



**Makhulu v Cipla Kenya Limited & another (Cause E602 of 2021)
[2025] KEELRC 1556 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1556 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E602 OF 2021
CN BAARI, J
MAY 22, 2025**

BETWEEN

EDMUND MAKHULU CLAIMANT

AND

CIPLA KENYA LIMITED 1ST RESPONDENT

EAST AFRICA LIMITED 2ND RESPONDENT

JUDGMENT

Introduction

1. The Claimant lodged this claim against the Respondent vide a Statement of Claim dated 27th July, 2021, seeking the following remedies: -
 - i. A declaration that the Claimant was unfairly terminated
 - ii. Reinstatement to the service of the Respondent
 - iii. In the alternative, the Claimant be awarded 12 months' salary as damages for the unfair termination
 - iv. Damages for violation of fundamental rights
 - v. Interests and costs of the suit.
2. The Respondent entered appearance on 19th August, 2021 and proceeded to lodge a Memorandum of Response dated 11th May, 2022, denying the Claimant's claim.
3. The matter first proceeded for hearing on 17th March, 2023, and concluded on 30th October, 2024. The Claimant testified in support of his case, adopted his witness statement and produced his list and bundle of documents as exhibits in the matter. The 1st Respondent presented a Mr. Oliver Tambo



Otieno, its Human Resource Business Partner to testify on their behalf. The 2nd Respondent neither presented a witness nor cross-examined the Claimant's and the 1st Respondent's witnesses.

4. Submissions were subsequently filed for the Claimant and the 1st Respondent, and which have been duly considered.

The Claimant's Case

5. It is the Claimant's case that he joined the 1st Respondent's company on 2nd March, 2015 in the capacity of a medical representative upon application and after going through a recruitment process.
6. The Claimant avers that he at all times diligently and professionally undertook his duties, and as a result, rose through the ranks to area sales Manager on 1st July, 2017, and subsequently, got promoted to the position of Regional Manager in January, 2021.
7. It is his case that on 10th February, 2021, he received a notice of suspension to pave way for investigation on expense claims fraud allegations, with the requirement that he vacates the Respondents' offices immediately, and hand over company property as he exits. He avers that he complied with the notice and vacated the premises.
8. The Claimant states that he was subsequently issued a show cause letter on 12th March, 2021 for gross misconduct in relation to negligence for the approval of alleged fraudulent expense claims submitted by a number of his subordinates. He avers that he was expected to respond to the show cause letter by 16th March, 2021, and which requirement he again complied with.
9. It is the Claimant's case that he attended a disciplinary hearing on 18th March, 2021 where he explained that the receipts in issue were submitted by his subordinates and that the receipts submitted on his account were all accurate and no issues were raised in respect of those.
10. The Claimant states that his explanation notwithstanding, he was issued a notice of termination dated 30th June, 2021, indicating that he was found guilty of submitting fraudulent claims to the 1st Respondent which resulted in loss of funds, and that he was enriched and had drawn beneficial interest in the payments.
11. The Claimant avers that he was notified of his right of appeal, and though he sought to be supplied with the minutes of the disciplinary hearing and the Respondents' Human Resources and Procedures Manual to enable him lodge an appeal, the documents were not supplied. The Claimant avers that he nevertheless lodged his appeal for the Respondents' consideration.
12. It is his case that the Respondents in a letter dated 16th July, 2021, upheld their decision to terminate his employment without allowing him an opportunity to be heard on the appeal.
13. The Claimant further avers that the Respondents have maintained their decision to terminate him despite him not participating in the fraudulent claims. He avers that he diligently performed his role in the verification of the receipts submitted to him by his subordinates before forwarding them to the finance department.
14. It is his case that his role was only to physically verify the receipts, but not to conduct a forensic examination on them. He asserts further that the Respondents did not avail him the tools to verify the receipts and neither was he trained on verification of receipts.
15. It is the Claimant's case that he never experienced the issue of fake receipts before, and had thus no suspicion that the receipt presented to him were fake.



16. The Claimant states that he never enriched himself with the company's finances.
17. It is his case that after the disciplinary hearing, there was a long silence from the Respondents which prompted him to write an email to find out the outcome of the hearing, and that it was only after he wrote the email that the Respondent's HR Manager contacted him and further send him a mutual separation agreement.
18. The Claimant states that he declined the mutual separation agreement and was threatened with termination if he did not sign the mutual separation form, and was also told that he was not going to be paid his terminal dues unless he agreed to the mutual separation.
19. It is his case that the notice to show cause issued to him indicated that he had failed to verify receipts, while the letter terminating his services indicated that he submitted fake receipts, which accusations were all false.
20. The Claimant states that the Respondents had at some point to bring in forensic experts from UK to authenticate receipts as none of their employees could do so. He states that he holds a degree in biochemistry and could thus not conduct a forensic audit.
21. It is the Claimant's case that three other managers of the Respondent named Damaris, Jonathan and Singh, who were similarly implicated were retained, except himself.
22. The Claimant prays that his claim be allowed.

The Respondent's Case

23. The Respondent states that the Claimant was an employee of the 1st Respondent whose payroll and emoluments were managed by the 2nd Respondent as an outsourced service provider.
24. It is the Respondent's case that the Claimant had a supervisory and administrative role over the medical representatives working under him where he would scrutinize and approve the presentation of the said receipts for reimbursement.
25. It states further that the Claimant, for over a period of 3 to 5 months, 4 of his charges submitted fake and fraudulent receipts and that he passed on the receipts for reimbursement on behalf of one of his charges for expenses incurred in field engagements. It avers further that the Claimant stated that he had advanced cash to the medical representative named Betty, and that he needed to have the cash reimbursed to him.
26. The Respondent states that the Claimant did not have access to petty cash and therefore, could only have advanced his personal cash to the medical rep. he states that this was more of a personal transaction that ought not to have been passed onto the employer. The Respondent further, states that the normal procedure is that whoever incurs expenses would apply for reimbursement on their own without going through another person, and therefore, this incident was viewed as suspicious as the Claimant chose to claim the expenses as his own, rather than allow the medical rep, Betty to claim on her own.
27. The Respondent further states that it was unusual for the manager at the Claimant's level to seek reimbursements for himself for the expenditure incurred by his juniors. It states that the Claimant did not at any time alert the company on his intention to claim expenses on another's behalf.
28. The Respondent states that the receipts referred to above show that the Claimant chose to make this claim and ended up presenting receipts that turned out to be fake and fraudulent, and which led the Respondent to conclude that it had lost faith in him as a Manager given the level of responsibility bestowed upon him.



29. It is the 1st Respondent's case that it suspended the Claimant to allow for investigations, and that the investigations concerned the origins, nature and form of the receipts and was carried out by a seasoned forensic investigator.
30. The 1st Respondent states that the Claimant was issued with all documentation required in conformity with the disciplinary process as contemplated by Section 41 and 45 of the [Employment Act](#) of 2007.
31. The 1st Respondent states that it took more than a month to go through the evidence presented by the Claimant during the hearing, and proceeded to issue the Claimant with the determination where they found him guilty of submitting fraudulent claims which resulted in loss of funds and in the Claimant being enriched and drawing an undue benefit financially.
32. The Respondent further states that the Claimant was a senior manager and supervisor who had access to and was familiar with all the Respondent's policies including the Human Resources and Procedures Manual and Disciplinary Handbook.
33. The Respondent denies any wrong doing or contravention of any law and/or procedure as alleged, and prays that this claim be dismissed with costs.

Analysis and Determination

34. Having considered the pleadings, the witnesses' oral testimonies and the rival submissions, the issues that arise for determination are: -
 - i. Whether the Claimant was unfairly terminated.
 - ii. Whether the Claimant is entitled to the remedies sought.
 - iii. Who bears the costs.

Whether the Claimant was unfairly terminated.

35. The Claimant's case is that he was terminated from the service of the Respondent for gross misconduct related to his approval of alleged fraudulent expense claims submitted by a number of subordinates serving under his supervision.
36. It is his position that he attended a disciplinary hearing on 18th March, 2021, where he explained that the receipts in issue were submitted by his subordinates and that the receipts submitted on his account were all accurate and no issues were raised in respect of his receipts.
37. The Claimant states that his explanation notwithstanding, he was issued a notice of termination dated 30th June, 2021, indicating that he was found guilty of submitting fraudulent claims to the 1st Respondent which resulted in loss of funds, and that he was enriched and had drawn beneficial interest in the payments.
38. The Respondents on their part, assert that the Claimant was terminated fairly for admitting fraudulent receipts and for failing to review and validate the receipts. It is their assertion that they conformed to the disciplinary process contemplated by Sections 41 and 45 of the [Employment Act](#) of 2007.
39. The issue is whether the Claimant's termination met the threshold espoused under Sections 41, 43, 45 and 47(5) of the [Employment Act](#), 2007, on procedural and substantive fairness. The Court of Appeal



in Prof Macha Isunde v- Lavington Security Guards Limited [2015] eKLR, summarized this threshold in the following words:-

“There can be no doubt that the Act, which was enacted in 2007, places a heavy legal obligation on the employer in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for terminating [section 43]- prove the reasons are valid and fair [section 45]- prove that the grounds are justified [section 47[5], amongst the other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.”

40. On procedural fairness, Section 41 of the *Employment Act*, states thus:-

“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.”

41. It is not disputed that the Claimant was issued a show cause letter spelling out the charges levelled against him, and which he confirmed that he responded to, and was subsequently invited for a disciplinary hearing on 18th June, 2021.

42. The Claimant was terminated vide a termination notice dated 30th June, 2021 and which also informed him of his right of appeal. The Claimant confirmed lodging an appeal against his termination, and which appeal was heard and the decision upholding his termination communicated to him.

