



Ali v Chief Executive Officer, National Health Insurance Fund & another (Cause E440 of 2024) [2024] KEELRC 13460 (KLR) (18 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13460 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E440 OF 2024
BOM MANANI, J
DECEMBER 18, 2024**

BETWEEN

AMRAN MOHAMED ALI CLAIMANT

AND

**THE CHIEF EXECUTIVE OFFICER, NATIONAL HEALTH INSURANCE
FUND 1ST RESPONDENT**

**THE BOARD OF MANAGEMENT, NATIONAL HEALTH INSURANCE
FUND 2ND RESPONDENT**

JUDGMENT

Introduction

1. The dispute between the parties revolves around the legitimacy of the Respondents' decision to terminate the Claimant's contract of service. Whilst the Claimant contends that the decision was irregular and therefore unlawful, the Respondents assert that the contract between the parties was legitimately terminated for lawful cause and in accordance with fair procedure.

Claimant's Case

2. The Claimant contends that she was employed by the National Health Insurance Fund (NHIF) through the 2nd Respondent to the position of Branch Manager at NHIF's Eastleigh Branch. She contends that on 19th June 2023, the Cabinet Secretary, Ministry of Health issued a directive requiring that branch managers of NHIF branches which had been adversely mentioned in a media expose by a local daily be suspended from duty with immediate effect pending investigations into the matter. According to the Claimant, the media expose had implicated the said branches in the pilferage of funds from the NHIF.



3. The Claimant avers that following the ministerial directive, the 1st Respondent issued her with a letter dated 26th June 2023 interdicting her from duty indefinitely. She avers that the said Respondent directed her to report to her supervisor once every two weeks until investigations into her case were concluded and the matter resolved
4. The Claimant faults the 1st Respondent's decision to interdict her from duty for a number of reasons. First, she contends that the decision was premised on media reports even before the matter was investigated. Second, she contends that the decision was informed by a ministerial fiat. Third, she contends that the interdiction was indefinite in contravention of NHIF's Human Resource Manual. She therefore contends that the decision constituted punitive disciplinary action against her.
5. The Claimant contends that the 1st Respondent's letter of interdiction stated that the NHIF was in receipt of an audit report implicating her in paying fraudulent claims raised by three medical institutions during the period between January 2022 and February 2023. Yet, the 2nd Respondent had issued an internal memo removing branch managers from directly handling claims.
6. The Claimant avers that as a result of the aforesaid memo, her role in respect of claims at the branch was merely supervisory. She denies that she had a role in scrutinizing and paying the claims. As such, she contends that there is no way she would have been involved in the alleged fraud. On the basis of the foregoing, it is her case that the decision to interdict her from duty was informed by ulterior motive.
7. The Claimant contends that she wrote to the 1st Respondent on 26th July 2023 refuting the accusations against her and asking that her interdiction be lifted. However, she received no response from the Respondents.
8. The Claimant avers that on 31st July 2023, she received a letter from the 1st Respondent inviting her for a hearing before the NHIF Human Resource Advisory Committee scheduled for 3rd August 2023. She contends that although she presented herself before the committee, the session was adjourned allegedly because the committee was not in possession of the audit report to guide the process. According to the Claimant, this disclosure was strange given that the Respondents had interdicted her on the basis of alleged findings in an alleged audit report.
9. The Claimant avers that the foregoing fortifies her contention that the decision to interdict her from duty was without basis. She contends that the fact that the disciplinary session was adjourned on account of lack of an audit report demonstrates that the Respondents interdicted her from duty before investigations were conducted into the matter. As such, she contends that the Respondents' decision was informed by the desire to assuage the storm which had been triggered by the media expose rather than the truth.
10. The Claimant accuses the Respondents of having shrouded the processing of her case in secrecy. She contends that she was not notified about the appointment of an investigation committee to look into her matter in contravention of NHIF's Human Resource Manual. Further, she avers that she was not furnished with any investigation report on the matter.
11. The Claimant avers that on 1st March 2024, she received an invite to appear before NHIF's Human Resource Advisory Committee on 6th March 2024. She contends that at the time, she had not been notified of the specific charges against her. Neither had the investigation reports been shared with her. As such, she avers that she appeared before the committee without knowledge of the charges against her and with no idea regarding the results of the investigations.
12. The Claimant contends that she was subsequently issued with a letter dated 12th June 2024 terminating her services. She contends that the process which resulted in the termination of her employment



