



**Maritim v Kenyatta National Hospital (Cause E6557 of 2020)
[2025] KEELRC 2133 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2133 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6557 OF 2020**

**MN NDUMA, J
JULY 17, 2025**

BETWEEN

PHILIP KIPRONO MARITIM CLAIMANT

AND

KENYATTA NATIONAL HOSPITAL RESPONDENT

JUDGMENT

1. The suit was filed on 22/12/2020 against the Respondent in which the Claimant prays for:-
 - a. An order that the decision to surcharge the Claimant of the sum of Kshs. 964,415.00 without granting a fair hearing and opportunity to be heard is unlawful;
 - b. A permanent injunction restraining the Respondent from surcharging the Claimant of the sum of Kshs. 964,415.00 without subjecting him to a fair disciplinary process.
 - c. An order directing the Respondent to reimburse to the Claimant the sum of Kshs. 424,200.00 with interest thereon at commercial bank rates from the date of filing suit.
 - d. General damages for breach of the employment contract and unfair disciplinary process.
 - e. Costs and interest at court rates from the date of judgment.
2. Claimant testified in support of the claim stating that the Respondent made a decision to surcharge him Kshs. 964,415.00 in respect of alleged deficit in the store stocks. The surcharge followed a disciplinary process where the Claimant was called to a board of enquiry and was notified that he had been found guilty of loss of stock in the sum of Kshs. 964,415.00 in his capacity as a Supplies Chain Management Officer.
3. The Claimant states that no such loss was proved but rather there was discrepancies in the accounting of the stock in his department.



4. That pursuant to that decision, the Respondent commenced monthly deduction from the salary of the Claimant in the sum of Kshs. 4,200.00 per month. That as at the time of filing suit, the Respondent had recovered Kshs. 424,200.00 from the salary of the Claimant since June 2012 and continued to deduct the amounts.
5. The court issued a temporary injunction to stop the deduction by an order dated 21st December 2020.
6. The Claimant states that the deduction was unlawful and unfair and that the court grants him the reliefs sought. The Claimant stated that he was never given opportunity to explain the issue yet the Bin card and physical stock which were under his custody matched up.
7. That the Claimant appealed the decision but the appeal was dismissed hence the suit.
8. The Respondent filed a memorandum of response to the claim in which it denies the claim. RW1 Peris Mwaura testified and adopted a witness statement dated 22/2/2021 and produced exhibits '1' to '6' in defence of the claim of the even date.
9. RW1 stated that the Claimant was the stock holder at the Respondent's building stores and was in charge of keeping up to date all records and/or inventory of supplies and consumables within his area of designation.
10. RW1 stated that during the stock taking conducted at the laboratory and cold room stores which were under the Claimant during the financial years 2010/2011, it was noted that there were discrepancies. That stock with over Kshs. 964,415.00 was missing and could not be accounted for. The Claimant was required to explain the discrepancies. The Respondent established an independent committee known as Board of Enquiry to enquire into the matter and get explanation from the officers concerned.
11. The Board of Enquiry made a finding that the Claimant was negligent in the performance of his duties thereby exposing the Respondent to losses. As a result it decided that the Claimant be surcharged to recover the losses.
12. That the Claimant being aggrieved with the decision of the Board appealed the decision to surcharge him to the Board of Enquiry appeals Committee which reviewed the decision alongside other appeal cases presented to it. The Claimant was invited before the Board of Enquiry Appeals Committee about twice to explain the shortages experienced during 2010/2011 financial year. The Claimant made both oral and written response against the surcharge. The appeals committee reached a finding that the Claimant was unable to explain the discrepancies and upheld the decision to surcharge the Claimant. The surcharge was implemented 7 years ago and as at September 2020 the outstanding balance was Kshs. 544,415.00.
13. That the administrative process was expeditious, efficient, lawful, reasonable and procedurally fair in conforming with Article 47 of the Constitution of Kenya 2010 read with section 4 of Fair Administrative Actions Act 2015.
14. That this suit was brought too late in the hour, is an afterthought and lacks merit.

Determination

15. The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. The issues for determination are:-
 - i. Whether the decision to deduct the incurred loss from the Claimant is supported by the employment contract of the Claimant; the Human Resource Policy; the manual of the Respondent and/or by the Employment Act, 2007.



