



**Ouma v MP Shah Hospital (Cause E169 of 2022)
[2025] KEELRC 1185 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1185 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E169 OF 2022**

J RIKA, J

APRIL 28, 2025

BETWEEN

PATROBA OMORO OUMA CLAIMANT

AND

MP SHAH HOSPITAL RESPONDENT

JUDGMENT

1. The Claimant pleads that he was employed by the Respondent Hospital as Phlebotomist, effective 3rd November 2012. [A Phlebotomist is a medical professional, trained to draw blood from patients, for testing, donation or research].
2. His letter of appointment is dated 18th October 2012.
3. He was promoted to a Laboratory Technologist, through a letter issued upon him by the Respondent, dated 22nd February 2013.
4. He was summarily dismissed on 4th March 2021, on account of gross misconduct. His gross monthly salary at the time was Kshs. 110,870.
5. He was alleged to have been involved in illegal removal of blood samples from the Hospital. He was said to have colluded with one Ezekiel Lihanda, in the illegal activity. The allegation was baseless. The Respondent alleged also, that he visited Lihanda at the Police Station, when Lihanda was apprehended. It was not an offence to visit Lihanda. It was alleged by the Respondent that he sought a pardon on behalf of Lihanda, from the Respondent's Manager.
6. The other allegation was that the Claimant was engaged in fraud. A forged medical report and fake invoices were alleged to have been sent to a patient. There was no proof in any of the allegations. On fraud, the Claimant was said to have known, that the e-mail of a colleague, was used in forwarding the fake documents.



7. He was not given notice; valid reasons; and a fair hearing. He prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. 1-month salary in lieu of notice at Kshs. 110,870.
 - c. 12 months' salary in compensation for unfair termination at Kshs. 1,330,440.
 - d. Costs.
 - e. Interest.
 - f. Any other suitable relief.
8. The Respondent concedes through its witness statement, that the Claimant was its Employee, as pleaded in his Claim. He was dismissed on 2nd March 2021 for lawful cause.
9. On or about 3rd December 2020, an Employee named Ezekiel Lihanda, was implicated in an incident where 3 pints of blood was being unlawfully spirited away, from the Hospital.
10. As the Respondent Hospital investigated and set in motion the disciplinary process, the Claimant was at the forefront of agitating for the pardoning of the Employee who was caught at the centre of a serious crime.
11. Lihanda resigned when under investigation. The Claimant was constantly in communication with him, and it was him, who handed in Lihanda's resignation letter.
12. Earlier, on 19th November 2020, there was a report of forgery of medical report and invoices. The Respondent launched investigations. The Claimant was in communication with the suspects. He conceded to have spoken to one of the suspect Employees, Dickens Marwa.
13. The Claimant was issued a letter to show cause, based on the two allegations. He did not exonerate himself. He was invited for disciplinary hearing, scheduled for 16th February 2021. He admitted that the two Employees involved in the crimes against the Respondent, were his friends. He was elusive on his involvement in the crimes.
14. Based on his lack of transparency and elusive behaviour, the Respondent lost trust and confidence in the Claimant, and decided to terminate his contract.
15. He was advised on his right of appeal, which he did not exercise.
16. He cleared with the Respondent, was paid his terminal dues, and issued his certificate of service. He executed a discharge voucher, confirming that he did not have further claims against the Respondent. The Respondent urges the Court to dismiss the Claim with costs.
17. The Claimant, and his witness Ezekiel Lihanda, gave evidence on 22nd November 2023, closing the Claimant's case. The Respondent's Chief Human Resource Officer Edna Kiunga, gave evidence on 19th July 2024, closing the hearing. The Claim was last mentioned on 18th November 2024, and the file forwarded to the Trial Judge on 22nd January 2025, for preparation of the Judgment.
18. The Claimant adopted his witness statement, which replicates his pleadings, in his evidence-in-chief. He gave a summary of his employment history and his terms and conditions of employment with the Respondent, as captured at the outset, in this Judgment. He added that he was not on duty, when the incidents of theft of blood, and forgery of documents, took place. He merely passed the letter of resignation entrusted to him by Lihanda, to the Human Resource Office.