- violated the law and the NHIF's Human Resource Manual both of which underscore the need to uphold the principles on natural justice, fair administrative action and fair procedure whilst processing disciplinary matters against an employee.
13. The Claimant avers that the NHIF Human Resource Manual requires that disciplinary processes against an employee be concluded within six months. However and in contravention of this requirement, her case lingered on for more than twelve months.
 14. The Claimant contends that all this while, the Respondents did not bother to inform her about the reasons for the delay. As such, she contends that the process violated her rights to: fair administrative action; fair labour practices; human dignity; and information.
 15. The Claimant contends that the NHIF Human Resource Manual guaranteed her the right to appear before the Disciplinary Panel in the company of an expert. She further contends that the Manual obligated the Respondents to notify her of her right to legal representation. She contends that despite these explicit provisions, she was not accorded these rights.
 16. The Claimant accuses the Disciplinary Panel of having exhibited bias against her. She asserts that the Panel denied her: the opportunity to interact with the charges leveled against her before her case was heard; the particulars of the accusations against her; the opportunity to call witnesses in support of her case; access to the witness statements by her accusers; and the opportunity to answer interrogatories during the trial.
 17. The Claimant also questions the legality of the disciplinary process on account of the transition that affected the NHIF. She contends that the National Health Insurance Fund Act (NHIF Act) was repealed by the Social Health *Insurance Act* on 22nd November 2023. Consequently, the institutional mechanisms under the NHIF Act became nonexistent after 22nd November 2023. As such, the NHIF Human Resource Advisory Committee, which is founded on the NHIF Act, had no authority to process her case. Proceeding on this premise, she contends that the disciplinary proceedings against her were void, ultra vires and illegal.
 18. The Claimant contends that the transitional clause in the Social Health *Insurance Act* does not automatically transit employees of the NHIF to the Social Health Authority. She avers that the law requires the Social Health Authority to recruit its own staff albeit it is required to give priority to individuals who had been serving the NHIF.
 19. Consequently, the Claimant avers that she is not an employee of the Social Health Authority. This is despite the clause in the Social Health *Insurance Act* implying that all rights, powers, liabilities and duties attaching to the NHIF were transferred and vested in the Social Health Authority on the appointed date (22nd November 2023). The Claimant thus contends that the unfair disciplinary action against her has diminished her suitability for engagement by the Social Health Authority.
 20. The Claimant contends that because the Respondents did not conclude the disciplinary case against her before the NHIF Act was repealed and with it their mandate to continue with the disciplinary case, the case aborted and could not be processed to its logical conclusion. As such, the decision to terminate her contract could not legitimately issue.

Respondents' Case

21. On their part, the Respondents contend that internal NHIF audits revealed that some hospitals colluded with staff of the NHIF to lodge fraudulent claims which resulted in massive losses to the agency. The Respondents aver that the hospitals which lodged the questionable claims were in the jurisdiction of the Claimant's branch.



22. According to the Respondents, the audits revealed that the hospitals in question lodged claims purporting that some employees had been treated as in-patients when available evidence showed that the employees were at their work stations at the time when they were allegedly hospitalized. Further, the Respondents contend that the reports revealed that the hospitals lodged claims for major surgeries on employees who had not undergone any such surgeries. The Respondents also contend that the hospitals raised invoices to cover admission fees even before admitting the affected employee thus putting to question the authenticity of the entire process.
23. The Respondents contend that since the fraudulent claims arose from the operational zone of the Claimant's branch, she had the overall responsibility of ensuring that they were uncovered beforehand and nipped in the bud. However, she did not do so.
24. The Respondents accuse the Claimant of negligence in performing her duties which resulted in loss to the NHIF. As a result, they contend that the NHIF had valid reason to terminate her employment.
25. The Respondents contend that the Claimant was issued with the audit reports in question and given an opportunity to respond to them. However, her response was not satisfactory. As a result, she was subjected to the disciplinary process which resulted in termination of her contract.
26. The Respondents contend that the Claimant was invited for a disciplinary hearing and given an opportunity to make her oral representations. As such, they deny that there was failure to uphold fair procedure in the process.
27. The Respondents aver that the Claimant's interdiction was not indefinite. They contend that the interdiction was premised on the NHIF Human Resource Policy.
28. The Respondents further deny that the interdiction was punitive as asserted by the Claimant. They contend that the interdiction was merely facilitative of the investigations which were to be carried out in the matter.
29. The Respondents deny that the internal memo which the Claimant has alluded to was intended to remove branch managers of the NHIF from direct handling of claims. They contend that the memo simply emphasized the supervisory role of the managers in the process.
30. The Respondents deny the Claimant's contention that she was not notified of the charges which she was to face. According to them, the charges were clearly spelt out in the letter of interdiction dated 19th June 2023.
31. The Respondents contend that the Disciplinary Panel took into account the findings in the audit reports to find the Claimant culpable of the accusations against her. They contend that the Claimant failed to discharge her supervisory mandate at the branch thereby allowing the fraud to be committed.
32. The Respondents contend that the disciplinary process against the Claimant was triggered by the results of an internal audit. It is their case that because the audit results were comprehensive, the NHIF did not deem it necessary to conduct further investigations into the case in line with its Human Resource Manual. As such, the 1st Respondent did not set up another investigation committee to investigate the case.
33. The Respondents contend that the NHIF Human Resource Advisory Committee retained the mandate to finalize the disciplinary process against the Claimant in terms of the transition provisions under the Social Health *Insurance Act*. According to them, although the National Health Insurance Fund Act was repealed by the Social Health *Insurance Act*, the latter Act provided for a window through which the NHIF was to be wound up in order to ensure smooth transition. They contend that



