



Mukabi v Program for Appropriate Technology in Health (PATH) Kenya (Employment and Labour Relations Cause E428 of 2021) [2025] KEELRC 1659 (KLR) (4 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1659 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E428 OF 2021**

HS WASILWA, J

JUNE 4, 2025

BETWEEN

JAMES KHAUNYA MUKABI CLAIMANT

AND

**PROGRAM FOR APPROPRIATE TECHNOLOGY IN HEALTH (PATH)
KENYA RESPONDENT**

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 19th May 2021 and prays for judgment against the Respondents for: -
 - a. A declaration that the termination of the Claimant's employment was wrongful, unfair and unlawful;
 - b. 12 months' salary as compensation for wrongful, unfair and unlawful termination of employment – KES. 16,895,244/-;
 - c. Damages for unfair labour practice of requiring the Claimant to self-investigate against rumours contrary to Article 41 of *the Constitution*;
 - d. An order for the award of a Certificate of Service;
 - e. Costs of the suit;
 - f. Pay the Claimant interest on (b), (c) and (d) above; and
 - g. Any other relief that this Court deems appropriate to grant.



Claimant's Case.

2. The Claimant states that he was offered employment by the Respondent through an employment agreement dated 1st April 2011 as a Deputy Chief of Party at a monthly salary of Kshs. 360,000.
3. The Claimant states that he rose through the ranks and at the time of leaving employment, he was serving in the position of Programs Technical Director at a monthly salary of Kshs. 1,407,937.
4. The Claimant states that in 2012, the Respondent employed Ms. Owoko following its own independent recruitment process. Prior to her employment, he had a relationship with Ms. Owoko resulting to a birth of a child in 2008 but they ended their relationship in 2008; Ms. Owoko left the Respondent's employment in 2018.
5. The Claimant states that he was issued with a show cause letter on 31st March 2020 alleging that he violated the Respondent's Personal Conduct Policy, Harassment and Retaliation Policy and Code of Ethics, Governance and Responsibility Policy, Kenya Employee Handbook and the Staffing Policy. The letter did not contain any details of the alleged violation but he was directed to respond by 2nd April 2020. The letter referred to an investigation report dated March 2020 which did not contain any factual details of misconduct.
6. The Claimant states that on the same date, the Claimant was suspended from duty for two weeks pending conclusion of the process.
7. The Claimant states that he responded to the show cause letter on 2nd April 2020 denying all the allegations and requesting for evidence in support of the allegations.
8. Subsequently, he was issued with a further show cause letter on 23rd April 2020 which invited him for a disciplinary hearing scheduled for 28th April 2020. The letter laid down the following allegations:
 - a. He violated the Conflict of Interest Policy by failing to disclose his relationship with Ms. Owoko with whom he had a child prior to his employment with the Respondent.
 - b. He violated the Dating in the Workplace Policy by failing to disclose his relationship with Ms. Owoko.
 - c. He violated the Kenya Handbook, Staffing Policies and Conflict of Interest Policies which prohibit the hiring and supervising of relatives since he participated in the hiring committee that selected Ms. Owoko.
 - d. He violated the Dating Policy since there was evidence that Ms. Owoko reported directly to him during the course of his employment.
 - e. He violated the Personal Conduct Policy and Code of Ethics Governance and Responsibility Policy and Sexual Harassment Policy by having an inappropriate relationship with another staff member (Subject 2) noting his position as Chief of Party in the Kakamega Office. It alleged that Subject 2 was seen at his residence and in public places such as bars on several occasions. During investigations, the Claimant admitted that she came to his house to fix lunch for him with one of the interns but denied having any sexual relationship with her.
 - f. Contrary to the Respondent's Personal Conduct Policy and Code of Ethics Governance and Responsibility Policy he failed to properly address any allegations by staff insinuating that there was a sexual relationship between him and subject 2. This was a violation of policy since he was



the Chief of Party in the Kakamega Office which is the highest managerial role and he exercised supervisory role over the staff.