19. He told the Court that he had known and worked with Lihanda for 8 years. He also knew and worked with Dickens Abongo and Ken Olum. Lihanda resigned. Dickens' contract was terminated. The Claimant did not know what became of Ken Olum.
20. The Respondent has a procedure on blood dispatch. Lihanda was found with 3 pints of blood. The Claimant did not know if Lihanda followed the right procedure, in obtaining the blood from the blood bank. The Respondent would not lose trust in the Claimant, over an incident he was not involved in.
21. The Claimant did not request the Manager to pardon Lihanda. His witness statement says he requested for pardon. Peter is the one who requested for pardon. The Claimant was not certain, if he mentioned Peter in his witness statement. He visited Lihanda at the Police Station. Lihanda entrusted him the resignation letter to pass on to the Respondent. The Claimant denied that he was involved in fraud. He was not part of the team which investigated fraud.
22. He was paid 1-month salary in lieu of notice. He received his certificate of service. It did not look authentic. He received a job opportunity in the US, and his Employer required his certificate of service to be authenticated, which the Respondent declined. He was paid Kshs. 97,875 as terminal dues. Redirected, he confirmed that he was familiar with blood dispatch procedures, and was not involved in blood removal.
23. Lihanda relied on his witness statement. He explained that there was an emergency at a neighbouring Hospital. A child needed blood at Belle Vue Hospital. Lihanda was on duty. He tried to assist the child the best he could. He told Belle Vue Hospital contact who had called him, that there was a protocol in release of blood from the Respondent's blood bank. But because it was an emergency, he sidestepped the protocols, and released the blood. A motorcyclist came for the blood. Security Guards arrested him. He explained that he was given the blood by a doctor. Lihanda clarified it was him, who gave the blood to the rider. Lihanda was arrested. The Claimant was not on duty. Lihanda wrote a letter of resignation, which he entrusted to the Claimant for transmission to the Respondent. He was at the time detained at police station. The complaint was later withdrawn.
24. Cross-examined, he told the Court that the Claimant was his best friend. He did not have a document to show that the Claimant was not on duty on the material day. Lihanda released blood, without following protocol. He was assisting a child in an emergency, at a neighbouring Hospital. The child was Lihanda's relative. He made a mistake. He resigned in protest. He resigned on the date of his arrest- 23rd December 2020. Lihanda denied that he came to Court, to aid his friend. Redirected, Lihanda told the Court that he did not have time to discuss blood release protocols with others, because it was an emergency.
25. Dickens Abongo and Ken Olum filed witness statements, but were not called as witnesses, and it is unhelpful to recite their untested statements, in examining the evidence for the Claimant.
26. Edna Kiunga relied on her witness statement. She told the Court that she had served the Respondent for two years, at the time of testifying. She adopted documents filed by the Respondent.
27. Cross-examined, she told the Court that she was familiar with the Claimant's personnel record. He was dismissed in March 2021. 2 units of blood were being removed from the Respondent. Management reported the offence to the Human Resource Office. She did not know Lihanda. The Claimant was at the forefront of agitating for pardoning of Lihanda. He passed on Lihanda's resignation letter to the Manager, Rose Adhiambo. He said that Rose would intercede. The Claimant was not involved in removal of the blood. He was not involved in the forgery incident. It is not illegal to make friends at the workplace.



28. Redirected, Edna told the Court that the Claimant was not accused of blood removal. He was issued a letter to show cause with 7 items.
29. The issues are whether the Claimant's contract was terminated by the Respondent on fair procedure; whether it was founded on valid reason or reasons; and whether his prayers are merited.

The Court Finds: -

30. The Court file as transmitted to the undersigned Judge for preparation of the Judgment, does not contain a complete record of the documents alluded to, in the Respondent's evidence.
31. The record of the Court indicates that the matter came up for mention on 23rd September 2022. The Respondent had not filed its pleadings and documents, and it was noted on the file that the pleadings are closed, and hearing scheduled for 17th February 2023. On 28th July 2022, the Respondent had been granted 21 days to file its pleadings and documents.
32. The minute sheet which is supposed to be a record of all the pleadings and documents filed by the Parties, is totally blank. What is the purpose of affixing a minute sheet to the file, if nothing is recorded in it?
33. The record indicates that the Respondent filed a Memorandum of Appearance dated 12th April 2022. It filed the witness statement of Edna Kiunga Kiptoo on 13th March 2024.
34. Did the Respondent file its Statement of Response within the 21 days granted on extension, on 28th July 2022? There was no further extension. The Respondent spent the better part of the year 2022, defaulting on filing and service of its pleadings and documents, even after the Court extended time for compliance. The closing submissions of the Claimant, indicates that a Statement of Response was filed on 11th October 2022. It is not in the physical file, and if filed, was filed irregularly 6 months after the Respondent entered appearance, and without the leave of the Court. These are the only documents filed by the Respondent in the file forwarded to the undersigned Judge for preparation of the Judgment. The Court has relied on the witness statement of Edna, and her oral evidence, in examining the Respondent's position.
35. While the Claimant in his own evidence, concedes that he was issued with a list of allegations; called upon to answer to the letter to show cause; and answered those allegations before being called to disciplinary hearing, it was never clear why he was subjected to a disciplinary process from the very outset.
36. Probably, procedure was in conformity with the bare requirements of a fair exercise, under sections 41 and 45 of the Employment Act, but what was the Claimant being taken through the disciplinary process for?
37. Edna, the witness for the Respondent told the Court on cross-examination that: -Patroba [Claimant] was not involved in removal of blood. The Claimant was not involved in forgery. It was not illegal to make friends at the workplace.
38. Having completely exonerated the Claimant on cross-examination, an attempt was made upon her redirection, to widen or completely obscure, the scope of the allegations against the Claimant. She told the Court that the Claimant was not accused of removing blood. He was given a letter to show cause with 7 items.
39. The 7 items, as rehashed in the letter of termination dated 2nd March 2021, revolved around the allegations of blood removal and forgery.