this window entitled the NHIF Human Resource Advisory Committee to conclude the disciplinary process against the Claimant.

Issues for Determination

34. After analyzing the pleadings, the law, the evidence and submissions by the parties, I consider the following to be the issues for determination:-
- a. Whether the disciplinary proceedings that were conducted by the NHIF Human Resource Advisory Committee against the Claimant were legitimate having regard to the repeal of the National Health Insurance Fund Act.
 - b. Whether the interdiction of the Claimant from employment was legitimate.
 - c. Whether the decision to terminate the Claimant's employment was substantively and procedurally fair.
 - d. Whether the Claimant is entitled to the reliefs that she seeks through these proceedings.

Analysis

35. The NHIF was established under section 3 of the National Health Insurance Fund Act Cap 255 Laws of Kenya (now repealed). During its life, the Fund was managed by a Board established under section 4 of the Act.
36. By virtue of section 4(3) of the Act, the Board was clothed with corporate personality with powers to, inter alia, sue and be sued, enter into contracts and acquire and dispose property. As such, it had the capacity to enter into contracts of employment on behalf of and for the benefit of the Fund.
37. Section 10 of the Act established the office of Chief Executive Officer of the Fund. Subject to directions of the Board, the holder of this office was entrusted with mandate of the day to day management of NHIF's activities including its employees. As such, he/she had general disciplinary control over the Fund's employees.
38. On 19th October 2023, Parliament enacted the Social Health *Insurance Act*, No. 16 of 2023. The Act came into force on 22nd November 2023.
39. By virtue of section 54 of the Act, the National Health Insurance Fund Act was repealed. With this, the NHIF and the Board which had been set up to manage it came to a close.
40. Ideally, with the above development, the institutions established under the National Health Insurance Fund Act were expected to die a legal death. However, this was not the case.
41. The law recognized that the NHIF could not be disbanded at once upon the repeal of the National Health Insurance Fund Act. It required time to wind it up. As such, the first schedule to the Social Health *Insurance Act* was enacted to provide for the transition process.
42. Section 6(1) of the schedule provides as follows:-
- “Notwithstanding the provisions of paragraph (2), the National Health Insurance Fund Board shall wind up the Fund within one year from the appointed day and the cash balances and all other assets shall be transferred to the Authority.”



