



**Karimi v Kenyatta National Hospital (Cause 1169 of 2018)
[2024] KEELRC 2355 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2355 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1169 OF 2018
JK GAKERI, J
SEPTEMBER 30, 2024**

BETWEEN

PIERA KARIMI CLAIMANT

AND

KENYATTA NATIONAL HOSPITAL RESPONDENT

JUDGMENT

1. The Claimant instituted the instant case vide a Statement of Claim filed on 10th July, 2018 alleging that termination of her employment was unfair.
2. The Claimant avers that she was employed by the Respondent and deployed in the Finance Department and served dutifully and diligently until 28th February, 2017 when she was served with a notice to show cause on alleged irregular clearance of patients from the Respondent's hospital.
3. That she received an invitation to a disciplinary hearing on 15th March, 2017 and was interdicted on 18th July, 2017.
4. That the Claimant's request for time to gather information and documentation on the patients was not considered by the committee but accessed them after the hearing and was dismissed from employment on 19th September, 2017.
5. The Claimant avers that she lodged an appeal on 10th October, 2017 but it was not heard notwithstanding the evidence attached.
6. The Claimant prays for;
 - i. A declaration that termination of her employment by the Respondent was unfair.
 - ii. Service pay from all years served.
 - iii. Damages equivalent of 12 months' salary for unfair termination.



- iv. Costs of the suit.
- v. Any other relief that this honourable court may deem fit and just to grant.

Respondent's case

7. By a statement of defence and Counter-claim filed on 20th November, 2019, the Respondent admits that the Claimant was its employee at all material times and had been previously warned of cash shortages while serving as a Cashier.
8. The Respondent further admits having issued a notice to show cause and invited the Claimant for a disciplinary hearing and avers that it complied with the prescribed procedures and the [Employment Act](#).
9. It is the Respondent's case that the Claimant failed to address the cases, the subject matter of the notice to show cause on which dismissal hinged as evidenced by the minutes of the hearing dated 15th August, 2017 and was accorded 21 days of appeal which was considered on 30th September, 2019.
10. As regards the Counter-claim, the Respondent avers that since the Claimant was a Billing Clerk and used her position improperly occasioning revenue loss of Kshs.981,012/=, she was liable.
11. The Respondent prays for dismissal of the Claimant's suit with costs.

Claimant's evidence

12. On cross-examination, the Claimant confirmed that although she was heard, she received the documents after the hearing.
13. The Claimant confirmed that she presented her case at the hearing but could not recall whether she received the minutes.
14. The Claimant admitted that she was given the reasons for termination of employment namely, irregularly clearance of patients to the tune of Kshs.981,012/=.
15. That she provided evidence in rebuttal and denied having used other patients for her defence as opposed to those identified by the notice to show cause.
16. According to the Claimant, a patient was cleared by three departments, namely; ward, finance and security.
17. It was her testimony that Hillary Wiyala was cleared by Nixon Odhiambo, as was Mr. Stephen Murengi, Allan Maina, Michael Ndungu, Mary Wamuhu and Michael Wasukira.
18. The Claimant testified that Mark Lewis Mutegi was cleared by Edna and Cecily Njeri Njagi by Hillary Kiprotich and bill paid by the NHIF in the case of Cecily Njeri Njagi.
19. In the case of Francis O. Makokha, the invoice was finalised by the Claimant but not dispatched to the institution for payment of Kshs.14,600/= as was the invoice of Tobias Ating'a Opondo and its status was not explained.
20. The Claimant admitted that Wanjiku Milka Mwangi's file had no clearance form and Nixon Odhiambo was responsible.
21. The Claimant confirmed that Benson Ondari was a project patient cleared by Nixon.
22. The Claimant further confirmed that she filed an appeal against the dismissal but was not invited for a hearing and did not receive a letter on the outcome.



23. On re-examination, the Claimant testified that the Respondent did not communicate the outcome of the appeal.
24. That Nixon Odhiambo was the Claimant's supervisor and still works for the Respondent as are Victor and Edna.
25. That in the debtors office, the Claimant did not handle cash and invoices were paid later and was praying for reinstatement and dues.

Respondent's evidence

26. RWI, Mr. Anthony Folingi confirmed that he was an Accountant and joined the Respondent in 1995 and was the Chair of the Investigation Committee appointed on 19th July, 2016 to investigate the Claimant's and other cases of irregular clearance of patients.
27. That the Claimant was a Billing Officer and her role was to finalise bills and clear patients and would be responsible if a patient was released without payment.
28. RWI testified that initially, the Claimant had three cases of Stella Musyoki, Wanjiku Milka Mwangi and Benson Ondari.
29. That by letter dated 28th April, 2016, the Claimant explained to the SAD Finance the circumstances surrounding the attempted fraudulent clearance of Stella Musyoki through the Britam Scheme as demanded by letter dated 22nd April, 2016 from SAD Finance.
30. According to the Claimant, the bill was paid in cash but she could not confirm.
31. According to Stella Musyoki's statement dated 6th February, 2017, the Claimant was the Billing Officer and the patient was cleared through Britam but she was not a Britam Patient and there was no valid letter of undertaking by Britam to pay the bill.
32. RWI testified that the clearance was improper and the billing was reversed as the Claimant had no documentation to clear the patient.
33. As regards Wanjiku Milka Mwangi, patient number 0358110, RWI testified that she was cleared by the Claimant through Britam fraudulently as the Claimant billed Britam and Lang'ata Women Prison, Kshs.12,000/= yet the patient was not a prisoner and no payment was made save Kshs.1,015/=.
34. RWI testified that Benson Ondari was cleared through the Fitsula Project yet he is a man and was cleared by the Claimant but the bill was not paid.
35. It was RWI's testimony that as they were investigating the three cases, others cases were unearthed, cleared through MSF-Belgium and DMU. The latter is for indigents and it's a debtor's account and the patients were not in these two categories.
36. For instance, Hillary Wiyala was cleared by the Claimant in the system on 1st June, 2015 but the supervisor Nixon Odhiambo signed the printed Patient Release Form on the same day as the file copy showed.
37. That the patient was first cleared under MSF and the debt transferred to DMU (abscondment) as it was not paid and remains unpaid as the patient was not a MSF patient and the amount billed exceeded their cap of Kshs.100,000/=.
38. That the Final Invoice is to MSF-Belgium and the Payer is ABSCONDMENT.



