



Muthoni v Teachers Service Commission (Employment and Labour Relations Cause E698 of 2022) [2025] KEELRC 2437 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2437 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E698 OF 2022
HS WASILWA, J
SEPTEMBER 18, 2025**

BETWEEN

SARAH MURAA MUTHONI CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 29th September 2022 and prays for judgment against the Respondent for:
 - a. Damages for illegal and unlawful distress which is tabulated as below:
 - i. Certificate of service
 - ii. Reinstatement of license with the Respondents
 - iii. The sum of Kshs. 2,863,770 made up of
 - a. Accumulated salaries from the date of interdiction to the date of dismissal – Kshs. 736,398
 - b. Unpaid salary for May and June 2021 – Kshs. 163,644
 - c. Damages for unlawful termination (12 months) – Kshs. 1,963,728
 - b. Payment of all her terminal dues as calculated by the Respondent.
 - c. Unremitted pension contribution during the period of interdiction.
 - d. Costs of this suit.
 - e. Any other order that this honourable court may deem fit to grant.



Claimant's Case

2. The Claimant avers that she was employed by the Respondent as a graduate teacher on 19th June 1986. The employment was on permanent and pensionable terms and she was earning a monthly salary of Kshs. 1,794.
3. The Claimant avers that due to her hard work she was promoted in 2000 as a graduate teacher and she was transferred to Ruthimitu Girls Secondary School. In 2002, she was promoted to Deputy Principal and in 2012 to Principal of Ruthimitu Girls Secondary School earning a monthly salary of Kshs. 163,644 until she was interdicted.
4. The Claimant avers that the promotions were merit based and were implemented after a thorough and extensive evaluation assessment exercise carried out by the Respondent.
5. The Claimant avers that she undertook her duties respectfully and diligently until 29th July 2020 when she was accosted by some the Respondent's officials who informed her of some allegations reported about her. She was neither served with the alleged complaints to date nor requested to make a response as normal practice.
6. It is the Claimant's case that her attempts to follow up on the alleged complaints from the Respondent's offices was met with resistance and victimization.
7. The Claimant avers that she became the subject of envy and victimization from some quarters of the Respondent as a result of her exemplary service which led to quiet measures being undertaken to remove her from her position before retirement. The Respondent then started exploring flimsy reasons for dismissing her without due process which culminated in her being served with a letter of interdiction on 23rd September 2020 without any warning or notice to show cause.
8. The Claimant avers that she was compelled to vacate her offices within 48 hours upon service of the letter of interdiction against due process. Therefore, she was condemned unheard in violation of the principle of fairness and in violation of her rights under *the Constitution*, the *Employment Act*, the *Teachers Service Commission Act* and the Code of Regulations for Teachers, 2015.
9. The Claimant avers that the allegations levelled against her in the letter of interdiction were based on corporate decisions made by Ruthimitu Girls Secondary School's Board of Management (BOM) and the Parents Teachers Association with the necessary approvals and she should not have been condemned as a result.
10. The PTA and BOM approved the collection of Kshs. 1000 per student per term towards the purchase of a new school bus which was approved by the County Director, Ministry of Education by issuing an approval of the proposal.
11. Subsequently, the bus was purchased in the normal manner and commissioned by the Respondent's officers, BOM, PTA and the school community and it was supervised by the BOM and PTA as required.
12. It is the Claimant's case that she was condemned unfairly since she was never a member of the Procurement Committee of the school. The financial years preceding her dismissal, the school had been audited by the Ministry of Education auditors as required by law and the school's accounts had been given a clean bill of health.
13. The Claimant avers that the Respondent treated her with bias and she was unable to obtain materials necessary to defend herself from the allegations as a result of being escorted from the school.