40. It was alleged that: -
- i. The Claimant was involved with the case of Lihanda, who was caught with 3 units of blood, trying to get it out illegally.
 - ii. The Claimant was interested in the case, as he had requested that Lihanda is pardoned.
 - iii. The Claimant went up to the police station after Lihanda was arrested and handled his resignation letter.
 - iv. He was involved in fraud case, where medical reports and fake invoice was sent to a patient.
 - v. He had personal information that the e-mail account of Dickens was used in forwarding the documents.
 - vi. He contacted Dickens during investigations and alerted him about the finding that his e-mail account had been used.
 - vii. Any other information the Claimant was aware about.
41. What were the findings of the Respondent on these 7 items, and how are they distinguishable, from blood removal and forgery?
42. What kind of an accusation, was item 7, “any other information you knew regarding the above, and why disciplinary action should not be taken against you.”? How would an Employee answer to item 7, if this was part of 7 charges against the Claimant, separate from blood removal and forgery?
43. Edna’s witness statement is clear that removal of the blood and forgery of medical report and invoices, were the epicentre of the accusations against the Claimant. She states that blood was removed, and the Claimant was in constant communication with Lihanda, the key suspect. He was at the forefront of seeking pardon for Lihanda. She also states that he was in communication with Employees implicated in forgery. Where are the 7 items, away from blood removal and forgery, over which the Claimant was tried and convicted?
44. The Court completely fails to see how communication with colleagues, even on the subject matter of the Respondent’s investigations, and calling on for the pardoning Lihanda, would result in acts of gross misconduct, warranting dismissal of the Claimant. The Respondent appears to say that the Claimant was guilty by being friends with Lihanda and others, and more so for delivering Lihanda’s resignation letter to the Respondent, and interceding for his pardoning.
45. Termination was not based on valid reason under Sections 43 and 45 of the *Employment Act*. The Claimant is entitled to compensation.
46. He agreed that he was paid notice. He was issued a certificate of service, which he submits, without persuasion, that needs to be reissued and authenticated. He did not demonstrate what he means by authentication of the certificate issued to him. Were there details omitted, and if so, what were the details, to justify an order for reissue?
47. He worked for about 9 years. His record was unblemished, and he is not shown to have been involved in blood removal or forgery, leading to termination. He had a warning letter back in 2018, which was not in validity period at the time of termination, and was unrelated to the allegations over which he left employment. He told the Court that he works for different medical laboratories on locum assignments. He even had an opening to work in the US. The sky has not been all grey, since his contract was



terminated. He has moved on to mitigate his loss of employment. He was paid Kshs. 97,875 in terminal benefits.

48. He is granted compensation for unfair and unlawful termination equivalent of his 9 months' gross salary at Kshs. 997,830.
49. Costs to the Claimant.
50. Interest granted at court rate, from the date of Judgment.

In sum, it is ordered: -

- a. It is declared that termination was not based on valid reasons, and was unfair and unlawful.
- b. The Respondent shall pay to the Claimant equivalent of 9 months' gross salary in compensation for unfair and unlawful termination, at Kshs. 997,830.
- c. Costs to the Claimant.
- d. Interest granted at court rate, from the date of Judgment.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI, THIS 28TH DAY OF APRIL 2025.

JAMES RIKA

JUDGE