39. That Peter Chege's final bill of Kshs.57,472/= remains unpaid.
40. RWI testified that the Claimant initiated the clearance of Stephen Murengi and the Final Bill of Kshs.89,341/= remains unpaid as the payer is ABSCONDMENT.
41. That Allan Maina Nyagi, Patient No. 0348142's bill of Kshs.79,066.00 remains unpaid and was cleared by the Claimant but in rebuttal, the Claimant provided details of Allan Maina, Patient No. 0506557 whose bill of Kshs.25,737.00 was paid in cash.
42. That final invoice of Michael Ndungu's, Patient number 0342053's bill of Kshs.116,056.00 remains unpaid as the payer is abscondment, as is that of Mary Wamuhu Njogu Patient No. 0323683's bill of Kshs.126,544.00 though cleared through MSF-Belgium.
43. RWI testified that Mr. Lau Michael Wasukira, Patient No. 0329514's was cleared by the Claimant through MSF-Belgium Kshs.26,869/= but the payer was abscondment.
44. That the patient exited the hospital on the strength of Mr. Nixon Odhiambo's handwritten comment on the Final Invoice dated 18th February, 2015, that the system had challenges, hence there was no clearance form as such.
45. As regards Lewis Mark Mutege, Patient Number 042307 with a bill of Kshs.16,085.00, the Claimant presented another Patient by the name Mark Lewis Mutunga Patient Number 0527928 cleared by Edna and whose bill of Kshs.9,862.00 was cleared by NHIF.
46. As regards Esther Mumbi Ngethe, Patient Number 0328310's bill of Kshs.20,002.00, clearance was by the Claimant through Britam. The payer is indicated by hand by the Claimant.
47. In the case of Cecily Njeri Njagi, Patient number 0434945, RWI confirmed that this is the patient under investigation and not Cecily Njeri Ongwae, patient number 0585490 cleared by Hillary Kiprotich and bill paid by NHIF.
48. That the bill of Kshs.72,925/= incurred by Kelvin Mudendei Michinga was cleared by the Claimant as admitted in her undated letter to the Deputy Director Human Resource and remains unpaid.
49. RWI explained that the investigation revealed that the Respondent is owed the sum of Kshs.981,612/= attributable to faulty clearance of patients by the Claimant.
50. On cross-examination, RWI confirmed that he is a Senior Accountant, member of ICPAK No. 10463 and has been in Finance since 2002 having joined the Respondent in Internal Audit in July 1995 and knew the Claimant as a Billing Clerk whose principal duty in 2015 was finalisation of bills before clearance.
51. That under the Funsoft System, the provider of service charges the patient and the bill accumulates per service in the system and after discharge, the patient proceeds to finance for billing and the Claimant was in billing.
52. On Stella Musyoki, the witness admitted that 9 cash payment of Kshs.48,498/= was received and bill cleared.
53. As regards Wanjiku Milka Mwangi, the witness testified that she was cleared by Nixon and later by the Claimant under Britam and Lang'ata Women's Prison was not a prisoner but the Bill was paid by Britam vide cheque number 52506 052015.
54. As regards Benson Ondari, RWI could not tell how and by whom he was mapped or registered as Fistula patient.