14. The Claimant avers that the disciplinary tribunal was not properly constituted and the Respondent declined her request of being represented by a lawyer of her choice during the proceedings thus she was unfairly treated during the hearing. Additionally, the Respondent declined her request for a video recording of the proceedings.
15. The Claimant avers that the proceedings were biased and conducted in an incriminatory manner to pave way for her conviction as the Respondent failed to address its correspondence to the Claimant directly prior to the hearing. The correspondence was channelled to the county offices where the Claimant had been directed not to access leading to delays in communication and as a result she was notified of the hearing 48 hours prior.
16. The Claimant avers that the Respondent did not serve her with all the documents supporting the allegations against her and she was denied adequate time and opportunity to defend her case.
17. She contends that during the period of investigation, she was not accorded fair treatment and the opportunity to respond to the allegations. Additionally, she was not asked by the Respondent's officers to give any explanation or materials in response to any complaints levelled against her.
18. The Claimant avers that she was not accorded ample time to prepare for the disciplinary hearing as she was informed of the hearing via a telephone call on the evening of 17th May 2021 whereas the hearing was scheduled for 18th May 2021. This was in breach of the Teachers Service Commission that provides for two weeks' notice and the Code of Regulations for Teachers, 2015 that provides for one month notice for disciplinary hearings.
19. The Claimant further avers that the disciplinary panel brushed off her witnesses or denied them the opportunity to testify due to failure to present their national identity cards thus violating her constitutional right to fair hearing.
20. It is the Claimant's case that she was not dismissed as she was not issued with an official dismissal letter but a letter of communicating the disciplinary panel's decision. Further, a new allegation was mentioned in the letter that had not been stated in the disciplinary proceedings or the allegations levelled against her.
21. Additionally, the decision to terminate her employment was made a few minutes after the disciplinary hearing confirming that the decision had been made to summarily terminate her employment.
22. The Claimant avers that her termination was not in accordance with the [*Teachers Service Commission Act*](#) and the Code of Regulations for Teachers, 2015 since the matter was taken up by the Respondent without following the proper mode of investigation which requires that the same is conducted by the County Director in liaison with the BOM.
23. Further, the Claimant was not informed of the allegations against her with sufficient details.
24. The Claimant avers that she was not issued with the Notice to Show Cause or administrative warning before disciplinary action was commenced against her contrary to the Code of Regulations which requires that if a teacher is found guilty of the allegations against her, she should be given a written administrative warning prior to interdiction and be informed that subsequent misconduct will lead to automatic interdiction.
25. The Claimant contends that the Regulations provide that a teacher facing disciplinary allegations should be given an opportunity to adduce and challenge any adverse evidence whereas she was denied this opportunity.



26. The Claimant avers that payment of her half salary was suspended without notice since August 2020, contrary to the Regulations which provides that a teacher on interdiction shall be entitled to half basic pay except in cases of desertion of duty.
27. It is the Claimant's case that her services were terminated six months before her retirement and the Respondent ignored her earlier request and application of early retirement. The Respondent further backdated her actual mandatory retirement by one month (from 30th June 2021 to 30th May 2021) against the stipulations of the Public Service Commission Act.
28. The Claimant avers that she was unlawfully dismissed from employment despite the fact that she had never received any warning letter for her entire 35 years of service with the Respondent
29. The Claimant avers that the Respondent has refused to issue her with a Certificate of Service as required by the law.
30. It is the Claimant's case that after the unlawful termination, the Respondent failed to submit her pension contributions to her pension scheme for the period of interdiction.

Respondent's Case

31. In opposition to the Claim, the Respondent filed a Memorandum of Defence dated 25th October 2022.
32. The Respondent avers that the Claimant's contract of employment was governed by inter alia the Constitution of Kenya; Teachers Service Commission Act (TSC Act); the Employment Act; the Code of Regulation for Teachers (2015) (hereinafter referred to as the "Code"); the Code of Conduct and Ethics for Teachers (2015), the Leadership and Integrity Act and other legal instruments that include Administrative Circulars issued by the Respondent from time to time.
33. The Respondent avers that vide a letter dated 18th June 2020, it received a complaint against the Claimant on abuse of office for demanding and receiving Kshs. 1,000 per term from each parent without issuing receipts and receiving Kshs. 4,000 for repayment of a loan used to buy a school bus without proper accountability among other allegations.
34. The matter was then reported to the Respondent's CEO and the Respondent commenced investigations to establish the veracity of these allegations. Subsequently, it was found that the Claimant was culpable for some of the allegations leveled against her hence she was issued with an interdiction letter dated 23rd September 2020 wherein she was given a chance to respond to allegations in writing within 21 days where after she would be accorded opportunity to be heard in person.
35. The Respondent avers that the Claimant recorded her statement dated 7th October 2020 wherein she denied all the allegations levelled against her.
36. It is the Respondent's case that the allegations against the Claimant amounted to gross professional misconduct on her part and constituted breach of the Code of Regulations for Teachers, 2015. It was alleged that the Claimant failed to seek for approval from Principal Secretary State of Early Learning and Basic Education in 2016 to charge extra levies of Kshs. 4,000; and she failed to comply with procurement procedures and guidelines awarding her company tenders to supply food stuff.
37. The Respondent avers that she duly constituted a special panel to hear and determine the Claimant's disciplinary case. As the matter was still pending hearing, on 10th March 2021 the commission received another complaint with regards to withdrawal of funds from the school's account.