43. This provision extended the life of the Board established under section 4 of the repealed National Health Insurance Fund Act by one year from 22nd November 2023 so that it could wind up the Fund. As such, despite the repeal of the Act, the Board remained alive for the duration and purpose aforesaid.
44. As seen earlier, subject to the directions given to the Chief Executive Officer of the NHIF by the Board, she/he had overall control over the NHIF's employees. As such, both the Board and the Chief Executive Officer had overall control over the Fund's employees.
45. As indicated in the judgement, by reason of section 6(1) of the first schedule to the Social Health *Insurance Act*, the Board was saved for one year for purposes of winding up the NHIF. In my view, this process included mopping up of pending disciplinary cases against employees of the NHIF so long as this was done within the one year window which was to end on 22nd November 2024.
46. The letter which set in motion the disciplinary process against the Claimant was signed by the NHIF's Chief Executive Officer on 19th June 2023. In terms of section 10 (3) of the *National Hospital Insurance Fund Act*, this was legitimate given that at the time the aforesaid legislation was still in force.
47. The evidence on record shows that by a letter dated 1st March 2024, the 1st Respondent invited the Claimant to appear before the NHIF Human Resource Advisory Committee to offer her oral submissions on the charges which she was facing. As pointed out earlier, the 1st Respondent was mandated by section 10 (3) of the repealed Act to exercise disciplinary control over employees of the NHIF. As such, his aforesaid letter to the Claimant was legitimately issued.
48. Despite the repeal of the enabling legislation, the Chief Executive Officer, in consultation with and under the direction of the Board, was entitled to oversee finalization of the disciplinary process against the Claimant in line with the transitional clauses as read with NHIF's Human Resource Manual. Indeed, clause 11 of the Human Resource Manual is clear that disciplinary matters relating to the NHIF's employees fell within the purview of the 1st Respondent, the Board and the Human Resource Advisory Committee. Consequently, I find and declare that the disciplinary proceedings by the aforesaid institutions against the Claimant after the National Health Insurance Fund Act had been repealed were legitimate.
49. The second issue is whether the Respondents' decision to interdict the Claimant from duty pending processing of her case was legitimate. The Claimant contends that the decision was illegal since it was not preceded with investigations to validate the accusations against her. She also contends that the interdiction was illegitimate because it was allegedly for an indefinite period. She argues that the interdiction was punitive in nature.
50. The NHIF Human Resource Manual provides for both interdiction and suspension of employees from duty. Both procedures appear to operate so as to temporarily remove an employee from the workplace whilst undertaking a disciplinary process against him/her.
51. An interdiction is usually invoked to keep an employee from the workplace to enable the carrying out of investigations on a suspected infraction by her/him. On the other hand, a suspension under the NHIF Human Resource Manual is invoked to keep an employee from the workstation when disciplinary proceedings have been instituted against him or when the employee has been convicted of a serious criminal offense.
52. The definition of the term interdiction contemplates a situation where an employer suspends an employee from his duties pending investigation on grounds of suspected misconduct. On the other hand, suspension from duty is construed to denote the act of forbidding an employee from performing his duties or exercising his functions for a definite interval of time. Thus, the two terms, albeit used to



describe slightly different scenarios, are often used to denote the temporary removal of an employee from the workplace during a disciplinary process against him.

53. An interdiction or suspension may be used for punitive or administrative purposes. It is applied as a punitive measure when it is invoked to impose a penalty on an employee for an infraction he has committed at the workplace. For instance, section 89 (1) (b) of the *National Police Service Act*, Cap 84 Laws of Kenya provides for suspension of a police officer from duty as a punitive measure.
54. On the other hand, a suspension or interdiction from duty is considered as administrative when it is invoked to keep an employee away from the workplace pending investigations into accusations against him. In this case, the suspension or interdiction is meant to prevent the employee from interfering with the investigations. As such, it is not considered as punitive.
55. In the instant case, the Claimant was interdicted from duty pending investigations into her case. Thus, the interdiction was merely facilitative of the anticipated investigations and not a punitive measure. Further, the interdiction was not indefinite. Rather, it was to remain in place for the duration of the investigations against her.
56. In the premises, it is apparent that the interdiction that was handed to the Claimant was neither indefinite nor punitive as she contends. As such, I find that it was legitimate.
57. The next issue for determination is whether the decision to terminate the Claimant's employment was substantively and procedurally fair. In this regard, the court is obligated to determine whether the Respondents had valid grounds to terminate the Claimant's contract of service and whether they processed the decision to terminate the contract in accordance with fair procedure.
58. The reason for terminating the Claimant's contract was her alleged involvement in fraudulent activities involving various medical facilities and the NHIF following which, the latter lost colossal sums of money. The Claimant is said to have violated section 44 (4) (c) of the *Employment Act* as well as clause 11.11 Part III (i) and (xx) of the NHIF Human Resource Manual.
59. Section 44 (4) (c) of the *Employment Act* provides that an employee who willfully neglects to perform any work which it was his duty to perform, or carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly is guilty of gross misconduct. On the other hand, clause 11.11 of the NHIF Human Resource Manual identifies negligence of duty and irregular payments of NHIF's funds as acts of gross misconduct.
60. Essentially therefore, whilst the letter terminating the Claimant's employment accused her of having participated in acts of fraud against the NHIF, the provisions which the disciplinary committee relied on to terminate her contract largely deal with negligent performance of duty. The only ground that may point to fraud is perhaps the one that dealt with irregular payments.
61. The audit reports which the NHIF Human Resource Advisory Committee relied on to find the Claimant culpable of the accusations against her contain a detailed account of how employees of various institutions aided various medical facilities to present fake medical claims for processing. The auditors are clear that the pilferage was enabled by a weak supervisory mechanism at the NHIF's Eastleigh branch where the Claimant was serving as branch manager.
62. The Claimant contends that she cannot be held responsible for the loss that occurred because she was not directly involved in scrutinizing and processing of claims. She contends that her role at the branch was purely supervisory. She relies on the NHIF's memo dated 30th January 2018 and or 31st January 2018 to advance this argument.