55. That Hillary Wiyala's Patient Release Form was printed by the Claimant, and signed by Nixon Odhiambo and a nurse named Mary.
56. That although the Claimant billed MSF-Belgium, he was not their patient and the Bill of Kshs.101,233/= was unpaid as per the MOU between the Respondent and MSF-Belgium.
57. That there was a purported undertaking dated 1st June, 2015 signed by one Jonah of Kibera South Health Centre.
58. That in the case of Mr. Stephen Murengi, the Claimant printed the Patient Release Form and Nixon signed the hard copy.
59. That in the case of Allan Maina's Patient Release Form, the name was handwritten and the billing officer's name is unknown but it was signed by one Victor and in fact there were two Allan Maina's as evidenced by documents on record namely; Allan Maina and Allan Maina Nyagi.
60. RWI confirmed that while the disciplinary committee recommended dismissal of the Claimant, it recommended interdiction of the supervisor who remains in the Respondent's employment to date.
61. That Esther Mumbi Ngethe's Bill was paid in cash vide receipt number 0328310 according to the Claimant but it was not as the alleged cash receipt number was a Patient Code number.
62. According to RWI, the person who prints the Patient Release Form clears the patient in the Funsoft system and in the case of Hillary Wiyala, Nixon Odhiambo signed the form.
63. That MSF could only paid upto Kshs.100,000/=.
64. That notwithstanding the referral note dated 1st June, 2015, MSF-Belgium denied the document as their own and closed the account and the bill was not paid.
65. That page 120B of the Respondent's 1st Bundle of documents enumerated patients in respect of whom the Claimant did not respond.
66. That the Claimant printed the Patient Release Form for Stephen Murengi, patient number 0349846 and the bill was not cleared despite a referral note from Kibera Health Centre.
67. That in the case of Allan Maina, patient number 0506557, the document does not show who cleared him in the system.
68. The witness admitted that the notice to show cause dated 28th February, 2017 and the summary dismissal letter dated 19th September, 2017 had no patient number against the name Allan Maina but the Investigation Report confirmed that there were two patients by the name Allan Maina.
69. That MSF-Belgium did not pay Michael Ndung'u Murigi's bill of Kshs.107,556.00.
70. According to the witness, Mary Wamuhu Njogu's Patient Release Form printed by the Claimant was signed by Nixon Odhiambo as the case in Michael Wasukira Lau's bill.
71. On re-examination, the witness testified that the Claimant's duties included closing of patient bills after a discharge. From the wards
72. That while Cecily Njeri Njagi's bill was unpaid, that of Cecily Njeri Ongwae was paid by NHIF.
73. That Michael Wasukira Lau's bill is still outstanding under DMU and the Claimant was the billing officer.
74. That every patient had a computer general and manual number.



75. For instance, Michael Wasukira Lau had No. 0329514 as computer generated and No. 1704366 as the manual number.
76. That Stephen Murengi's bill is still outstanding as is that of Mary Wamuhu Njogu of Kshs.126,544/= both cleared by the Claimant.
77. That the Claimant bore the responsibility as the final billing officer as Nixon merely signed the printed document and did not clear the patient.
78. The witness testified that the MOU on record between the Respondent and Medecines Sans Frontiers (MSF)-Belgium (Kenya) capped the maximum financial liability on a patient to Kshs.100,000.00.
79. That the MSF document under the name Hillary Wiyala and Mary Wamuhu had identical serial number 2057.
80. That the statement under NB on page 120B to the effect that "Patients were properly cleared and should not form part of the disciplinary case" meant the properly cleared patients hitherto.
81. That Stephen Murengi's final invoice is to MSF-Belgium but payer is abscondment having been cleared by the Claimant as are the cases of Allan Maina Nyagi and Mary Wamuhu.
82. That Langata Women's Prison did not clear the bill.
83. RWII, Peris Ndungu, the Respondent's Human Resource Officer confirmed on cross-examination that neither the notice to show cause dated 28th February, 2017 nor the dismissal letter dated 19th September, 2017 identified the patients by their numbers and admitted that the issue was raised in the investigation report as it is possible to have patients with identical names such as Allan Maina in this case instance where two names of the patients were identical.
84. That the Claimant appealed vide letter dated 9th October, 2017 and the appeal was received and heard on 30th September, 2019 after the suit had been filed in 2018 despite the Claimant's letter of 7th May, 2018 which was received but not responded to.
85. The witness admitted that the Internal Memo dated 3rd July, 2018 came from a committee in Finance Department addressed to the Deputy Finance and the hand written comment to the Human Resource Manager and the signature was the one of Ephas Choge, the Human Resource Manager.
86. On re-examination, the witness testified that the material period was 2013 and 2015 and dismissal was in 2017.
87. That the Claimant raised many issues that required further investigations and it took time and the appeal was heard and the decision upheld and communicated.

Claimant's submissions

88. By 12th September, 2024 when the Court retired to prepare this judgment, none of the parties had filed submissions notwithstanding the directions given by the Court on 30th July, 2024.

Analysis and determination

89. It is common ground that the Claimant was an employee of the Respondent and at all material times was a billing officer of the Respondent whose duties included finalising bills and clearing of patients after discharge.



90. It is also not in dispute that by internal memo dated 11th July, 2016, the Respondent's Acting SAD notified the Human Resource of possible fraudulent clearance of patients by the Claimant and a notice to show cause was issued on 22nd April, 2016.
91. The case was that of Stella Musyoki, Patient No. 0480447 where the patient had a card only and no undertaking and when the nurse raised alarm, the patient availed cash. The Claimant had discharged the patient through Britam.
92. The second case was that of Benson Ondari whose bill the Claimant had transferred to the Fistula Project.
93. The last was the case of Wanjiku Milka Mwangi who died and the Claimant invoiced Britam and after many reversals, the invoice was transferred to Lang'ata Women Prisons Account and was suspended with a balance of Kshs.241,175/=.
94. Records reveal that the Claimant was suspended on ½ salary with full allowances vide letter dated 18th July, 2016 on account of the three patients. This was to pave way for investigation and a four person committee was appointed vide memo dated 19th July, 2016 and its report was due by 5th August, 2016. RWI was the Chairman.
95. The report of the committee is dated 10th February, 2017.
96. The Claimant provided a written response.
97. The Committee found that;
 - i. Stella Musyoki's bill invoiced under Britam by the Claimant was reversed by Nixon and paid in cash. There was no undertaking.
 - ii. That the bill owed by Wanjiku Milka Mwangi invoiced to Britam and later to Lang'ata Womens Prison was not cleared.
 - iii. The Claimant finalized Benson Ondari's bill on the Freedom From Fistula Project (FFF) of Kshs.3,660/=. The man was offered out-patient services only.
98. In her response to the interdiction, the Claimant argued that it was improper as she was not accorded ample time to present her defense.
99. That she cleared the patients using the same access she uses in her daily routine work, and failure to follow protocol was inadvertent and was not diligent enough to notice the mistakes immediately and denied having acted fraudulently.
100. The Claimant stated that;
 - i. Wanjiku Milka Mwangi did not clear through Britam but paid in cash.
 - ii. Esther Mumbi Ngethe paid in cash via receipt No. 0328310.
 - iii. She cleared Kelvin Mudendei Michinga.
101. It is equally not in contest that the Claimant was issued with a notice to show cause dated 28th February, 2017 requiring an explanation within 7 days on alleged irregular clearance of patients through MSF/DMU, Britam Scheme, MSF-Belgium and case summary.
102. Those alleged to have been irregularly cleared through MSF/DMU were;