38. Subsequently, an investigative audit was conducted by the school's auditor wherein the Claimant was found culpable and recommendations made.
39. It is the Respondent's case that the Claimant was subsequently invited vide a letter dated 15th April 2021 to appear before the Respondent's disciplinary panel on 18th April 2021 and she was advised to bring along any witnesses if she so wished and any documents she might have wished to rely. The Respondent also invited witnesses in the case and facilitated their attendance for the hearing.
40. The Respondent avers that during the hearing, the Claimant was given a chance to state her case before the discipline panel and given an opportunity to cross examine the witnesses present and to call her own witnesses which she did.
41. The Respondent avers that the Claimant admitted to have committed the offences and asked for forgiveness during the hearing.
42. Having heard the Claimant's case and the witnesses' testimonies, the disciplinary panel found as follows:
- "i. Though she initially denied the charges, as the case progressed she admitted claiming they were due to ignorance.
 - ii. She admitted to have done a course in management and was aware of the guidelines governing headship and procurement procedures.
 - iii. On charge one the pane/ established that though the BOM and the PTA had approved charging of levies for the bus project at Kshs. 4.000 per term per student she did not get express authority from the Principal Secretary Education as per the requirements of the Basic Education Act before actualizing the same.
 - iv. On charge 2 the BOM, the PTA under in Min 6/7/2017 approved the purchase of the bus in 2017 and mandated the Claimant to seek authority/ approval from the Permanent Secretary of Education.
 - v. Though the initial cost of the bus approved by the BOM was to cost 6.4 million the principal was unable to explain how., the cost rose to 6.9 million shillings.
 - vi. On charge 3 the Principal admitted that she registered a company called "KAWISA ENTERPRISES" on 19/3/2013 and she was the sole proprietor.
 - vii. Though the Claimant claimed that she had given Kawisa Enterprises to a needy supplier, Christine Kinya, it was found that to date all cheques to this company were drawn in her name Sarah Muthoni Muraa.
 - viii. That on 24/9/2020 after handing over, the Claimant withdrew Kshs.720,000, on 25/9/2020 she withdrew Kshs. 600,000 and on 28/9/2020 she paid a contractor Kshs. 700,000 cheque."
43. The Respondent avers that given the gravity of the Claimant's professional misconduct, the disciplinary panel arrived at a decision to dismiss the Claimant from the teaching service. Subsequently, the Claimant was duly informed of the Respondent's decision to dismiss her from the teaching service through a letter dated 18th May 2021 and she was also advised of the reasons for her dismissal in the said



letter. The Claimant was also informed of the Respondent's decision to remove her from the Register of Teachers and notified of her right of review within 90 days.

44. It is the Respondent's case that the Claimant lodged an appeal dated 11th August 2021 and she was invited for a hearing of her review on 8th March 2022 vide an invitation letter dated 4th February 2022 and she was advised to bring documentary evidence that would be useful in her case.
45. The Respondent avers that the Claimant appeared for hearing of her review case and the same was heard and determined. Subsequently, the Respondent upheld the decision to dismiss and remove the teacher from the register was upheld and the Claimant was duly notified of the same.
46. The Respondent avers that it could commence disciplinary proceedings against the Claimant at any time so long as she was still under employment.
47. The Respondent avers that the Claimant has not adduced any evidence to corroborate the claims that the Respondent's actions were unfair and illegal.
48. It is the Respondent's case that proper investigations were instituted into the matter before any decision was taken against the Claimant and she was accorded an opportunity to be heard. It further contends that Claimant was accorded a right to be heard in person at the discipline panel as required under section 41 (2) of the *Employment Act*.
49. The Respondent avers that the Claimant was given ample opportunity to cross examine the witnesses and she was accorded an opportunity to present her witnesses during the disciplinary hearing which she did. Additionally, the Claimant did not produce any relevant documents at the review to support her case.
50. It is the Respondent's case that the Claimant is not entitled to the prayers and the declaratory orders sought for the reason that: her dismissal was based on cogent evidence and was pursuant to the law; she is culpable of professional misconduct hence the Respondent had a valid reason to terminate her services; and she was dismissed from service following due process.

Evidence in Court

51. The Claimant (CW1) adopted her witness statement dated 29th September 2022 as her evidence in chief and produced her filed list of documents dated even date as her exhibits 1-12 respectively.
52. During cross-examination, CW1 testified that the disciplinary committee sat on 18th May 2021 and by then she had retired. By the time of the proceedings, she was no longer a teacher
53. CW1 testified that her August 2020 payslip indicated that her retirement date was indicated as 31st May 2021 whereas she was to retire one month later.
54. CW1 testified that she was not taken through a financial management course.
55. CW1 testified that she was aware that EACC conducted investigations and she was issued with an interdiction letter thereafter.
56. She further testified that the investigation by TSC was done in less than one hour and she has never even received an investigation report.
57. It was her testimony that she appeared before the EACC and she responded to the interdiction letter.
58. CW1 testified that the balance of the school bus profit was paid by the school and that she has a letter dated 28th February 2020 authorising charge of the extra levy.