- g. It was alleged that he more likely than not had sexual relationship with two of the Respondent's staff i.e. subject 2 and Ms. Owoko. This was a violation of the Respondent's policies on Dating in the Workplace, Personal Code of Ethics and Sexual Harassment Policy noting that he had supervisory position over the staff.
9. The Claimant states that he responded to the further show cause letter and on 8th May 2020, the Respondent terminated his employment on grounds that he violated the Respondent's Conflict of Interest Policy by failing to disclose his relationship with Ms. Owoko with whom he admits having a child prior to his employment with the Respondent as well as acting in an overall supervisory role over during her employment; failure to disqualify himself from participating in the hiring process of Ms.Owoko in violation of the Respondent's Kenya Handbook, Staffing Policies and Conflict of Interest Policies which prohibit the hiring and supervising of relatives.
10. The termination letter also stated that although there was inconclusive evidence relating to the allegation that the Claimant was in breach of the Sexual Harassment Policy, he had an obligation to address any concerns raised in this regard immediately they were brought to his attention. That because of this alleged omission, he breached his contractual obligation.
11. It is the Claimant's submission that the Respondent's decision to terminate his employment was contrary to Section 43(2) of the [Employment Act](#) on grounds that during the course of his employment he did not have a relationship with Ms. Owoko and did not directly supervise her as alleged. There were no genuine reasons to terminate his employment since the allegations against him were non-existent and untruthful.
12. Further, there was no evidence that he had breached the Sexual Harassment Policy yet the Respondent still terminated his employment.
13. It is the Claimant's case that the reasons for his termination have no factual basis since the Respondent failed to conduct a thorough and impartial investigations devoid of any malice against him.
14. The Claimant states that he was given a four days' notice of hearing and present a witness. He was also permitted to appear with a colleague for the hearing but the suspension letter indicated he could have no contact with any of his colleagues. Additionally, he was denied to cross examine the witnesses during the hearing.

Respondent's Case.

15. In opposition to the Claim, the Respondent filed a Memorandum of Defence dated 18th August 2021.
16. The Respondent admitted that the Claimant was its employee and his last position was as Programs Technical Director; and states that during the tenure of his employment, the Claimant was expected to and agreed to comply with the terms of his contract of employment and the Respondent's policies.
17. The Respondent states that in February 2020, its staff members made a number of reports to its internal investigation's unit against the Claimant. The allegations were sexual harassment of a female staff over a number of years the most recent being in 2019; and that he allegedly had a child with an employee, Lillian Owoko, which he confirmed after she was hired. The recruitment records further showed the Claimant participated in the hiring committee that selected the employee for a position that reported to him thus presenting a possible conflict of interest.



18. It is the Respondent's case that it engaged an independent investigator to conduct an inquiry into the allegations to determine whether the allegations are substantiated. The investigator conducted interviews offsite with both former and current employees and the Claimant recorded a statement with the investigator concerning the allegation in which he confirmed his relationship with Lilian Owoko.
19. The Respondents state that the investigator found that the Claimant was more likely than not in violation of the Respondent's Code of Ethics, Governance and Responsibility and Conflict of Interest Policies, Dating in the Workplace Policy and Staffing policies prohibiting the hiring and supervising of relatives and that he failed to disclose his relationship with Lillian Owoko in accordance with the company policies.
20. Subsequently, it wrote to the Claimant a show cause letter dated 31st March 2020 highlighting the allegation as well as the Investigation Report Summary. It further resolved to lawfully suspend the Claimant for 2 weeks from 31st March 2020 noting the serious nature of the allegations to enable proper conclusion of the proceedings. The Claimant responded vide a letter dated 2nd April 2020.
21. Having considered the Claimant's response, the Respondent found it necessary to conduct further internal inquiries in April 2020. Upon further examination of additional documentation, it emerged that additional material facts had been unreported and/or not brought to the attention of the Respondent. Based on the additional evidence obtained, the Respondent issued the Claimant a further show cause dated 23rd April 2020 together with an Amended Investigation Report Summary and required him to respond to the allegations therein and invited him to a disciplinary hearing on 28th April 2020.
22. The Respondent states that the Claimant responded to the further show cause letter dated 27th April 2020. It rejected the Claimant's request for the identities of women who levelled accusations against him as it is his obligation to protect witnesses in sexual harassment. Further, there were concerns of retaliation as the Claimant's wife had contacted an individual and put pressure on the individual in regard to the ongoing investigations.
23. It is the Respondent's case that the Claimant attended the disciplinary hearing as scheduled and was given an opportunity to defend himself against the allegations.
24. Upon considering the Claimant's case as well as the evidence presented, the Respondent found the same unsatisfactory and his action tantamount to gross misconduct. The Respondent thus resolved to summarily dismiss him for gross misconduct on 8th May 2020. The termination letter stated the reasons for termination and informed the Claimant of his right to appeal against the decision.
25. It is the Respondent's case that it had genuine and reasonable belief that the Claimant knowingly and deliberately concealed the relation with Ms. Owoko thus amounting to a violation of its policies on conflict of interest.
26. The Respondent states that the Claimant was terminated for violation of the Respondent's policies on conflict of interest and not sexual harassment as stated by the Claimant. The termination letter was clear that the evidence in relation to the sexual harassment allegations were inconclusive though they were made and investigated.
27. It is the Respondents' case that the Claimant being aware of the Respondent's policies should neither have been involved in the recruitment process of Lilian Owoko nor have a supervisory role over her during her employment. and at no point did the Claimant disclose to the Respondent his relationship with Ms. Owoko as required by its policies and procedures.



28. It is the Respondent's case that Lilian Owoko qualified as a relative according to its policies on the fact that she had a child with the Claimant. Therefore, the Claimant knowingly violated the Staffing and Conflict of Interest Policies by participating in the hiring committee of Ms. Owoko and the allegation that he was not the decision maker does not hold water based on the fact that by being part of the committee, he was reasonably expected to have influence over the recruitment process.

Evidence in Court.

29. The Claimant (CW1) adopted his witness statement dated 19th May 2021 as his evidence in chief and produced his filed bundle of documents dated even date as his exhibits 1-10.
30. During cross examination, CW1 testified that he was not terminated for sexual harassment.
31. CW1 testified that he had a chance to be interrogated by the investigator during the investigations of the allegations against him.
32. CW1 testified that he noticed that Lilian had been shortlisted for a job. He informed his supervisor about his previous relationship with her and he informed him that since the relationship was before he joined PATH, he could proceed and sit in the panel. He however stated that no such evidence has been produced in court.
33. CW1 testified that he was the Deputy Chief of Party and Technical Lead based in western Kenya for project Afa Plus; Lilian was also with Afa Plus Western Kenya
34. CW1 testified that he did not disclose in his disclosure forms his relationship with Lilian as there was no conflict of interest from his point of view.
35. CW1 testified that the HR policies does not state clearly on family relationships but they are on governance and financial conflict. Further, his spouse was a board member of another organisation working with PATH and he disclosed the same.
36. CW1 testified that he joined PATH before Lilian and included the child they share in his medical record but when Lilian joined the company, he was removed from his records. This was a disclosure in the conflict of interest.
37. CW1 testified that he was paid his final dues and that he did not appeal against the termination of his employment.
38. The Respondent's witness (RW1) Nelly Wanjiku stated she is the HR Director for PATH Africa and adopted her witness statements dated 13th October 2022 and 3rd February 2023 as her evidence in chief and produced the Respondent's bundle of documents dated 18th August 2022 and supplementary list of documents dated 3rd February 2023 as her exhibits.
39. RW1 testified that the Claimant was not terminated on account of sexual harassment but on account of breach of conflict of interest policies.
40. During cross examination, RW1 testified that the termination letter issued indicated that the Claimant failed to disclose the parenting relationship between himself and Lilian Owoko, who was the mother of his child, at the time they were both employed by the organisation.
41. RW1 testified that the Claimant disclosed the name of the child in the medical insurance forms.
42. RW1 testified that the during the hiring of Lilian Owoko, he was working under a supervisor, who had a say on whether or not a person can be hired.



43. RW1 testified that the Claimant was in charge of the project that he was working for together with Lilian Owoko.
44. RW1 testified that the NTSC was issued 2 years after Lilian Owoko left the Respondent's employment and in response he said he had informed his supervisor of their relationship but did not provide any evidence of the same.

Claimant's Submissions.

45. The Claimant submitted on two issues: - Whether the Claimant termination of employment was wrongful, unfair and unlawful; and whether the Claimant is entitled to the prayers as sought in his Memorandum of Claim.
46. On the first issues Claimant relied on *Walter Ogal Anuro v Teachers Service Commission (2013) eKLR* where the court held that "For termination of employment to pass the test of fairness, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination."
47. The Claimant submitted that the disciplinary process was not procedurally fair he was not given a detailed account of the alleged breach of the Respondent's policies and was given one day to respond to the show cause letter of 31st March 2020. The Claimant argues that the argument that he ought to seek an extension does not nullify the Respondent's responsibility to give him sufficient time to respond.
48. Additionally, the Claimant has submitted that the hearing was on short notice and although he was permitted to have a colleague appear with him, his suspension letter barred contact with any of the Respondent's employees.
49. The Claimant submitted that when he was locked out of the system and denied access to obtain records of the conversation with his supervisor, Dr. Mosire, informing him of his child with Ms. Owoko and that his supervisor gave him the go ahead to sit in the recruitment panel despite his disclosure.
50. The Claimant submitted that disciplinary procedure was fundamentally flawed as the Respondent had an interest in the outcome. They were biased against the Claimant who realised that all this was done to basically have him leave the Respondent organisation.
51. On substantive fairness, the Claimant submitted that the reasons given in justifying termination of his employment are disputed as said reasons were never substantiated. The Claimant argued that Respondent did not have any evidence Ms. Owoko's recruitment was not on merit; and neither did it establish that the Claimant directly or indirectly tried to influence the hiring of Ms. Owoko.
52. The Claimant submitted that he did not have the overall mandate on hiring employees but the Respondent still relied on the ground that he knowingly violated the Respondent's Kenya Handbook, Staffing Policies and Conflict of interest Policies to terminate the Claimant's employment
53. On the second issue, the Claimant submitted that having established that the termination of his employment was wrongful, unfair, unlawful; he is entitled to the prayers as sought in the Memorandum of Claim.



Respondents' Submissions.

54. The Respondents submitted on three issues: - whether the Respondent had valid reasons to warrant the termination of the Claimant's employment contract; whether the Respondent followed due process in effecting the termination; and whether the Claimant is entitled to the reliefs sought.
55. On the first issue, the Respondent submitted that upon review of the Claimant's conflict of interest declaration between 2012 and 2018, it was discovered that he knowingly violated its Conflict of Interest Policy by failing to disclose his relations with Lilian Owoko, as required. He admitted during cross-examination that he had a child with Lilian Owoko and that he did not disclose this fact in the annual disclosure forms.
56. The Respondent submitted that the Claimant did not have anything in writing to prove that he informed his supervisor of his relationship with Lilian Owoko. The Respondent contends that from the time he received the show cause letter, the Claimant had a duty to contact Dr. Mosire to obtain any necessary confirmations. Further, he did not even call him as a witness during the hearing of this court case.
57. It is the Respondent's submission that Lilian Owoko being the mother of the Claimant's child amounted to a private interest and under the Respondent's policies, an employee has the personal responsibility to disclose any conflict of interest and to conduct themselves in utmost integrity in all their dealings.
58. The Respondent submitted that the Claimant was the overall supervisor of Lilian Owoko and he confirmed in his testimony that they worked in the same project, Afia Plus. This was in breach of the Respondent's policies that prohibit the supervising of any person with whom there is a conflict of interest or is a relative. No employer would allow a manager to have overall supervision over an employee whom the supervisor had a parenting relationship.
59. The Respondent submitted that the Claimant testified that he participated in the hiring committee that selected Lilian Owoko and failed to recuse himself from participating in the hiring process or declare any conflict of interest during the interview. The Claimant argument that he was not the one who hired Lilian Owoko is immaterial as he should not have been part of the panel and he should have declared a conflict of interest.
60. The Respondent relied on Section 43(2) of the *Employment Act* that states that the reasons for the termination relates to issues that the employer genuinely believed to exist at the time of termination of the employee's contract; and submitted that it has proved on a balance of probabilities the reasons for termination of the Claimant's contract were valid, fair and just.
61. On procedure fairness, the Respondents submitted that the Claimant's termination was procedurally fair and within the meaning of Section 41 of the *Employment Act*.
62. The Respondents submitted that the Claimant was issued with a show cause letter dated 23rd April 2020 which also invited him for a disciplinary hearing on 28th April 2020. This was sufficient time for the Claimant to prepare and he never raised any concerns with the period require to reply to the letter even during the hearing. Secondly, the Claimant never sought an extension of time to file any responses or illustrated what harm and prejudice suffered in respect to the timing of the disciplinary hearing.
63. The Respondent submitted that the Claimant's allegation that he was unable to get a colleague to appear at the hearing as a result of his suspension is false. During the hearing, the Claimant indicated



that the selected employee had an emergency and indicated the committee could proceed with the meeting without the employee of his choice present.

64. The Respondent submitted that the Claimant's allegation that his responses dated 2nd April and 27th April 2020 were never considered is a false allegation. The termination letter clearly indicated that the Respondent considered the Claimant's written responses and his responses made during the disciplinary hearing and the letter set out a determination of all the allegations.
65. It is the Respondent's submission that the allegation that the Claimant was not allowed to cross-examine the witnesses at his disciplinary hearing does not arise as he was not terminated on account of sexual harassment. The Respondent did not call any witnesses in respect to the conflict of interest.
66. On the third issue, the Respondent submitted that having proved that the termination of the Claimant's employment was based on valid reasons and was procedurally fair, the Claimant is not entitled to 12 months compensation or any damages arising from the same alleged wrong.
67. The Respondent submitted that the Claimant admitted he received his final dues set out in the termination letter dated 8th May 2020 and a payslip was produced in the Respondent's supplementary bundle of documents setting out the payments made.
68. I have examined all the evidence and submissions of the parties herein. From the evidence on record, the claimant was terminated vide a termination letter dated 8th May 2020 which indicated the reasons for termination being:

1. You knowingly violated PATH's Conflict of Interest Policy, by failing to disclose your relationship, as required, with Lilian Owoko with whom you admit having a child with prior to her employment with PATH as well as acting in an overall supervisory role over her during her employment with PATH. In this regard, there is no documentary evidence in your personnel file of the alleged discussions with your supervisor Dr. Misore as indicated by you during the disciplinary hearing

2. You knowingly violated PATH's Kenya Handbook, Staffing Policies and Conflict of Interest Policies which prohibit the hiring and supervising of relatives by participating in the hiring committee that selected Lilian Owoko for a position at PATH. You failed to disqualify yourself from participating in the hiring process and the fact that you were not the final decision maker is immaterial.

69. Before the termination, the claimant was served with various notice to show cause letters. The 1st notice to show cause was one dated 31st March 2020. In the NTSC the respondents indicated that the claimant had breached its policies and procedures in the employment contract being:

Policy: Personal Conduct Policy

This policy ensures that "As an organization respectful of all people, obvious illegal, threatening, or unsafe behaviors cannot be tolerated. Some conduct, either on or off the job, is unacceptable in any form and may lead to immediate termination of employment.

Unacceptable personal conduct includes

Sexual and malicious harassment"

Policy: Harassment and Retaliation Policy

Unacceptable behavior under this policy includes "Offering a job or an employment benefit (such as a raise, promotion or career advancement) in exchange for sexual favors, or threatening an employment action (such as termination or demotion) for an employee's refusal to engage in sexual activity."

Policy: Code of Ethics, Governance, and Responsibility



Personal Responsibility

This policy states that the organization "expects our staff, board members, affiliates, and those with whom we work to conduct themselves with the utmost integrity and in a manner that complies with the letter and spirit of all applicable laws and regulations." It also expects each individual to make every good-faith effort to know what is expected for her or his particular role and to act with good judgment

It is critical that individuals participate in training, seek guidance, are familiar with policies and laws, and ask questions to ensure ethical conduct and report concerns regarding compliance with legal requirements" and with the organization's policies.

Kenya Employee Handbook

Sexual harassment

Is defined as including "unsolicited and unwelcome sexual advances, requests for sexual favors, and other written, verbal, physical, or visual conduct of a sexual nature that is directly imposed on an individual or observed by a third party. Sexual harassment occurs when:

Submission is made either explicitly or implicitly a term or condition of employment Submission or rejection by an employee is used as a basis for employment decisions affecting the employee."

Policy: Staffing Policy

This policy states that the organization "ensures that the most suitably qualified candidates are selected by adhering consistently to staffing processes that are fair, transparent (internally and externally), competitive, and comply with federal, state, and local employment laws.

70. Investigations were also conducted on the issue whereby the claimant is said to have been found culpable. The investigation revealed that the claimant violated the respondent's conflict of interest policy and dating in the workplace policy by failing to disclose his relationship as required with subject 3 with whom he admitted having a child with prior to her employment with PATH.
71. That the claimant also violated the respondent's handbook, staffing policies and conflict of interest policies which prohibit having and supervising of relatives.
72. The investigation report pointed out that the claimant participated in the hiring committee that selected subject 3 for the position at PATH and that subject 3 reported directly to the claimant in the course of her employment.
73. The claimant was thereafter suspended from duty vide a letter of 31/3/2020 and informed that he was strictly not allowed to be in contact with anyone working with PATH and his access to PATH systems were deactivated.
74. The claimant responded to the show cause letter denying culpability. He contends that he never had any sexual contact with subject 3 since 2009 when they broke up. During the disciplinary hearing, the claimant avers that he was not allowed an opportunity to call his witnesses as he was denied an opportunity to get in contact with staff of Path. He avers that he could also not get access to any evidence as his access to Path systems were deactivated.
75. From the evidence on record, it is indeed true that the claimant had a relationship with subject 3 in 2008 and they had a child. The claimant was however employed by the respondents in 2011. The subject 3 was employed by the respondents in 2012. The claimant has not denied sitting in the interview panel that interviewed her. The claimant however averred that he disclosed his previous relationship with her during the interview process. No evidence was adduced on this but the claimant avers he had no access to the Path system to bring out this evidence.



76. Indeed the claimant was locked out of the system of the respondents but he had a chance if he so wished to demand production of certain document which he couldn't access. This he did not do.
77. On the issue of supervising the subject 3 while having had a relationship that produced a child is also a matter admitted by the claimant. It is therefore true that the claimant breached the respondent's rules and regulations/policies. The respondents indeed had a valid reason to warrant the claimant's termination.
78. As concerns the process the claimant has averred that the process was flawed in that he had no chance to call his witnesses or cross examine the respondent's witnesses. This is indeed true given the fact that the claimant had previously been told not to contact any staff of the respondent as he was sent on suspension. Vide a letter of 23rd April 2020 the claimant was issued with a further show cause letter and also invited to a disciplinary hearing scheduled to take place on 28/4/2020. The fact that there was a show cause letter and a scheduled hearing in the same letter indicate a pre meditated position by the respondent despite any response that may be aduced from the show cause letter.
79. The letter asked him to come with an employee of his choice for the hearing whereas also bringing in extraneous issues relating to his wife. It is my finding that the disciplinary process was not above board as it was perceived that the claimant was guilty despite his presentation in the show cause letter.
80. Section 45(2) of the *Employment Act* 2007 states as follows:
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.
81. Having found that the respondents failed to follow due process whilst carrying out their disciplinary process, I find the claimant's termination was unfair and in the circumstances of the case, I find for claimant in terms of the breach and in view of the fact that the failure to follow a proper disciplinary action ruined his career, I find 6 months' salary as compensation apt which I grant him being 6x1,407,937= Kshs a8,447,622/- less statutory deductions.
82. I also order he be issued with a certificate of service. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