| Name | Amount lost |
|------------------|-------------|
| Wiyala Hillary | 101,233.00 |
| Chege Peter | 53,972.00 |
| Murengi Stephen | 87,841.00 |
| Allan Maina | 79,066.00 |
| Michael Ndungu | 107,556.00 |
| Mary Wamuhu | 126,544.00 |
| Michael Wasukira | 86,642.00 |

103. The amounts allegedly lost was indicated against the name as above.

104. Irregularly, cleared through Britam Scheme

| Name | Amount lost |
|---------------------|-------------|
| Mark Lewis Mutugi | 16,085.00 |
| Esther Mumbi Ngethe | 20,002.00 |
| Cecily Njeri Njagi | 163,432.00 |

105. Irregularly, cleared through MDF-Belgium

| Name | Amount lost |
|-------------------------|-------------|
| Francis Oting'a Makoha | 14,600.00 |
| Tobias Ating'a Opondo | 24,639.00 |
| Kevin Mudendei Michinga | 72,925.00 |

106. Irregularly, cleared through case summary

| Name | Amount lost |
|----------------------|-------------|
| Wanjiku Milka Mwangi | 23,415.00 |
| Benson Ondari | 3,660.00 |



107. Notably, Stella Musyoki, Patient No. 0480447 was not included.
108. The Respondent did not file the Claimant's response to the Notice to show cause and the only indication of a response is the Respondent's rebuttal of the evidence adduced by the Claimant at the hearing styled as Review of Piera's cases.
109. The Claimant alleged that she did not clear Stephen Murengi, Hillary Wiyala, Lau Michael Wasukira and Mary Wamuhu Njogu as the Patient Release Forms were signed by Mr. Nixon Odhiambo.
110. The documents showed that the Claimant cleared the patients in the Funsoft system and printed the Patient Release Forms.
111. In addition, the Claimant introduced patients who were not part of the disciplinary cases, namely; Cecily Njeri Ongwae (0585490), Allan Maina (050655) and Mark Lewis Mutunga (0527928) cleared by Hillary Kiprotich, Victor and Edna respectively.
112. According to the Respondent, the patients in the disciplinary cases were Cecily Njeri Njagi (0434945), Allan Maina Nyagi (0348142) and Mark Lewi Mutugi (042307).
113. Finally, that the Claimant did not respond in the cases of Benson Ondari, Chege Peter, Allan Maina, Michael Ndung'u Mirigi, Mark Lewi Mutugi, Cecily Njeri Njagi and Doreen Anyango Odiri.
114. It is important to indicate that the List at page 120 B of the Respondent's bundle of documents with the letters NB at the top of the page was intended to capture patients, Cecily Njeri Ongwae, Allan Maina and Mark Lewis Mutunga introduced by the Claimant.
115. However, as admitted by RWI and RWII, the Respondent's notice to show cause and dismissal letters identified patients by name exclusively and in some cases 2 names only which complicated instances of patients with two identical names such as Allan Maina, Cecily Njeri and Mark Lewis.
116. Although the names of patients provided by the Claimant cannot avail her case as the patients were cleared by other persons, the Respondent complicated her case unnecessarily yet all patients had a unique digitally generated number and a manual number as RWI confirmed on cross-examination.
117. It is also common ground that the Claimant's employment was terminated vide letter dated 19th September, 2017 on the ground of irregular clearance of patients and appealed vide Notice dated 9th October, 2017.
118. In her Memorandum of Appeal, the Claimant addressed 13 patients leaving out 4 patients.
119. In 9 out of 13 patients, the Claimant contends that the clearance was by Nixon or other officers such as Victor, Kennedy or Hillary.
120. The issues for determination are;
 - i. Whether the Claimant's dismissal by the Respondent was unfair and unlawful.
 - ii. Whether the Claimant is entitled to the reliefs sought.
121. Concerning the dismissal, whereas the Claimant maintains that it was unfair substantively and procedurally, the Respondent contends that it was fair as prescribed processes were followed.
122. It is common ground that the Respondent is the oldest and foremost referral hospital in Kenya with a fairly long history of patient care and in particular emergencies and inpatient care.
123. It is the largest government hospital in Kenya and the only one with a Satellite hospital.



124. Uncontroverted evidence of RWI is that the Respondent manages its billing through the Funsoft System under which services are billed as they are rendered and a final invoice is generated for clearance by the patient or the person or body obligated to pay the bill.
125. RWI testified that at the time, the Respondent had a Memorandum of Understanding with MSF-Belgium to pay bills of upto Kshs.100,000/= for individual patients under their system. Patients bills were also payable in cash, or through schemes such as Britam and NSSF or Lang'ata Women's Prison Account in the case of female prisoners who were treated at the hospital.
126. As adverted to elsewhere in this judgement, the Claimant was at all material times a Billing Officer in the Respondent's Finance Department whose primary role was to bill and clear patients after charge and was accused of having cleared patients irregularly.
127. For purposes of clarity, I will address each patient separately.

Hillary Wiyala P. No. 0389118 was admitted on 21st April, 2015 and discharged on 1st June, 2015 and had a bill of Kshs.101,233.00

128. The Patient Release Form of even date was printed by the Claimant but signed by Nixon Odhiambo. The Patient's final invoice was under MSF-Belgium and the payer is MSF-Belgium but RWI testified that the Bill was not paid by MSF-Belgium as it exceeded their capping of Kshs.100,000/= and remains unpaid.
129. Interestingly, the alleged MSF-Belgium referral notice from Kibera South Health Centre dated 1st June, 2015 allegedly signed by one Jonah has the same serial number as that of Mary Wamuhu dated 10th February, 2015.
130. It is discernible that the document is a copy of the other.
131. RWI testified that this was not a MSF-Belgium patient.
132. The bill is outstanding to date.

Chege Peter P No. 1725050

133. The Claimant did not respond to this patient's case.
134. This patient was admitted on 26th March, 2015 and discharged on 31st March, 2015 and had accumulated a bill of Kshs.57,472.00 and although MSF-Belgium is invoiced, the payer is abscondment.
135. The Court was unable to trace the Patient's Release Form.

Mwangi Stephen P. No.

136. The patient was admitted on 27th January, 2015 and discharged on 7th March, 2015 with an accumulated bill of Kshs.87,841/= invoiced to MSF-Belgium and checked out on the same day, was cleared by the Claimant in Funsoft system but the form was signed by Nixon Odhiambo.
137. RWI testified that the patient was cleared through MSF-Belgium Serial Number 1773.

Allan Maina

138. While the Claimant availed details of Allan Maina P No. 0506557, the Respondent availed those of Allan Maina Nyagi P No. 0348142.



139. The former paid the Bill in cash and was cleared by Victor.
140. The latter was admitted on 23rd January, 2015 and discharged on 9th February, 2015 and his bill had accumulated to Kshs.79,066.00, invoiced under MSF-Belgium but the payer is abscondment as testified by RWI.
141. The record has no Patient Release Form for one Allan Maina Nyagi whose bill, according to RWI remains unpaid.

Michael Ndung'u PNo. 0342053

142. The patient was admitted on 11th January, 2015 and discharged on 28th February, 2015.
143. Investigations conducted by the committee found that although the sum of Kshs.107,556/= was invoiced to MSF-Belgium, the pay was abscondment as evidenced by the final invoice of Kshs.116,056.00 and outstanding.
144. For unexplained reason, the Claimant did not respond to the alleged irregular clearance of this patient.

Mary Wamuhu Njogu P No. 0323683

145. The patient was admitted on 25th November, 2014 and discharged on 11th February, 2015.
146. The final invoice was made to MSF-Belgium and the payer was MSF-Belgium, sum of Kshs.126,544/= but the bill transited to abscondment and thus not paid as RWI confirmed on cross-examination.
147. The Patient Release Form on record show that it was printed by the Claimant but signed by Nixon Odhiambo.

Michael Wasukira Lau P No. 0329514

148. The patient was admitted on 9th February, 2015 and discharged on 18th February, 2015.
149. Documentary evidence and RWII confirmation on cross-examination is clear that the detailed final invoice of the patient of Kshs.26,869.00 was printed by the Claimant on 18th February, 2015 and there was no Patient Release Form on record.
150. The patient was released on account of a hand written message by Mr. Nixon Odhiambo as the system had challenge.
151. RWI confirmed that the invoice was unapproved, which is evident in that although invoiced to MSF-Belgium, it has neither a payer nor scheme.
152. According to the Claimant, Nixon Odhiambo cleared the patient.
153. The debt is outstanding.

Michael Lewis Mutugi P No. 0423073

154. The Investigation Committee found that the invoice was finalized by the Claimant but was not dispatched to the institution for payment of the sum of Kshs.16,085.00.
155. Puzzlingly, the Claimant provided details of another patient with a closely related name of Mark Lewi Mutunga P No. 0527928 who was admitted on 3rd March, 2016 and discharged on 8th March, 2016 who was cleared by Edna and the bill paid in full by the NHIF.



156. It is unclear why the Claimant cleared the patient through Britam and the bill was not paid.
157. The Claimant did not deny having cleared this patient or avail evidence that the bill was paid.

Esther Mumbi Ngethe P No. 0328310

158. Was admitted on 14th February, 2015 and discharged on 20th February, 2015 and the bill paid in cash.
159. The patient was then re-admitted on 2nd July, 2015 and discharged on 8th July, 2015 after 228 days.
160. Evidence revealed that the Claimant originated the invoice through Britam Scheme on 1st July, 2015.
161. The patient was cleared by the Claimant.
162. The amount due was cleared in cash by the patient.
163. This case is somehow similar to those of Stella Musyoki P No. 0480447 and Milka Wanjiku Mwangi P No. 0358110.
164. In both cases, the Claimant had invoiced the Britam Scheme yet the patients were not under the scheme.
165. In the case of Milka Wanjiku Mwangi, the Claimant admitted in writing that she only realized that the bill had not been settled when the patient was re-admitted and died and invoice to Britam had to be reversed.
166. It is unclear to the Court why the Claimant would invoice the Britam Scheme for patients who had no letter of undertaking from the scheme and not once or twice.

Cecily Njeri Njagi P No. 0434945

167. The patient was admitted on 27th July, 2015 and discharged on 3rd September, 2015 having accumulated a bill of Kshs.163,345.00.
168. The Patient Release Form was printed by John and signed by the Claimant.
169. The invoice is to Britam and the payer is Britam.
170. The Bill was finalised by John not the Claimant. She merely signed the Patient Release Form.
171. Cecily Njeri Ongwae, Patient No. 0585490 relied upon by the Claimant was a different patient cleared by one Hillary.
 - xi. Francis Oting'a Makokha P No. 0398785 was admitted on 12th May, 2015 and discharged on 1st June, 2015 and invoice finalised through MSF-Belgium by Joseph Shivachi and the Patient Release Form signed by one Kennedy although RWI testified that the Claimant did so but availed no documentary evidence to corroborate the assertions.
 - xii. Tobias Ating'a Opondo
172. Investigators found that the Claimant finalised the bill but it was not dispatched to the institution for payment of the sum of Kshs.24,639/=.
173. The Claimant states that she could not access the file as it could not be traced.



Kevin Mudendei Michinga

174. By an undated letter to the Deputy Director Human Resource, the Claimant admitted having cleared the patient but provided no details on payment of the bill.
175. The investigation committee found that the invoice was finalised by the Claimant but not dispatched to the institution for payment.

Wanjiku Milka Mwangi P No. 0358110

176. As adverted to elsewhere in this judgment by memo dated 22nd April, 2016, the SAD Finance, M.K. Kihuga sought the Claimant's explanation for alleged suspicious clearance of the patient through Britam and Lang'ata Women's Prison Schemes.
177. A response was required within 7 days and in her response dated 28th April, 2016, the Claimant admitted having cleared the patient under Britam in the 1st case and the bill was not paid but was paid by a relative on re-admission.
178. The letter makes no reference to the amount paid, when or how and most importantly why she had invoiced Britam and Lang'ata Women's Prisons simultaneously and the balance was still outstanding by 23rd August, 2016, Kshs.148,685.00 as it was not closed when the patient died in the Ward.
179. The Claimant's retort that the bill was paid in cash in her undated letter was not supported by any evidence as revealed by SAD Finance Internal Memo to Acting SAD Human Resource Management & Administration dated 11th July, 2016 which sets out the sequence of activities on the patients account by the Claimant.
180. From the communication on record, it is decipherable that clearance of this patient was demonstrably irregular.

Benson Ondari P. No. 0003577

181. In response to the request for an explanation by SAD Finance dated 22nd April, 2016, the Claimant on 28th April, 2016 states that Fistula was meant for women not men.
182. The Claimant did not deny having cleared the patient but stated that she had never done so and was unaware.
183. The response lacks essential details.
184. A print out of the unapproved invoice dated 7th January, 2016 reveals that the Claimant was the billing officer and the amount due then was Kshs.3,660.00.
185. In her appeal document, the Claimant admits that the patient was cleared through the Fistula Project by Nixon Odhiambo.
186. As Mr. Michael Kahuga's Internal Memo to the Acting SAD HR Management & Administration dated 11th July, 2016 reveals, the patient secured outpatient services on 3rd October, 2013 and 31st January, 2014 incurring a bill of Kshs.4,560/= and did pay for lab tests and drugs dispensed by the pharmacy and the Claimant invoiced the Fistula Project, Kshs.3,660/= and the balance of Kshs.900/= was unpaid and the entire sum was outstanding.
187. Having found that documentary evidence show that the Claimant was the Billing Officer, it is deducible that she is the one who invoiced the FFF Project irregularly as the patient was a man.



188. In the course of the hearing, the terms clearance and release were used interchangeably.
189. According to Black's Law Dictionary (10th Edition), Clearance means;
- To acquit or exonerate, to pay out of funds held on behalf of the maker, to be paid by the drawee bank out of funds held on behalf of the maker.
- Free from encumbrances or claims, free from doubt, sure.
190. Release, on the other hand signifies;
- Set free, allow to move or flow freely or remove from a fixed position.
191. As adverted to elsewhere in this judgment, the Respondent's billing system was Funsoft and thus electronic and clearance was electronic and the Patient Release Form could only be printed after a patient had cleared with the Ward and Finance to facilitate exit at the gate and was therefore not a clearance, but part of the clearance process to allow patient movement out of the hospital.
192. This is the reason why the Funsoft System had no clearance but a billing officer whose duty was to ensure that all bills were paid.
193. A sample of the Patient Release Forms on record reveals that a person other than the billing officer could sign the physical form.
194. In the court's view, the Patient Release Form is not an accounting or finance document but a document whose sole purpose is to facilitate exit of the patient and cannot be relied upon as conclusive evidence of payment of a bill.
195. In many instances, the Form is not clear as to who paid or would pay the bill and some are not signed by the nurse.
196. Although at common law signature prima facie acceptance, the person signing the Patient Release Form relies and trusts that the other processes have been complied with. It is based on trust and good faith of the billing officer and can be avoided in case of misrepresentation, duress, undue influence, mistake or illegality.
197. In the Court's view, the responsibility of ensuring that a bill was paid rests on the Billing Officer who cleared the patient as opposed to the officer who signed the Patient Release Form whose liability, if any, is secondary as the principal actor is the billing officer.
198. In all the cases where the Claimant was the billing officer, she was solely responsible for clearance of the patient and cannot pass the buck.
199. Section 43(2) of the *Employment Act*, 2007 provides that;
- The reason or reasons for termination of a contract are the matters that the employer at the time of the termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.
200. In *Galgalo Jarso Jillo V Agricultural Finance Corporation* (2021) eKLR, Manani J. held that;
- “In other words, it is not a requirement of the law that the substantive ground informing the decision to terminate must be in existence. All that is required is for the employer to have a reasonable basis for genuinely believing that the ground exists.