59. She testified that the county office allowed them to charge the extra Kshs. 4,000 for the bus, however, the letter is not in court.
60. CW1 testified that Kawisa Suppliers is a personal company registered by her but she gave it to someone else and asked them to change the directors but she did not follow up.
61. She testified that Kawisa Suppliers was contracted by the school to supply food stuffs but she did not have any interest.
62. CW1 testified that she vacated the office upon interdiction on 23rd September 2020, thus she never withdrew school funds on 28th September 2020. She gave cheques to the BOM Chair including signed cheques which she had signed prior to the interdiction.
63. The Respondent's witness, Kodek Onyango (RW1) stated that he works as an auditor based in Nairobi Region as an employee of the Ministry of Education. He adopted his witness statement dated 24th April 2025 as his evidence in chief and produced the Respondent's bundle of documents as his exhibits.
64. RW1 testified that there was a first investigative audit before the Respondent interdicted the Claimant, the Ministry then undertook the second audit.
65. The second audit revealed the Claimant was trading with the school and after the interdiction she had cashed out Kshs. 20,000 and later Kshs. 60,000 which was not accounted for.
66. He undertook an audit and generated a report dated 20th January 2021.
67. During cross-examination, RW1 testified that the first audit report is not before this court and that the Claimant was not charged with a criminal offence relating to the EACC investigations.
68. RW1 testified that the Claimant misappropriated school funds, however, the school has not sued her in respect to the funds and that during the investigations, they did not interview her.
69. RW1 testified that it is not misconduct to carry out investigations without talking to the suspect.
70. He testified that the school account has signatories, however, his audit report did not capture these signatories. There are three signatories, however, the Claimant as the Principal was the mandatory signatory. However, RW1 stated that he has no information from the bank to show the signatories and he did not ask the bank for the same.
71. RW1 testified that page 35 of the Respondent's bundle shows that a Cheque was presented on 28th September 2020 for Kshs. 70,000, however, it does not show who presented the cheque. People cannot be given post-dated cheques and RW1 does not know who the cheque was paid to. He requested for the copy but there is no evidence in court to corroborate this.
72. RW1 testified that he did not interview the BOM or PTA chair.
73. The Respondent's second witness, Daniel Kioko (RW2) stated that he works as the Respondent's County Director, Wajir County.
74. He testified that in respect to this matter, he was a discipline officer at TSC Headquarters and he adopted his witness statement dated 24th November 2023 as his evidence in chief and produced the Respondent's bundle of documents as his exhibits.
75. During cross-examination, RW2 testified that he attended the disciplinary process on 18th May 2021 and none of the panellists was a commissioner.



76. RW2 testified that the Claimant was served the hearing notice via email in April, he denied that the Claimant was served 2 days to the hearing. However, he testified that he does not have a copy of the email he sent.
77. RW2 testified that the Claimant was interdicted on 23rd September 2020 and she was to retire on 31st May 2021. Additionally, the Claimant's hearing was conducted 12 days before her retirement.
78. RW2 testified that the TSC rules provide that a teacher must not be on compulsory leave, however, 2020 was a covid year therefore there was no physical hearing, this is what attributed to the delay of the hearing of the Claimant's matter.
79. He testified that the disciplinary panel makes the final determination during the proceedings and in this case, it made the decision to dismiss the Claimant on the spot.
80. He further testified that he communicated the decision of dismissal to the Claimant vide a letter. He was authorised by law vide the Code of Regulation but he does not have the regulations before court.
81. RW2 testified that the dismissal decision was communicated on 18th May 2021 and the panel made this decision within two hours.
82. He testified that the hearing started at 9 a.m., the Respondent had 5 witnesses and the Claimant had 2 witnesses and these witnesses were heard up to 2 p.m. and the panel had no break.
83. RW2 testified that the panel declined one of the Claimant's witness, Kinya, from testifying on grounds that she did not have a national identity card and she did not have any other document to identify her. However, the witness did not ask for more time to present her alternative identification document.
84. RW2 testified that the Claimant returned on 31st May 2021 and by then TSC had no jurisdiction over teachers employment.

Claimant's Submissions

85. The Claimant submitted on two issues: whether the Claimant was given a fair hearing during the disciplinary hearing proceedings by a competent tribunal; and whether the Claimant is entitled to reliefs sought in her Memorandum of Claim.
86. On the first issue, the Claimant relied in the court's decision in *Walter Ogal Anuro V Teachers Service Commission* [2013] KEELRC 386 (KLR) wherein the court held:

“However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness”
87. The Claimant submitted that an improperly constituted tribunal cannot arrive at a proper decision and the decision of such a tribunal is a nullity. She relied in decision of the Supreme Court in *Mutava v Tribunal Appointed to Investigate the Conduct of Justice Joseph Mbalu Mutava, Judge of the High Court of Kenya* [2019] KESC 49 (KLR) wherein it was held:

“We are inclined to agree with the Respondent for the following reasons; we have already established that an improperly constituted Tribunal would have no competency to determine a question of jurisdiction or any other issue and its proceedings are void ab initio.”
88. On substantive justification, the Claimant submitted that the reasons given for her dismissal were institutional rather than individual shortcomings. The issue of accounting of the school funds was the



responsibility of the PTA and the School Management Board; this explains why no action has been taken against her for any alleged shortcomings in the institution. The PTA chair and the Management Board's Chair, who are also signatories to the school accounts, were not penalized in the manner the Claimant was chastised.

89. The Claimant submitted that charges levelled against her were a witch hunt as she explained herself. She produced a letter from the Respondent dated 28th February 2020 authorizing the school to purchase the bus by levying extra levies of Kshs. 4,000; and all witnesses confirmed that the project was a PTA and School Management Board project. The bus was also purchased by the school thus she was not to blame.
90. She further submitted that on failing to comply with procurement procedures and guidelines in purchase of the school bus and supply of food stuffs in the school for the period 2013 to 2018; she produced minutes of a meeting held on 14th May 2020 by the School authorizing purchase of the school bus through open tender. The Claimant further testified that she is not a member of the tender committee and this evidence was not challenged by the Respondent.
91. The Claimant submitted that in respect to the allegation that she awarded her company, Kawisa Suppliers, tenders to supply foodstuffs in Ruthimitu Girls Secondary School between 2013 and 2018; she produced documents to show that she had transferred the business to Christine Kinya which are attached to her bundle. Additionally, the disciplinary board refused to give audience to this witness.
92. It is the Claimant's submission that the Respondent did not file any documents to support their reasons for dismissal other than the second investigation report and the disciplinary hearing proceedings without any justification of the same. Additionally, the Respondent did not also file any documents to prove that the allegations were substantiated and during the disciplinary hearing, no witnesses were called to explain the source of allegations. Therefore, the proceedings were one-sided as the persons who reported the said allegations were never brought as witnesses and neither were there valid documents to prove that indeed allegations had been reported or complained about except a letter produced by the Respondent from the EACC.
93. The Claimant submitted that the disciplinary committee did not give any explanation or rationale for arriving at their decision. Therefore, it never analysed the evidence tendered by the parties in a logical manner before arriving at its decision. The Claimant was only served with a letter of the decision, but it did not give further details on how the disciplinary panel arrived at their decision.
94. On procedural fairness, the Claimant submitted that Regulation 151(3) of the Teachers Service Commission Code of Regulations for Teachers, 2015 provides that the composition of the disciplinary panel as follows: -

“The Discipline Panel at the headquarters shall comprise- (a) at least one member of the Commission who shall be the chair of the panel; (b) two directors or their representatives, appointed by the Commission Secretary; and in attendance; (c) an officer representing the division dealing with matters touching on discipline; and (d) any other technical officer whose attendance shall be deemed necessary.”
95. The Claimant submitted that the Respondent instituted a disciplinary panel which held the disciplinary hearing on 18th May 2021 and it comprised of a Panel Chair, who doubled up as the one taking proceedings, one member, and one presenting officer being one. Thus, a total of 3 panel members and a presenting member.



96. It is the Claimant's submission that the disciplinary panel was not properly constituted as it lacked mandatory crucial panel members to hear the matter. The panel lacked at least one commissioner, two directors or their representatives appointed by the Commission secretary to hear the disciplinary case, an officer representing the division dealing with the matters touching on discipline. The minimum number of members of the disciplinary panel according to Regulation 151(3) is five members and the tribunal hearing this matter comprised of 3 members. One such member was the prosecuting counsel who also wrote the Claimant's dismissal letter.
97. The Claimant submitted that Regulation 154 (1) of the Teachers Service Commission Code of Regulations for Teachers, 2015 provides that the Commission shall within 28 days from the hearing date, inform the teacher of its decision regarding the teacher's disciplinary case and shall give its reasons for its decision in the manner set out in the 27th Schedule. Contrary to this provision, RW2 stated that the Claimant was issued with a decision of the disciplinary proceedings letter a few minutes after conclusion of the proceedings and no reasons were contained in the letter.
98. It is the Claimant's submission that she was dismissed immediately thus the Commission did not critically review the proceedings to make a proper and informed decision before informing her of the dismissal.
99. The Claimant submitted that Regulation 154 (2) of the Teachers Service Commission Code of Regulations for Teachers gives ten (10) other forms of sentences that can be meted on a teacher found guilty after disciplinary hearing, among them is retirement under public interest or retirement of the teacher under the fifty-five (10/50) year rule under the *Pensions Act*. Removal of a teacher is the highest form of punishment. It was the Claimant's testimony that she applied to be retired in the public interest but her plea was rejected by the Respondent.
100. The Claimant submitted that the tribunal failed to appreciate the law and to apply it with due consideration to the circumstances of this case. The Respondent without an explanation of such a heavy penalty and with little evidence to support the allegations, terminated her 35-year career, 8 days before her retirement.
101. The Claimant submitted that the Respondent neither called the signatories to the school accounts as witnesses nor were they held accountable with regards to the allegations that the Claimant allegedly withdrew funds from the school account, if indeed that allegation had merit. The school accounts had three signatories and funds could neither be transferred nor withdrawn without the signatories.
102. It is the Claimant's submission that Respondent did also not investigate how the Claimant was allegedly able to transfer funds from the school accounts without the knowledge and consent of the other signatories to the account. No document was produced in court by the Respondent to show such withdrawal. Additionally, the alleged withdrawal was after the Claimant's suspension thus it could not form the basis of suspension and the subsequent disciplinary proceedings since the claim occurred after the fact.
103. The Claimant further submitted that the Respondent did not produce any documents to prove that its investigators took evidence from the other signatories to the school bank accounts before arriving at the conclusion that the principal was the only one to be held solely accountable for the allegations.
104. The Claimant submitted that she was never served with any administrative warnings despite starting a secondary school and build it to a formidable institution. She therefore deserved better from the Respondent.



105. On the second issue, it is the Claimant's submission that pension is a property protected by the Constitution thus she is entitled to her full pension. She relied in *Otieno v Teachers Service Commission* [2024] KEELRC 1630 (KLR) where it was held:-

“Indeed this court has held that every employee has a right to social security and in the case of *George Kuria Vs TSC* (2019) eklr, the Court of Appeal held as follows :-“indeed, pension is a proprietary right as stated in the authority cited for the appellant but it must be pension lawfully arrived at. There can be no right of pension where the employee has already attained and passed the mandatory age of retirement. Thus, while we agree with the dictum of Shah, JA in the *COCKAR* case (supra) that the pension of a retiree is not a matter of fun and games, we add that it is not a matter of greed and speculative wager either.

It is indeed true as held herein that pension already earned is a right and cannot be taken away from an employee for whatever reason.

I accordingly agree with the claimant that he earned his pension and the decision to dismiss him without his pension is unconstitutional and is set aside.”

106. The Claimant submitted that she is entitled to salary payment from 23rd September 2020 when she was interdicted up to 18th May 2021 since her dismissal was unlawful and she has never been prosecuted for any offence.

Respondent's Submissions

107. The Respondent submitted on two issues: whether the Claimant was given a fair hearing during the disciplinary hearing proceedings by a competent tribunal; and whether the Claimant is entitled to reliefs sought in her memorandum of claim.
108. On the first issue, the Respondent submitted that the Claimant was dismissed on proper, established and compelling grounds of abuse of office, misappropriation of funds, negligence of duty and flaunting procurement procedures after a rigorous process as outlined in its Code of Regulations for Teachers.
109. The Respondent submitted that as Principal and Head of Institution of Ruthimitu Girls Secondary School, the Claimant was the administrator of the institution vested with mandate to ensure proper institutional management in line with government procedures and the Respondent's policies. Contrary to the duty bestowed upon her, the Claimant was found culpable of: failing to seek approval from the Principal Secretary State Department of Early Learning and Basic Education in 2016 to charge extra levies of Kshs 4,000/- per learner; failing to comply with procurement procedures and guidelines; and awarding her own company tenders to supply food stuff to Ruthimitu Girls Secondary School.
110. The Respondent submitted that in her response, the Claimant admitted to awarding her own company Kawisa Suppliers the tender to supply food stuff to the school and owned up to having registered the Kawisa Suppliers but gave an unconvincing and illogical reason as to why the company was trading with the school. Additionally, she could not explain or produce evidence authorizing her to charge extra levy of Kshs 4,000 per learner.
111. It is the Respondent's submission that it discharged its burden under Section 43 of the Employment Act and that the reason of the Claimant's dismissal was sound sufficient and lawful and ought to be upheld.



112. The Respondent submitted that the Claimant was accorded a fair hearing and the opportunity to be heard in compliance with the provisions of the Constitution, the Employment Act and the rules of natural justice.
113. The Respondent submitted that it instituted a probe into the allegations against the Claimant's professional misconduct and the investigation team recorded statements from various witnesses and prepared a report. Subsequently, the Claimant was granted an opportunity to respond to the allegations which she did. The Respondent then evaluated the statements, investigation report and the Claimant's responses and resolved to interdict her for abuse & negligence of duty and being of infamous conduct.
114. The Respondent submitted that the Claimant was served with a letter of interdiction dated 23rd September 2020 that informed her of the nature of the allegations against her and invited her to respond to the same within twenty-one (21) days. The Claimant wrote a Statement of Defence vide a letter dated 7th October 2020.
115. It is the Respondent's submission that the Claimant's disciplinary case was heard on 18th May 2021. The invitation letter specified the time and place where the hearing was to take place and gave the Claimant ample time to organize her defence and attend the hearing. The Claimant was present in person throughout the proceedings. Witnesses testified in her presence and she was accorded an opportunity to cross-examine them as well as present her case and tender exculpatory evidence, which she did to her satisfaction. The panel was fair, courteous and treated the Claimant with dignity and at no time did the Claimant raise any objection about the manner in which the proceedings were conducted or even the constitution of the panel.
116. The Respondent submitted that the disciplinary panel considered the evidence adduced before it, the Claimant's oral and written testimony, circumstances of the case and arrived at the decision to terminate the Claimant's service. The decision of the panel was then promptly communicated to the Claimant.
117. The Respondent submitted that it adhered to procedural fairness in the procedure leading to the Claimant's dismissal as set out by the Court in Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd [2013] KEELRC 920 (KLR).
118. It is the Respondent's submission that under the Code of Regulations for Teachers, it is not mandatory during investigations for the Claimant to be present when witnesses are being interviewed nor be accorded an opportunity to challenge adverse evidence. The sole purpose of the investigations is to collect evidence to establish if the allegations were true.
119. The Respondent submitted that the process the Claimant was taken through was in conformity to the tenets of fair hearing as held by the Court of Appeal in Bett Francis Barngetuny & another v Teachers Service Commission & another [2015] KECA 82 (KLR). The Respondent submits that the Claimant was dismissed from employment based on the hearing conducted on 18th May 2021 where he appeared in person and made her representations. In addition, the witnesses testified in her presence and he was accorded an opportunity to cross-examine the witnesses as well as challenge any adverse evidence.
120. The Respondent submitted that the Claimant admitted to the allegations: she admitted that she did not obtain the necessary approvals prior to charging extra levies and that her own company was trading with the school.
121. It was submitted for the Respondent that the Claimant's contention that her right to fair administrative action has been infringed is unfounded. The Respondent affirms that it adhered to



procedural fairness in the process of exercising its disciplinary powers. The Claimant was informed of the nature of allegations against her and given an opportunity to present her written and oral defence at the hearing of her discipline case. She was also timeously informed of the Respondent's decision.

122. It is the Respondent's submission that the Claimant was subjected to a fair, procedural and lawful disciplinary process from the time an inquiry was instituted up to the time of dismissal. Her dismissal from service was hence justified, procedural and lawful as all the tenets of fair hearing were strictly adhered to prior to the said dismissal.
123. On the second issue, the Respondent submitted that it had valid reasons for terminating the Claimant's employment and that it faithfully adhered to the due process in terminating. The Claimant was accorded the opportunity to be heard; her representations were considered; and she was eventually found culpable of negligence of duty and infamous conduct.
124. It is the Respondent's submissions that it has discharged the burden imposed under Sections 41, 43 and 45 of the *Employment Act*. Consequently, the due process having been followed in her dismissal in line with *the Constitution, Employment Act, Fair Administrative Action Act*, the Respondent's Human Resource Manual and the Claimant's employment contract; therefore, the Claimant's prayer for reinstatement and damages for unfair termination lacks merit.
125. I have examined all evidence and submissions of the parties herein. The issues for this court's determination are as follows:
 1. When the claimant was to retire as per her age and records.
 2. Whether there were valid reasons to warrant the claimant's termination.
 3. Whether the claimant was subjected to a fair disciplinary panel.
 4. What remedies the claimant is entitled to.

Issue No 1

126. The claimant had testified that her disciplinary hearing case was conducted after her retirement and was this irregular. The claimant however testified that she was born on 15/6/61. The disciplinary hearing was however conducted on 18/5/21. Having been born on 15/6/61, it implies that she was to attain her retirement age of 60 years on 14/6/2021. Since the disciplinary hearing was conducted on 18/5/21, this was done when she was still an employee of the respondents.
127. The claimant's contention that she was heard after retirement is therefore true. That notwithstanding after the disciplinary hearing the claimant appealed the decision of the disciplinary panel on the 13/8/2021. The appeal was conducted on 8/3/22 and was dismissed. The appeal was therefore considered and determined after her retirement which was therefore irregular.

Issue No 2

128. On reason for termination the claimant was terminated for reasons given in the letter of 18/5/2021 following a disciplinary hearing the same day. The reasons given are as follows:

Date: 18th May 2021

REF: TSC/DISC/NO. 033/09/2020/2021/23

MR/MRS/MISS:

Muraa Sarah Muthoni



Po Box-449-40612

Nkubu

Re: Decision Of The Commission

Dismissal

Pursuant to the hearing of your discipline case held on 18/05/2021 am directed by the Teachers Service Commission to inform you that, the Commission has carefully considered your case and has determined that you are guilty of the charges leveled against you and that you are hereby Dismissed with effect from 18/05/2021 for the following reasons

1. You failed to seek for approval from Principal Secretary State of Department of Early Learning-and-Basic Education in 2016 to charge extra levies of Ksh.4000 for the bus project.
2. You failed to comply with procurement procedures and guidelines in purchase of the school bus and supply of food stuffs in the school for the period 2013-2018 contrary to the provisions of the Public Procurement Assets and Disposal Act 2015.
3. You awarded your company (KAWISA Suppliers), tenders to supply food stuffs in your School (Ruthimitu Girls Secondary School) between 2013 and 2018 contrary to the TSC Code of Conduct and Ethics for teachers (2015) (part II, 13 (1) (2) (3).

