



REPUBLIC OF KENYA



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**Odanga v Board of Governors Gatuura Secondary School & another (Cause
1263 of 2017) [2025] KEELRC 2582 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2582 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1263 OF 2017
JW KELI, J
SEPTEMBER 26, 2025

BETWEEN

GLORIA K. ODANGA CLAIMANT

AND

**BOARD OF GOVERNORS GATUURA SECONDARY SCHOOL 1ST
RESPONDENT**

DAVID KAMAU MUIGAI 2ND RESPONDENT

JUDGMENT

1. Vide a memorandum of claim dated the 12th of June 2017, the claimant sued the respondent, the former employer, and sought the following Orders:-
 - a. A declaration that the claimant was unlawfully dismissed from her employment.
 - b. A declaration that the claimant is entitled to payment of terminal dues and damages as prayed.
 - c. An order for the respondent to pay the claimant her terminal benefits and compensatory damages totalling Kshs. 435,954/=.
 - d. An order to the effect that the claimant to be issued with a certificate of service.
 - e. Costs of this application plus interests thereon.
2. The claimant, in support of the claim, filed her witness statement and the witness statement of one David Gacheru Njeri, both dated 12th June 2017; an undated list of witnesses filed on 5th July 2017; and an undated list of documents with the bundle of documents attached. The claimant later filed her supplementary list of documents dated 10th November 2017.
3. The Respondent entered an appearance through S.M. Chege & Company Advocates and filed a list of witnesses dated 19th September 2017, a statement of response by the 2nd Respondent dated 19th



September 2017, and a list of documents of the same date. with the bundle of documents attached. The 1st Respondent later changed representation and on boarded the Honourable Attorney General on 27th January 2021.

4. In response to the Respondent's defence, the claimant filed a reply to the Respondent's statement of response dated 9th November 2017.

Hearing and evidence

5. The claimant's case was heard before Justice Ocharo Kebira on the 27th September 2022 where the claimant testified as CW1, adopted her witness statement dated 12th June 2017 as her evidence in chief, produced her documents as C-exhibits 1-5, was cross-examined by counsel for the respondent, Mr. Mwangi and re-examined by own counsel and claimant's case closed.
6. The respondent's case was heard before me on 8th May 2025, when David Kamau Muigai, the school principal, testified on oath, adopted his witness statement in response dated 19th September 2017 as his evidence in chief, produced documents under list of even date as R- exhibits 1-9, and was cross-examined by counsel for the claimant, Makhanu, and re-examined by his counsel, Muthuuri.

The Claimant's case in summary

7. The Claimant's case is that she was employed as an English and Literature teacher at Gatuura Secondary School in March 2016, with a monthly salary of Kshs.15,000/-. The 2nd Respondent explained the job description and specifications to the Claimant and assured her she would receive the Employment Contract. The claimant was also promised her salary would be adjusted after three months to match the rates of teachers employed by the Teachers Service Commission at that time. When she requested a letter of appointment and her employment contract from the 2nd Respondent, the Claimant stated she was told that the 1st Respondent had decided not to issue appointment letters or employment contracts to employees.
8. The Claimant stated that in November 2016, she requested the 2nd Respondent to grant her maternity leave as she was due for delivery in a few weeks to come. He was reserved about granting the Claimant the said maternity leave and denied me the opportunity to fill my maternity leave form. After exerting pressure and explaining to the 2nd respondent the significance of pre-natal and post-natal care, the 2nd respondent reluctantly allowed her to commence her maternity leave in January 2017. In January 2017, the Claimant received a call from the 2nd respondent to the effect that her contract of employment had been terminated forthwith due to financial challenges hounding the institution. She was denied a formal termination letter, despite requesting for the same.
9. The Claimant's grievance against the 1st and 2nd Respondents is that she was not afforded a chance to be heard prior to termination; was not furnished with any warning or notice to show cause; and she has never received her terminal dues. The Claimant avers that her termination from employment was arbitrary and unlawful.

Respondent's case in brief

10. Initially, the 2nd Respondent contested the claim against him on the grounds that he was only the Head Teacher of Gatuura Secondary School at the relevant time, and therefore there was no employer-employee relationship between him and the Claimant.
11. The Respondents admitted to employing the Claimant as an English-Literature teacher in Gatuura Secondary School on 23rd March 2016 vide an oral contract of employment. However, they state



that her employment was subject to the posting of an English-Literature teacher to the school by the Teachers Service Commission., and was therefore temporary in nature. Another term of her employment contract was that the Claimant would be paid an all-inclusive salary of Kshs. 15,000/= with no provision for a salary increment, which was the standard salary paid to all the English-Literature teachers per the school's salary structure passed by the 1st Respondent in their meeting held on 14th November 2015. The 2nd Respondent denied promising the Claimant a pay increment and states that he was not in a position to do the same, as only the Claimant's employer could increase her salary. It is the Respondent's case that the Claimant was aware of the above set out terms of engagement since they were spelt out to her on 17th March 2016 in the presence of the Deputy Head Teacher and the Head of the Languages Department (Mr. Rueben Njuguna Ngugi).