201. The Court of Appeal expressed similar sentiments in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others* (2019) eKLR as follows;

“ . . . The standard of proof is on a balance of probability not beyond reasonable doubt and all the employer is required to prove are the reasons that it genuinely believed to exist causing it to terminate the employee’s services.

That is a partly subjective test.”

202. Having found that the Claimant was actively involved in the clearance of Wanjiku Milka Mwangi P No. 0358110, Benson Ondari P No. 0003577, Kevin Mudendei Michinga, Tobias Ating’a Opondo, Estehr Mumbi Ngethe P No. 0358110, Michael Lewis Mutugi P No. 0423073, Michael Wasukira Lau P No. 0329514, Mary Wamuhu Njogu P No. 0323683, Murengi Stephen P No. 1725050 among others as a billing officer, and further applying the foregoing tests, the Court is satisfied that the Respondent has proved on a balance of probabilities that it had a substantive justification to terminate the Claimant’s employment.

Procedure

203. It is common ground that the Claimant was issued with a notice to whose cause dated 28th February, 2017 which itemised the charges against her and a response was required within 7 days.

204. It is discernible that the notice to show cause was based on the findings of the investigation report dated 8th February, 2017 and executed on 10th February, 2017 but a copy of the document was not availed to the Claimant.

205. As mentioned elsewhere in this judgment, none of the parties filed the Claimant’s response to the notice to show cause dated 28th February, 2017.

206. This response was necessary for the Court to appreciate the Claimant’s defence and in particular how she navigated through each patient.

207. By notice dated 15th March, 2017, the Claimant was invited to a disciplinary hearing scheduled for 21st March, 2017 at 9.30 am.

208. The invitation made no reference to the notice to show cause or the charges against her.

209. The Claimant was notified of the right to be accompanied by the shop floor union representative or another nominee of her choice.

210. The Claimant admitted that she attended the meeting and defended herself on 21st March, 2017 and charges were read out to her.

211. Minutes of the meeting reveal that after the Claimant tabled clearance documents of patients as her defence, the committee observed that there was need to verify the documents and conduct further investigations to identify all the other staff who cleared the patients as the Claimant’s defence was that she cleared only 3 patients out of 15 patients.

212. The Claimant was directed to forward another letter of defense and attach all the evidence tabled for verification and the Risk and Internal Audit Department would conduct a system’s audit to establish the role played by other members of staff.



213. In her undated document referenced as Submission of documentary evidence, the Claimant stated that she cleared only 2 patients out of 15 and the rest were cleared by other officers and was diligent in discharging her duties.
214. Documents on record reveal that the Committee held a meeting on 15th August, 2017 in the Claimant's absence yet she had included in her defence final invoices of other patients outside the notice to show cause.
215. From the minutes, it is clear that the Committee was aware of the review conducted by a team comprising Anthony Folingi, Jonah Jakoyo, Laban Muriithi and Racheal Kiilu as Secretary executed on 29th May, 2017, a copy of which was neither availed to the Claimant nor deliberated upon in her presence yet it was part of the milieu in which the committee made its decision to recommend dismissal of the Claimant for gross misconduct.
216. The fact that the Committee had details verified and investigation done, the hearing ought to have been adjourned and continued on another day for the committee to table its findings after sharing the same with the Claimant.
217. It was unfair for the Disciplinary Committee to authorize verification of documents and conduct of a systems audit, receive the reports and adopt them as part of their evidence in the Claimant's absence and without availing copies to the Claimant, as it impeded the Claimant's right to a fair hearing.
218. The Claimant ought to have been invited for the meeting held on 15th August, 2017 as it deliberated her case in light of the findings made by the Risk and Audit Department.
219. The Claimant testified that she attended only one meeting and was not invited for the second meeting but was aware that it took place and was followed by the dismissal letter dated 19th September, 2017.
220. The Claimant faults the termination of employment on the ground of non-availment of documents in her department to defend herself and only accessed them after the hearing coupled with the fact that the appeal was determined more than 2 years later.
221. Although the Claimant did not raise the issue directly, it is clear that the notice to show cause lacked essential details of the patients. All the patients under the first category were identified by two names and had no patient number which is unique.
222. The case of Allan Maina is classical where the Claimant relied on Allan Maina and the Respondent one Allan Maina Nyagi.
223. The Claimant cannot in the Court's view be faulted for having insisted that Allan Maina cleared his bill in cash and the matter was fully settled.
224. Clarity and specificity of the notice to show cause implicate the right to fair hearing.
225. It requires no belabouring that the Respondent did not send a copy of the investigation report to the Claimant nor the evidence it relied upon at the hearing.
226. The Respondent ought to have availed all the documentary evidence it had on each of the patients for the Claimant to rebut.
227. Similarly, the Respondent ought to have forwarded a copy of the patients details whose particulars it had verified and the findings of the Risk and Audit Department as resolved on 21st March, 2017. It did not and equally did not hear the Claimant's appeal.