63. Clause 7 of the memo on responsibilities provides as follows:-
- “The overall responsibility for ensuring claims are processed and paid on time lies with the Systems Administrator, Branch Manager, Manager Benefits and Claims and Manager Finance and Accounts.”
64. By any stretch of imagination, the above clause cannot be understood to have excluded Branch Managers from evaluation of claims that fell within their purview. The clause made this exercise a joint undertaking involving various officers including branch managers. As such, the Claimant’s contention that she had been excluded from scrutinizing claims within her branch for purposes of payments is unfounded.
65. From the evidence on record, it is clear that NHIF lost colossal amounts of money through fraudulent claims lodged by medical facilities which were under the NHIF Eastleigh branch. The Claimant was in charge of the branch. It is therefore clear that the loss was occasioned as a result of her failure to ensure that the claims were properly scrutinized by her officers before they were presented for payment. As such, the failure by the Claimant to discharge her mandate aided in the fraudulent loss of the funds in question.
66. Having regard to the evidence on record, it is clear to me that the Human Resource Advisory Committee had sufficient material before it to find the Claimant culpable for the events that resulted in the loss of the funds in question. Her inaction contributed to this state of affairs. As such, I find that the said committee had justification to recommend that the Claimant’s services be terminated.
67. With respect to procedural fairness, the NHIF Human Resource Manual is quite detailed on what was required to be done whilst processing termination of an employee’s contract. The provisions in the Manual mirror the requirements under section 41 of the *Employment Act* and section 4 of the *Fair Administrative Action Act* as read with article 47 of *the Constitution*.
68. Clause 11.7 of the Manual sets out the guiding principles to be upheld whilst processing a disciplinary case against an employee. These include:-
- a. The rules of natural justice;
 - b. Procedural fairness;
 - c. Guarding against bias;
 - d. The need to ensure a decision is supported by cogent evidence;
 - e. Administrative action which must be expeditious, efficient, lawful, reasonable and procedurally fair;
 - f. Providing the employee with written reasons for any disciplinary action against him;
 - g. Providing the employee with prior notice of accusations against him and adequate time to respond to them;
 - h. Providing the employee with information, materials and evidence to be relied upon in making a decision or taking disciplinary action against him;
 - i. Providing the employee with an opportunity to attend the proceedings against him in person, to be heard and cross examine his accusers;
 - j. Notifying the employee of the right to legal representation;



- k. Notifying the employee of the right to appeal or review the decision against him.
69. Further clause 11.13.10 of the Manual requires the Head of Human Resource of the NHIF to issue an employee who is accused of an infraction a notice to show cause letter setting out the particulars of the offenses against him and inviting him to respond to the charges in writing. Clause 11.13.12 of the Manual obligates the Head of Human Resource to accord the affected employee adequate time to respond to the accusations. In addition, the time within which the response is to be tendered must be specified in the notice to show cause letter.
70. The Claimant contends that besides the letter of interdiction which made generalized accusations against her before investigations had been undertaken into the matter, she was not notified of the charges she was to face on the basis of the results of the investigations. She contends that she was not served with a formal charge sheet before she appeared before the Disciplinary Panel. She further contends that she was not supplied with statements from her accusers and the investigation reports detailing the results of investigations.
71. It is noteworthy that the Respondents did not provide a specific response to these accusations in their Statement of Defense. Apart from contending that the Claimant was not denied the opportunity to attend the proceedings in the company of an expert and that she was accorded an opportunity to be heard by both the audit and disciplinary committees, the Respondents did not controvert the Claimant's position that she was not furnished with: the charges she was to face after investigations had been closed; the statements from her accusers; and the investigation reports.
72. During trial, the Respondents' witness asserted that the Claimant had been supplied with the charges. It was contended that particulars of the charges were set out in the letter of interdiction. The witness also, contended, without supporting material, that the Claimant had been provided with the two investigation reports.
73. From the evidence on record, there is no indication that the Claimant was issued with a notice to show cause letter setting out the charges against her based on the results of the investigations. What she was issued with was a letter of interdiction which alluded to suspected infractions which the Respondents said required verification through investigations. As such, it is apparent that the Claimant was not notified of the charges that were framed against her based on the results of the investigations.
74. Despite the contention by the defense that the Claimant was furnished with both investigations reports, there was no evidence to verify this. It is noteworthy that the NHIF had two audit reports on the matter: one dated July 2023 and the other February 2024. There is absolutely no data to suggest that either the entire of or excerpts from the report dated July 2023 were shared with the Claimant.
75. As regards the report of February 2024, there is evidence that the NHIF wrote to the Claimant on 8th January 2024 and shared with her the preliminary findings on the case of Starehe Healthcare Limited to enable her give her observations as part of the investigation process. By the letter dated 2nd February 2024, the Fund notified the Claimant that further investigations into the Starehe matter had not yielded any new information. As such, it considered the preliminary report it had shared with her as the final report on the matter. Consequently, whilst there is evidence to suggest that the Claimant was supplied with the preliminary findings on the Starehe case, there is no evidence to demonstrate that she was given the report dated July 2023.
76. It is noteworthy that the two reports formed the basis of the decision to terminate the Claimant's employment. Yet, she was not given a chance to interact with the report dated July 2023 to enable her answer to its contents during the trial.