43. In Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd [2013] eKLR, the Court observed as follows:-

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee.

Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible.

Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

44. The Claimant’s issue with the procedure adopted in his termination, is that he sought to be supplied with the minutes of the disciplinary hearing together with the Respondent’s Human Resource Manual and Handbook, to enable him lodge an appeal against the termination, but which he contends were not supplied.

45. He further contends that he was not allowed to appear for a physical hearing during the determination of his appeal.



46. The Respondents' position is that the Claimant was a senior manager and supervisor who had access to, and was familiar with all the Respondent's policies including the Human Resources and Procedures Manual and Disciplinary Handbook.
47. I note that the Claimant did not seek to be supplied with the Respondents' Human Resources Policies during the initial disciplinary process when he had an opportunity to physically appear before the disciplinary panel. The minutes of the disciplinary hearing are prove that the Claimant did attend the hearing and had occasion to respond to the charges levelled against him.
48. I would thus in the circumstances, agree with the Respondents that his request for the documents at the appellate stage was nothing but an afterthought, not having sought to be supplied with the document earlier when he had a chance to present both written and oral representation in respect of the charges.
49. Further, the chronology of events from suspension to appeal, are indication that the Respondents adhered to the tenets of fair process. In the case of *Silvester Malei Kyengo v Kenya Meat Commission (2019) eKLR* the Court opined;
- “In this case the Claimant was first served with a show cause letter stating the charges against him, interdicted pending investigation, accorded on oral hearing in the company of another employee of his choice and finally served with a termination letter confirming that his defence was considered but his services terminated for reasons cited in the letter. Such procedure in view passes the test of procedural fairness and I so hold.”
50. In my considered view, the Respondents adhered to the demands of Section 41 of the *Employment Act* and which renders the termination procedurally fair.
51. The second limb, is whether the Respondents had reasonable, fair and justified grounds to terminate the Claimant.
52. The Claimant's contention is that the notice to show cause issued to him indicated that he had failed to verify receipts, while the letter terminating his services indicated that he submitted fake receipts, which accusations were all false. It is his case that his role was only to physically verify the receipts, but not to conduct a forensic examination. He asserts further, that the Respondents did not avail him the tools to verify the receipts and neither was he trained on verification of receipts.
53. It is his further position that the Respondents had at some point to bring in forensic experts from the UK to authenticate receipts, as none of their employees could do so, and that being a holder of a degree in biochemistry did not qualify him to conduct a forensic audit.
54. The 1st Respondents on their part, assert that the Claimant was terminated fairly for admitting fraudulent receipts and for failing to review and validate the receipts.
55. I note from the minutes of the disciplinary hearing that the Claimant confirmed that he could easily verify and validate the subject receipts with the establishments that issued, but did not proceed to explain why he did not do so.
56. It is evident in my view, that what was required of the Claimant in respect of the alleged fake receipts, was not for him to undertake a forensic examination having confirmed verifying the receipts previously without having to be a forensic document examiner. The verification and validation of receipts was an integral part of the Claimant's job, and he could thus not be heard to suddenly not being able to do it.
57. Section 43(2) of the *Employment Act*, 2007 states that the reason for termination of employment are matters that the employer at the time of termination genuinely believed to exist, and which caused the



employer to terminate the services of the employee. In the case of the Judicial Service Commission vs. Gladys Boss Shollei, Civil Appeal No.50 of 2014, the Court cited with approval the following passage from the Canadian Supreme Court decision in Mc Kinley vs. B.C.Tel. (2001) 2 S.C.R. 161;

“Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More Specifically the test is whether the employee’s dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee’s obligations to his or her employer.”

58. In my view, by the Claimant submitting receipts from a co-worker and presenting them as his own against the 1st Respondent’s policy, and further confirming that he could have verified the receipts with the establishments that issued them, but did not, no doubt confirms the Respondents’ suspicion and reasonably so, and the subsequent termination of the Claimant.
59. The Respondents in my opinion had reasonable, fair and justified grounds to terminate the Claimant, and which leads me to the conclusion that the Claimant’s termination was both procedurally and substantively fair and lawful, and so I hold.

Whether the Claimant is entitled to the remedies sought

60. The Claimant sought a declaration that he was unfairly terminated, reinstatement to the service of the Respondent or in the alternative, he be awarded 12 months’ salary as damages for the unfair termination, damages for violation of fundamental rights, interests and costs of the suit.
61. The Claimant’s prayers, are without exception, only tenable upon a finding of an unfair termination. With the holding that his termination is fair and lawful, all the reliefs sought fail and are dismissed.
62. In the end, the Claimant’s claim is hereby dismissed in its entirety with costs to the Respondents.
63. It is so ordered.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 22ND DAY OF MAY, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Timothy Tonkei h/b for Mr. Omiti for the Claimant

Mr. Okeche present for the 1st Respondent

Ms. Mwanja present for the 2nd Respondent

Ms. Esther S- C/A