As per the provision of Regulation 156 (4) of the Code of Regulations for Teachers, you have a right to appeal for review against the decision within ninety (90) days.

NB 1. Salary overpayment will be followed up from you as per payroll records,

2. Kenya Shillings One Million Five Hundred and Seventy Thousand (KSH. 1,570,000.00) will be followed up from you and remitted to Ruthimitu Girl's Secondary School-Nairobi County.

Daniel K. Kioko

For: Secretary/Chief Executive

Teachers Service Commission

Copy to:

1. County Director-Nairobi
2. Ruthimitu Girl's Secondary School

129. Before the disciplinary hearing the claimant was subjected to a disciplinary hearing where she was expected to answer to the said charges and during the hearing as per the minutes of 18/5/21 she denied capability. She indicated that she sought permission of the County Director and was given permission to levy extra money from parents.
130. As concerns Kawisa company she said it was her company but someone else was using it. From the evidence on record, the claimant insisted that she had the requisite authority to levy the charges. The witnesses called by the respondent however testified that no permission was given to the claimant to levy the extra charges. The claimant also failed to prove that she had gotten the requisite permission.
131. As concerns the issue of trading with the school using a company registered by herself, this was proved and the claimant admitted that the company was hers but had given it to someone else.



132. It is however worth noting that in the claimant's termination letter, the respondents decided to surcharge her ksh 1,570,000/- which surcharge was not a charge presented to her during the disciplinary hearing. The decision then to subject her to surcharge for signing cheques during her interdiction was irregular and null and void for want of proper hearing on the matter.

Issue No 3

133. On proper hearing process, the claimant has submitted that the panel that heard her disciplinary case was not properly constituted. The claimant submitted that regulation 151(3) of the TSC code of regulation for teachers, 2015 provides the composition of the disciplinary panel as follows:

“the discipline panel at the headquarters shall comprise (a) at least one member of the commission who shall be the chair of the panel (b) two directors or their representatives appointed by the commission secretary and in attendance (c) an officer representing the director dealing with matters touching on discipline and (d) any other technical officer whose attendance shall be deemed necessary.”

134. The panel that heard the claimant's case as per the minutes before court comprised of E.J Mitel (Mrs) panel chair, Florence Kamaina member/ taking proceedings and Lucy Nganwange M/s member. In attendance there was Daniel K. Kioko (AD(FSD) CNEA. There was no technical officer present. E. J Mitei (Mrs) was not a member of the commission and if she was, no evidence has been submitted before this court. It is not clear whether Florence and Lucy are the directors appointed by the commission secretary and who were to take minutes or not. There was no technical officer present.

135. In the circumstances of the case the panel as established was wrongly constituted. The wording of regulation 151(3) above of the TSC code of regulation is couched in mandatory terms and there is no room to have a non member of the commission sitting as chair of the panel. The commission as defined under the regulation means as established under article 237(1) of *the constitution*.

136. The TSC Act on the other had defined member of the commission as a member appointed under section 8 of the said article. There is no indication that E. J. Mitei (Mrs) is a member of the commission and therefore it is indeed true as submitted by the claimant that the panel that heard her disciplinary case was not properly constituted.

137. As held in the KESC 49(KLR) In Mutava vs Tribunal Appointed to investigate the conduct of Justice Mbalu Mutava (supra), an improperly constituted tribunal has no competency to determine a question of jurisdiction or any other issue and its proceedings are void ab initio.

138. Section 45(2) of the *Employment Act* 2007 also state as follows:

- (2) A termination of employment by an employer is unfair if the employer fails to prove——
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason——
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.



139. It is therefore the finding of this court that the claimant having been subjected to a wrongly constituted disciplinary panel the proceedings therein are void ab initio and therefore her termination and any subsequent proceedings and decisions emanating from such panel are null and void.

Issue No 4

140. Having found as above I find for claimant and I award her the following remedies.

1. The sum of kshs 736,398/- being accumulated salaries from the date of interdiction to the date of dismissal.
2. Unpaid salary from May and June 2021 kshs 163,644/- as prayed.
3. 6 months' salary as compensation for the unlawful termination – 6 x163,644/-= kshs 981,864. Total kshs 1,881,906 less statutory deductions.
4. Unremitted pension during the period of declaration that the claimant is on interdiction.
5. Payment of all her pension and terminal dues as calculated by the respondent.
6. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