228. It is trite law that an employee who is accused of gross misconduct or other misconduct by the employer must be provided with the materials the employer intends to rely upon in prosecuting the employee. This is an essential attribute of the right to fair hearing which is not only a statutory but a constitutional imperative and thus mandatory. Non-availment of the reports and other materials to enable the Claimant prepare her defence and non-invitation to the meeting held on 15th August, 2017 derogated the Claimant's right to fair hearing.
229. In *Postal Corporation of Kenya V Andrew K. Tanui* (2019) eKLR, the Court of Appeal held that;
“ . . . The board had in its possession the very document that formed the basis of the charges framed against the Respondent but kept it away from him. Even in criminal trials, which are more serious in nature, an accused is entitled to the statements that support the charges laid against him. That is the essence of fairness even outside a judicial setting . . . ”
230. Similarly, in *David Wanjau V Muhoro V Ol Pejeta Ranching Ltd* (2014) eKLR, Rika J. held thus;
“ The principles of fair hearing requires the employee has sufficient opportunity to prepare. This entails . . . the right to documentation. The employee must be given the documents the employer intends to rely on at the hearing as well as other the employee requests.”
231. On appeal by the Respondent, the Court of Appeal affirmed the judge's views and stated;
“ . . . There was no reason given as to why the Respondent could not have been supplied with a copy much earlier and in good time . . . That coupled with the fact that he had no knowledge of the audit findings, he had no fair chance to alliance his defence. In the circumstances, therefore it cannot be said that the termination process was fair.”
232. See also the observations of the Court of Appeal in *Regent Management Ltd V Wilberforce Ojiambo Oundo* (2018) eKLR on availment of documents to an employee who is facing charges.
233. Having failed to furnish the Claimant with essential reports and records and further having refused to invite him for the continuation meeting on 15th August, 2017, the process adopted by the Respondent to terminate the Claimant's employment cannot be entirely described as having been fair.
234. Under Section 45(5) of the *Employment Act* in determining whether termination of employment was conducted in accordance with just and equity, the Court is enjoined to consider the procedure adopted by the employer and handling of any appeal against the decision.
235. In this case, the Claimant filed a six (6) page Memorandum of Appeal dated 9th October, 2017 which was received on 10th October, 2017.
236. The appeal was filed within 21 days given by the letter of dismissal it was not considered, even after a reminder received on 11th May, 2018, until the Respondent's board meeting held on 30th September, 2019 rejected the appeal without interrogating its merits.
237. The Respondent provided no proof that it communicated the decision to the Claimant.
238. The totality of the foregoing is that it is the finding of the Court that the Respondent has failed to establish on a balance of probabilities that termination of the Claimant's employment was procedurally fair.



Appropriate reliefs

Declaration

239. Having found that termination of the Claimant's employment by the Respondent was procedurally flawed, a declaration to that effect is merited.

Service pay for years worked

240. Neither the Claimant's written statement dated 5th June, 2018 nor the oral testimony adduced in Court make reference to the fact that the Claimant was not a member of the NSSF which is a compulsory pension scheme and no statement was availed.

241. Significantly, the payslip on record reveals that the Respondent was deducting NSSF dues and remittances were made.

242. Similarly, the Claimant was a member of the Respondent's contribution scheme.

243. The claim lacks supportive evidence and is dismissed.

12 months compensation

244. Having found that termination of the Claimant's employment was unfair for want of procedural fairness, the Claimant is entitled to compensation under Section 49(1)(c) of the [Employment Act](#).

245. The Court has taken into account the following;

i. The Claimant had no recorded cases of misconduct before the matters, the subject matter of the investigation arose.

ii. The Claimant appealed the Respondent's decision within the prescribed duration.

iii. Neither the Claimant's witness statement nor statement of claim indicates the date of employment and neither party filed the letter of appointment.

Relatedly, none availed verifiable evidence as to when the Claimant was employed by the Respondent, which is essential under Section 49(4) of the [Employment Act](#).

iv. The Claimant substantially contributed to the termination of her employment by engaging in conduct which did not augur well with her position as a billing officer.

Why for instance would a single patient's bill be invoiced to two difference schemes?

246. In the circumstances, the Court is satisfied that the equivalent of two (2) months gross salary is fair, Kshs.75,921.00.

Counter-claim

247. Although the Respondent prays for the sum of Kshs.981,612/= as the revenue it was denied, it relies on the investigation report exclusively and tendered no iota of evidence to demonstrate that it suffered the alleged loss.

248. In particular, the Respondent ought to have shown that sum claimed is reflected in its financial statements, whether audited or not.



249. In the absence of credible evidence to show that the sum of Kshs.981,612/= is owed to the Respondent, the claim is unsubstantiated and is declined.
250. In conclusion, judgment is entered in favour of the Claimant against the Respondent in the following terms;
- a. Declaration that termination of employment was procedurally unfair.
 - b. Equivalent of two (2) months gross salary Kshs.75,921.00.
251. In the circumstances of this case, there shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30TH DAY OF SEPTEMBER 2024

DR. JACOB GAKERI

JUDGE

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 has 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.

