basis. The court in *James Omwoyo Nyanga'u v The Heritage Insurance Company Limited* [2014] eKLR held that employment remedies should compensate economic injury without unjustly enriching the employee. Courts do not award salaries for the entire period an employee expects to have worked, as the employee is expected to mitigate losses by seeking alternative employment.
361. The claims for Kshs. 4,200,000 as mileage allowance, family medical cover, and annual bonus until retirement were similarly defective. The claim for compensation for inability to secure employment was also without merit, as it was not pleaded but introduced in submissions. The Court of Appeal in *Galaxy Paints Company Limited v Falcon Guards Limited*, Court of Appeal Case No. 219 of 1998, held that issues for determination must flow from pleadings, and courts cannot determine matters not



pleaded. Moreover, the Claimant confirmed that she secured employment at Tropicall Brands after leaving the Respondent.

362. The Respondent submitted that costs should be awarded in its favour, as it had proved that the termination was lawful and fair. Having discharged the burden of proof, the respondent prayed that the claim be dismissed with costs.

363. I have examined all evidence and submissions of the parties herein. The issues for this court's determination are as follows:

1. Whether there were valid reasons to warrant claimant's dismissal.
2. Whether the claimant was subjected to due process.
3. Whether the claimant is entitled to the remedies sought.

### **Issue No. 1: The validity of reasons**

364. The claimant was terminated vide a letter of 8<sup>th</sup> August 2018 which stated as follows:

GSK

Glaxosmithkline Pharmaceutical

Kenya Ltd

Likoni Road

NAIROBI

8<sup>th</sup> August 2018

Dear Pauline,

RE: Termination Of Employment

Reference is made to the investigations on the alleged falsification of calls on Veeva, where you recorded a call on the system as confirmation of your meeting with a HCP. On further Investigation and the disciplinary hearing meeting held on 6 February 2018, you were not able to demonstrate the validity of the call, which brought your integrity to question.

Therefore, it has been established that you breached the code of conduct around the GSK Value of Integrity which is clear that all GSK staff should act responsibly with integrity living up to the standards that are rightly expected of us. The Company regards this violation as gross misconduct.

Therefore, this letter serves to notify you of the decision to terminate your services with GlaxoSmithKline Pharmaceutical Kenya Limited effective the 8 August 2018.

Your last working day will be 8 August 2018. Your final dues workings will be:

1. Salary up to and including 8 August 2018
2. One (1) month's salary in lieu of notice
3. Leave days earned and not taken as at 8 August 2018

In addition, you will be eligible for the following;

Pension benefits which will be computed and paid separately in accordance with the rules governing the GSK staff pension scheme. (Attached pension form of discharge.)A Certificate of Service

Payments:



Your final dues will be computed less tax and any other monies owed to the Company. To facilitate further processing of your dues, you will need to complete the clearance process and provide us with the completed clearance form. (Attached)

Kindly note that processing of these dues will only commence after we have received the completed clearance form.

#### Company Property:

Please ensure you make arrangements to return all property belonging to the GlaxoSmithKline Phar Kenya. As stated in your Terms and Conditions of Employment, you are required to return all books, files, documents, papers, materials, computer equipment, discs, credit cards, keys and other property which relate in any way to the business or affairs of the any company within the GlaxoSmithKline Group of companies, together with all copies of any of them.

#### Confidentiality Agreement

I would like to remind you that under the terms of the Confidential Information and Publication Clause in your Terms and Conditions of Employment and the general duty of confidence owed to the Company (both of which continue after your employment with GlaxoSmithKline Group has ended) you must not disclose or use for your own purposes or on behalf of a third party, any confidential information that you acquired by reason of your employment with the Company.

On behalf of GlaxoSmithKline, I take this opportunity to thank you for the years you have served the organisation and wish you the best in your future endeavours.

Yours sincerely,

Launder

Daphne Openda

Human Resources Manager

365. From the contents of the letter the claimant was accused of falsifying a call on Veeva. In the circumstances, the claimant was accused of breaching the code of conduct of GSK value of integrity. From the said letter, it is not clear which call the claimant is said to have falsified. However before this termination the claimant received an email on December 2017 from one Kevin Mutuma alleging falsification of a call log relating to Dr Summery. The claimant communicated with the said Kevin and explained that she had met the said Dr Summery on various occasions which addressed the dates in question as 30<sup>th</sup> January 2017 and June 14<sup>th</sup> 2017.
366. The claimant was thereafter invited to a disciplinary hearing and she was required to answer to the same complaints of falsified call on Veeva where she recorded a call on the system as her confirmation of meeting with Health care provider (HCP). She averred that when she met Mutua on 19<sup>th</sup> December 2017 she cleared her name with regard to the date of 30<sup>th</sup> January 2017 where she reported to Dr Summery and also exhibited evidence that Dr Summery was not at a burial on that day as the burial in question was on 4<sup>th</sup> February 2017 as per the obituary produced.
367. I have looked at the minutes of the disciplinary hearing held on 6<sup>th</sup> February 2018. The minutes indicated that though the claimant had recoded meeting with Dr Summery on 30<sup>th</sup> January 2017, the



Dr was not at KNH as the doctors were on strike. The claimant however insisted that she met the said doctor and recorded this appropriately. From the said minutes one James stated as follows:

“ The FLSH confirmed there are situations when the respondents have seen a doctor as part of the plan but one week after the notices that respondents have not recorded the calls which he asks them to update accordingly. Also, the FLSH confirmed there are some reports that both him and the respondents cannot see.... The commercial excellence manager clarified that at times calls can be recorded but the records are not available either because the synchronizing is not done well or due to lack of wifi. With every entry and correct submissions the colour code changes from red to blue confirming submissions.”

368. Allan indicated that some records for Pauline could be missing because she was using the offline platform. James confirmed he could see all records for Pauline from January 30<sup>th</sup>. Allan also confirmed that the system could have calculation errors but not entry errors. The claimant insisted she had been with Dr Summery on 30<sup>th</sup> January 2017. The conclusion was that considering the issues raised by the claimant they would be reviewed and feedback shared by 20<sup>th</sup> February 2018.
369. It was also stated by HR that the discussion of the day would be reviewed and a decision taken shared by the claimant. The commercial excellence manager was also asked to check on all issues raised by Pauline against the system and share the feedback.
370. Concerning the clarification to be made by Alan, he wrote an email to Kevin on 15<sup>th</sup> February 2018 at 16.17 pm. explaining how the platform works. Pauline the claimant explained that after the disciplinary hearing of 6<sup>th</sup> February 2018 she proceeded on maternity leave and on 6<sup>th</sup> April 2018 while still on leave as per the respondents documents she was informed that investigations on the alleged falsification of calls on Veeva and additional information shared following the disciplinary meeting held on 6<sup>th</sup> February 2018 was still going on and may be concluded while she is away on the 90 days maternity leave. That the feedback would be shared upon her return to work. She was informed that she could reach out to HR for any information/clarification. The letter was signed off by Daphne Openda, HRM.
371. It is not clear whether the investigation report was revealed or shared with the claimant. The claimant averred that she also under went a spine surgery after the C-section delivery in April 2018. She then resumed work on 6<sup>th</sup> August 2018. She was then served with a termination letter. The termination letter is dated 8<sup>th</sup> August 2018. The letter as indicated above only mentioned that the claimant was guilty of falsifying a call log. The date of this call is not explained.
372. Having considered the chronology of events herein, it is apparent that the Veeva system had its own errors. It is also clear that the issue of Dr Summery was never fully resolved as to whether she met or did not meet the claimant in January 2017 because after the hearing of 6<sup>th</sup> February 2018, the HRM had indicated more investigations into complaints raised by the claimant were going to be investigated and feedback shared. The results of this investigations had not been shared during the said hearing of 6/2/2018. It was also agreed that the commercial excellence manager was to share the feedback on the issues raised by the claimant. There is no indication that this was brought to the claimant’s attention. It is unfortunate that the respondents continued investigating the claim after a disciplinary hearing and did not call the claimant back to share their findings and ask her to respond.
373. In my view, failure to recall the claimant after the initial disciplinary hearing of 6/2/2018 and continuation with investigations after this was an indication that their initial investigations that were inconclusive. Their findings needed to be placed before a further disciplinary hearing so that the claimant could respond. The failure to conclude the hearing and just serve the claimant with a



termination letter 2 days after resuming from maternity leave is a pointer to an inconclusive process which could not have established the existence of valid reasons leading to the claimants dismissal.

374. Section 43 of the *Employment Act* 2007 states as follows:

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.

375. In view of the fact that the process was not completed leads this Court to arrive to a position that there were no valid reasons leading to the claimants termination.

### **Issue No 2: The disciplinary hearing.**

376. I have analysed above the process meted against the claimant. The claimant was indeed invited to a disciplinary hearing on 6/2/2018. This process was “adjourned” for further investigations to be done. The claimant was never after this invited again to any hearing and presented with the findings of the investigations and asked to respond.

377. The hearing was in my view inconclusive, half-baked and the claimant was not accorded an opportunity to present her case and be heard as envisaged under section 41 of the *employment act* 2007 which states as follows:

41. (1). 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.

378. Section 45(2) of the *Employment Act* 2007 states as follows:

- (2) A termination of employment by an employer is unfair if the employer fails to prove——
  - a. that the reason for the termination is valid;
  - b. that the reason for the termination is a fair reason——
    - i. related to the employees conduct, capacity or compatibility; or
    - ii. based on the operational requirements of the employer; and
  - c. that the employment was terminated in accordance with fair procedure.

379. Having established that the respondents did not establish they had valid reason to terminate the claimant and that due process was not followed, I return the verdict that the claimant’s termination was unfair and unjustified.

### **Issue No 3: Remedies**

380. Having found as above and considering the remedies sought by the claimant, I find she is entitled to compensation for unfair and unlawful termination. The claimant was terminated 2 days after resuming from her maternity leave and in this Court’s view, this was callous and inhumane.



I find 10 month's salary as compensation would be adequate in the circumstances = 10x Kshs 262,000= Kshs 2,620,000/- Less statutory deductions.

381. The respondents will also pay costs of this suit plus interest at court rates w.e.f the date of this judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF MARCH, 2025.**

**HELLEN WASILWA**

**JUDGE**