- ii. What reliefs is the Claimant entitled to, if at all.
16. The Respondent relies on clause 10.9(10) of the Human Resource Policy Manual which provides:-
- “The service shall surcharge any employee who through negligence, occasions loss of funds or service property. An employee who:-
- a. Has culpably failed to collect any monies owing to the hospital for the collection of which he is personally responsible;
 - b. Is personally responsible for any improper payment of hospital funds which are not duly vouched for;
 - c. Is personally and culpably responsible for any loss of damage to or destruction of any funds, stamps, stores or other property of the hospital which he has personal charge;
 - d. Knowingly uses without authority, stores, vehicles, buildings, equipment or any other service property or services provided for official purposes;
 - e. Is personally and directly responsible for any additional expenditure or liability being incurred by the hospital which, but for his culpable negligence, need not have occurred may, if his explanation is unsatisfactory, be surcharged for the whole or part of the amount involved.
- The clause further provides

Surcharge Committee

17. Any surcharge affected under this Regulation will only be made on recommendation of the Surcharge Committee appointed by the Director, Surcharge under this Regulation may be made in addition to other disciplinary action being taken against the employee.

Amount of surcharge

18. The amount of surcharge shall be determined by the Surcharge Committee taking into consideration the cost of damage caused or loss incurred. An employee who is dissatisfied with a surcharge imposed on him may appeal to the Director. In all such cases the amount of surcharge shall be recovered from the employee's salary. Where the loss incurred is such that the employee's salary cannot meet the cost, termination of the employee's service may be considered.
19. From the letter dated 12th June 2012, which the Claimant was surcharged and warned, the surcharge was established by a Board of Enquiry into stocks held during financial year 2010/2011. There is no indication that a Surcharge Committee was established in terms of clause 10.9(v) appointed by the Director to determine this matter of surcharge applicable to the Claimant having been found by the Board of Enquiry which established that there were unreconciled shortages/surpluses amounting to Kshs. 964,415.00.
20. The Claimant was not provided opportunity to appeal to the Director in terms of clause 10.9(vi) but instead an Enquiry Appeals Committee was established to review his case. Clause 10.9 (v) and (vi) do not provide for such procedure.



21. Accordingly, the Claimant was not surcharged following the established policy and procedure under clause 10.9 (iv) (v) and (vi) of the Respondent's HR Policy and Procedure manual. The Respondent violated its own internal documents in this respect.
22. Furthermore, there were many staff who were involved in this matter and is not clear how the surcharged amounts were apportioned to each one of them to justify the amount attributed to the Claimant personally.
23. Furthermore, RW1 confirmed under cross-examination that the letter dated 13th February 2013, indicated that the Bin card and physical stock that was under the custody of the Claimant matched. That no proper reasons were provided as to why the loss was attributed personally to the Claimant during the alleged inquiry and appeal, which were in any event not in conformity with the HR Policy and procedure manual.
24. The *Employment Act* provides
 - “ 19 Deduction of wages (1) notwithstanding section 17(1) ; an employer may deduct from the wages of his employee...
 - (b) A reasonable amount for any damage done to, or loss of any property lawfully in the possession or custody of the employer occasioned by the willful default of the employee.”
 - (b) An amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically on his being entrusted with the receipt, custody and payment of money;
25. The respondent did not adduce any evidence to prove any willful default of the Claimant that led to the alleged loss of stock nor did the employer adduce any evidence indicating a clause of the contract of employment of the Claimant which specifically provided or entrusted the Claimant with receipt, custody and payment of money in respect of alleged missing stock.
26. Accordingly, the Claimant has proved on a balance of probability that the decision by the Respondent to surcharge him and deduct from his salary a sum of Kshs. 964,415.00 was unfair and unlawful.
27. Accordingly, the suit has merit and the Claimant is granted the following reliefs set out in the memorandum of claim:-
 - a. The decision to surcharge the Claimant a sum of Kshs. 964,415.00 was unfair and unlawful.
 - b. The Respondent is permanently enjoined from surcharging and deducting from the salary of the Claimant Kshs. 964,415.00.
 - c. The Respondent is directed to reimburse to the Claimant all the amounts deducted from the salary of the Claimant which stood at Kshs. 424,200.00 at the time of filing suit and any subsequent deductions that may have occurred.
 - d. The Respondent is to refund the deducted amounts with interest at court rates from date of deduction till payment in full.
 - e. Costs of the suit

DATED AT NAIROBI THIS 17TH DAY OF JULY 2025.



MATHEWS NDUMA

JUDGE

Appearance:

Mr. Mwinzi Advocate for the Claimant

Mr. Lumumba for the Respondent

Mr. Kemboi – Court Assistant