77. The failure by the NHIF to furnish the Claimant with the investigation report of July 2023, witness statements by her accusers and to serve her with a notice to show cause setting out the charges against her violated its own Human Resource Manual, section 41 of the *Employment Act* and section 4 of the *Fair Administrative Action Act* as read with article 47 of *the Constitution* all of which are infused in the aforesaid Human Resource Manual. As such, it is apparent that the Claimant was deprived of fair procedure in the process that resulted in the termination of her contract of service. It is so declared.
78. The final issue for determination relates to whether the Claimant is entitled to the reliefs that she seeks through these proceedings. In determining this question, I will be guided by section 49 of the *Employment Act* and the evidence on record.
79. Having arrived at the conclusion that the decision to terminate the Claimant's contract of service was procedurally flawed, she is entitled to compensation for the unfair termination of her contract. However, the court is alive to the fact that the Claimant's failure to adequately supervise her branch substantially contributed to the loss of funds by the NHIF. Taking these factors into consideration, I award the Claimant compensation for the unfair termination of her contract which is equivalent to her gross salary for three (3) months, that is to say, Ksh. 277,810.00 x 3 = Ksh. 833,430.00.
80. The above amount is subject to the applicable statutory deductions and taxes.
81. The Claimant to be issued with a Certificate of Service in terms of section 51 of the *Employment Act*.
82. The Claimant is awarded costs of the case.
83. I note that at the time of this decision, the NHIF had ceased to exist. However, in terms of section 3 of the first schedule to the Social Health *Insurance Act*, all liabilities arising from contracts which the NHIF had entered into vested in and are enforceable as against the Social Health Authority as from 22nd November 2023, the day the Social Health *Insurance Act* came into force. As such, this judgment is enforceable against the Social Health Authority, the successor in title to the NHIF.

Summary of Findings and Orders

84. After evaluating the pleadings, the evidence, the law and submissions on record, the court makes the following findings and attendant orders:-
 - a. The court finds and declares that the disciplinary proceedings by the NHIF Human Resource Advisory Committee and the 1st and 2nd Respondents against the Claimant after the National Health Insurance Fund Act was repealed were legitimate.
 - b. The court finds and declares that the interdiction that was handed to the Claimant was legitimate.
 - c. The court finds and declares that the Claimant was deprived of fair procedure in the process that resulted in the termination of her contract of service in contravention of the NHIF Human Resource Manual, section 41 of the *Employment Act* and section 4 of the *Fair Administrative Action Act* as read with article 47 of the Constitution.
 - d. The court awards the Claimant compensation for the unfair termination of her contract of service which is equivalent to her gross salary for three (3) months, that is to say, Ksh. 277,810.00 x 3 = Ksh. 833,430.00.
 - e. The above amount is subject to the applicable statutory deductions and taxes.



- f. The court orders that the Claimant be issued with a Certificate of Service in terms of section 51 of the *Employment Act*.
- g. The court awards the Claimant costs of the case.
- h. In view of the transition provisions in the Social Health *Insurance Act*, this judgment is enforceable against the Social Health Authority, the successor in title to the NHIF.

DATED, SIGNED AND DELIVERED ON THE 18TH DAY OF DECEMBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondents

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE

