



**Chogo v Nairobi Hospital (Cause E661 of 2020)
[2025] KEELRC 1890 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1890 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E661 OF 2020**

**SC RUTTO, J
JUNE 27, 2025**

BETWEEN

WYCLIFFE A CHOGO CLAIMANT

AND

NAIROBI HOSPITAL RESPONDENT

JUDGMENT

1. Through a Statement of Claim dated 14th October 2020, the Claimant avers that on 3rd October 1997, he was employed by the Respondent as a Ward Attendant. The Claimant further avers that during his 20 year tenure of employment, he served the Respondent with loyalty and utmost diligence and in accordance with the terms of his employment contract.
2. The Claimant further avers that on or about the 5th day of October 2017, while in the conduct of his duties, he was called by his supervisor, who notified him that he was required in the security office. At the security office, he found the Head Chef, Chief of Security and other officials. It was then that it was brought to his attention that four plates of food were found in the ward where he used to work, three of which were alleged to be sold and one was the complimentary one issued to employees, including him.
3. The Claimant was asked to account for the three plates. He stated that he was not aware of any food business going on in the workplace and he was then asked to record a statement to that effect and allowed to resume his duties.
4. On the 6th day of October 2017, he was yet again called by his supervisor and was asked to explain what he knew about the incident. He was thereafter taken to the Security office, where he found police officers waiting for him.
5. He was arrested and taken to Kilimani Police Station without being given any reasons whatsoever. He was later informed by the Police that they were conducting investigations into the incident. He was released on bail on the same day and allowed to resume his duties with the Respondent.



6. The Claimant avers that to date, he has never been charged or made aware of the findings of the investigations.
7. The Claimant further averred that on the 9th day of October 2017, the Respondent suspended him for a period of five days on the grounds of diverting food belonging to patients. In the said letter, the Respondent undertook to conduct investigations and notify him of the findings. The suspension was extended vide letter dated the 12th day of October 2017 for an additional period of six days.
8. The Claimant further stated that on or about the 16th day of October 2017, the Respondent summarily dismissed him on the grounds of involvement in the theft of patients' food at MCF Ward Kitchenette, which allegedly occurred on 5th October 2017.
9. According to the Claimant, this was done without any regard to the pending investigations initiated earlier. In the Claimant's view, this was in blatant breach of the contents of his letter of employment and the rules of natural justice.
10. He states that as a result of the Respondent's actions, he has suffered loss and damage as he was the main breadwinner of his family.
11. Against this background, the Claimant has sought an order of reinstatement, one month's salary in lieu of notice and compensation for unlawful dismissal. He has further asked for the costs of the suit plus interest.
12. The Respondent countered the Claim through its Statement of Response dated 7th January 2025. In its defense, the Respondent avers that on or about the 5th of October 2017, the Head Chef noted that food meant for patients in the wards was going missing and upon investigations, it was deduced that the Claimant and others were involved in stealing patients' food and was suspended by the hospital to allow investigations.
13. The Respondent further avers that after undergoing a disciplinary hearing, the Claimant was summarily dismissed from employment as his explanation was found to be unsatisfactory.
14. The Respondent has further denied the Claimant's assertions that his termination from employment was irregular, unlawful and constituted a flagrant breach of his employment contract.
15. According to the Respondent, the Claimant was terminated for valid and just cause in accordance with fair and applicable procedures under the [Employment Act](#) and its Human Resource Policy and Procedure Manual.
16. In the Respondent's view, the Claimant is not entitled to the prayers and reliefs sought in the Statement of Claim. Consequently, the Respondent has asked the Court to dismiss the suit with costs.
17. When the matter came up for hearing on 18th March 2025, the Respondent was absent from Court despite the date having been taken by consent in the presence of the Respondent's Counsel on record.
18. This being the case and in accordance with Rule 60(1) (b) of the [Employment and Labour Relations Court \(Procedure\) Rules, 2024](#), the matter proceeded for hearing, the Respondent's absence notwithstanding.

Claimant's case

19. The Claimant testified in support of his case and at the outset, sought to rely on his witness statement and bundle of documents filed alongside his Statement of Claim to constitute his evidence in chief.



20. In his testimony in Court, the Claimant reiterated the averments contained in his witness statement.

Respondent's case

21. As the Respondent did not call oral evidence, its case remained as per its Statement of Response dated 7th January 2025.

Submissions

22. Upon close of the hearing, the Claimant filed written submissions. In the Claimant's submissions, he contends that he was dismissed from employment without prior notice of the allegations or an opportunity to respond, effectively denying him a "trial" or fair hearing.

23. The Claimant has further posited that failure by the Respondent to issue him with a show cause letter or hold a disciplinary hearing in accordance with Section 41 of the Employment Act was unlawful and unfair. To buttress the Claimant's position, reliance has been placed on the case of Walter Ogal Anuro v Teachers Service Commission [2013] eKLR.

24. The Claimant has further submitted that the Respondent did not give him any reasons to warrant his termination. That further, the Respondent failed to adduce any evidence or give reasons to justify the termination.

Analysis and Determination

25. Having considered the issues raised in the pleadings, the evidentiary material on record and the Claimant's submissions, the following issues stand out for determination: -

- a. Whether the Claimant's termination from employment was unfair and unlawful; and
- b. Is the Claimant entitled to the reliefs sought?

Unfair and unlawful termination?

26. Under the Employment Act 2007, an employer is required to prove that an employee's termination from employment was fair substantively and procedurally. Sections 41, 43 and 45 of the Employment Act are the key statutory provisions as they set the legal parameters for determining whether the employer acted justly and fairly in all respects in terminating the employment of an employee.

27. With respect to substantive fairness, Section 43(1) of the Employment Act requires an employer to prove the reason or reasons for the employee's termination from employment, and where it fails to do so, such termination is deemed to have been unfair within the meaning of Section 45.

28. In terms of Section 45 (2) (a) and (b) of the Employment Act, an employee's termination from employment is deemed unfair where the employer fails to prove that the reason for the termination of employment is valid, fair, and related to the employee's conduct, capacity or compatibility; or based on its operational requirements.

29. As can be discerned from the Claimant's letter of summary dismissal dated 16th October 2017, the reason leading to his termination from employment was that he was involved in the theft of patients' food at MCF Ward kitchenette on 5th October 2017. According to the Respondent, the Claimant's explanation was found to be unsatisfactory.

30. In terms of Sections 43(1) and 45(2) (a) and (b) of the Employment Act, the Respondent being the employer in this case, had the heaviest responsibility in terms of proof.



31. Essentially, the Respondent had the onus to prove on a balance of probabilities that the reasons leading to the Claimant's termination from employment were fair, valid and related to his conduct.
32. As it is, the Respondent could only discharge its evidential burden by way of evidence. Seeing that the Respondent did not adduce evidence in whatever form or manner, it follows that it failed to discharge its evidential burden.
33. In its Response to the Claim, the Respondent alluded to investigations it had undertaken following the alleged theft by the Claimant. Indeed, the Claimant was suspended from employment on the basis of investigations into the allegations against him. Be that as it may, the report arising from such investigations, if any, was never produced in Court.
34. Needless to say, the allegations leveled against the Claimant remained largely unsubstantiated.
35. What's more, failure by the Respondent to call oral evidence did not help matters either and if anything, fundamentally impaired its case.
36. The total sum of my consideration is that the Respondent has failed to discharge its evidential burden under Sections 43(1) and 45 (2) (a) and (b) of the Employment Act, hence the Claimant's termination from employment was substantively unfair.
37. With respect to the limb of procedural fairness, Section 45(2) (c) of the Employment Act requires an employer to prove that the termination of employment was undertaken in accordance with fair procedure. Section 41(1) of the Employment Act sets out the minimum requirements of a fair procedure. This entails notifying the employee of the allegations he or she is required to respond to and thereafter granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a union representative of his or her own choice.
38. In the instant case, the Respondent has averred in its Response to the Claim that the Claimant was subjected to a disciplinary hearing and that his termination from employment was in accordance with fair procedure. From the record, the Respondent's assertions were not supported by any evidence.
39. I say so for the reason that there was no evidence that the Claimant was put on notice that the Respondent was considering terminating his employment based on whatever allegations.
40. In the same vein, there was no evidence that the Claimant was invited to give his explanation in answer to whatever allegations. Similarly, there was no evidence that a disciplinary hearing was conducted and the Claimant granted an opportunity to answer to the allegations levelled against him in the presence of a fellow employee or a union representative of his own choice.
41. In the absence of such evidence, it is highly doubtful whether the Respondent subjected the Claimant to the process contemplated under Section 41 of the Employment Act. To this end, I cannot help but find that the termination of the Claimant from employment was procedurally unfair within the meaning of Sections 45 (2) (c) and 41 of the Employment Act.
42. In sum, the Court finds that the Claimant's termination from employment was both unfair and unlawful in terms of Sections 41, 43 and 45 of the Employment Act.

Reliefs?

43. As the Court has found that the Claimant's termination from employment was unfair substantively and procedurally, he is awarded one (1) month's salary in lieu of notice and compensatory damages equivalent to eight (8) months of his gross salary. This award has considered the length of the employment relationship, which was relatively long, as well as the fact that the Respondent neither



proved the reasons for the Claimant's termination from employment nor the fact that it complied with the requirements of a fair hearing in so doing.

Orders

44. In the final analysis, Judgment is entered in favour of the Claimant against the Respondent and he is awarded: -
- a. One (1) month's salary in lieu of notice being the sum of Kshs 74,124.70.
 - b. Compensatory damages in the sum of Kshs 592,997.60, being equivalent to eight (8) months of his gross salary.
 - c. The total award is Kshs 667,122.30.
 - d. Interest on the amount in (c) at court rates from the date of Judgment until payment in full.
45. The Claimant shall also have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Lawi

For the Respondent Mr. Kamotho

Court Assistant Millicent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