12. The Teachers Service Commission advertises for the post of an English-Literature teacher for the subject school in August 2016. The Claimant applied for the post, vide an application dated 19th August 2016 but failed to attend interviews conducted on 6th September 2016 as per the TSC guidelines. Another candidate was selected to fill the post, and they were formally posted to the school by the Teachers' Service Commission vide a letter dated 18th November 2016, with their formal commencement date being 3rd January 2017. In light of the appointment of a new English-Literature teacher by the Teachers' Service Commission, the Claimant received communication that her employment would come to an end on 31st December 2016. The School closed for the holidays on 28th October 2016 and the Claimant was paid all her dues up to and including 31st December 2016. The Respondent denied having a discussion with the Claimant on her maternity leave or due date, and denying her the same, but confirms that she never took maternity leave during the course of her employment. Finally, they state that she is not entitled to the reliefs sought, having worked for the Respondent for only 10 months.

Determination

Issues for determination

13. The claimant outlined the following issues for determination in the claim.
 - a. Whether the claimant was issued with an employment contract.
 - b. Whether the respondent gave a fair and valid reason for the dismissal.
 - c. Whether the respondents adhered to section 40 of the *Employment Act* in terminating the claimant's employment.
 - d. Whether the claimant was unlawfully and unfairly dismissed from employment.
 - e. Whether the claimant is entitled to compensation as claimed.
 - f. Whether the claimant is entitled to costs of the suit.
14. Conversely, the respondent outlined the following issues for determination in the claim-
 - I. Whether there existed a formal employment contract between the Claimant and the 1st Respondent.
 - II. Whether the Claimant was unlawfully and unfairly dismissed.
 - III. Whether there was a redundancy, and if so, whether the applicable legal procedure under Section 40 of the *Employment Act* was adhered to.



- IV. Whether the Claimant is entitled to the remedies sought
15. The court finds that from the pleadings before the court, the parties were in agreement that there existed an employment relationship founded on oral contractual employment. Section 8 of the Employment Act recognises as valid oral contract of employment. The oral contract was prove of existence of employee employer relationship. Thus the issues for determination were-
- a. Whether there was unfair termination of the employment of the claimant by the respondents.
 - b. Whether the claimant was entitled to relief sought

Whether there was unfair termination of the employment of the claimant by the respondents.

16. The threshold for determination of fairness of termination of employment is according to the provisions of section 45 (2) of the Employment Act to wit:- ‘45(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.” To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the Employment Act (Walter Ogal Anuro v Teachers Service Commission[2013]eKLR).

Substantive fairness

17. The claimant presented her witness statement as her primary evidence, which detailed the circumstances of her termination as follows: ‘In January 2017, I received a call from the 2nd respondent informing me that my employment had been terminated immediately due to financial difficulties faced by the institution. I attempted to inquire from the 2nd respondent why I was summarily dismissed without a fair hearing, as required by the constitution and a fundamental aspect of natural justice. I requested the 2nd respondent to provide me with a termination letter so I could understand the grounds for dismissal and whether I was entitled to any termination benefits. However, he refused to give me a dismissal letter and told me to stop bothering the institution.”,
18. Section 43 of the Employment Act places the burden of proof of reasons for termination of employment on the employer as follows: ‘43. Proof of reason for termination
- (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
 - (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”



19. The respondent, in response, by David Kamau Muigai, stated that the employment of the claimant as an English Literature teacher was verbal and considered temporary, pending the posting of a teacher by the Teachers Service Commission. He explained that the Teachers Service Commission advertised the position of English Literature Teacher in August 2016, and the claimant applied through an application dated August 19, 2016. However, for reasons unknown to RW1, she did not appear for the interviews. The interviews were held on September 6, 2016, and a successful candidate was selected by the Commission. The position previously held by the claimant was filled by a teacher posted by the Commission via a letter dated November 18, 2016, and the new teacher started work on January 3, 2017. David communicated to the claimant that her employment would end on December 31, 2016. The schools closed on October 28, 2016, and the claimant was paid all her dues up to and including December 31, 2016. He also stated that the claimant never discussed her maternity leave with him and therefore had no knowledge of her due date, and that she did not go on maternity leave during her employment. In response, the claimant stated she would rely on her documentary evidence to prove her claim.
20. During cross-examination, the claimant agreed her employment terms of service were temporary but denied agreement that the employment was to come to an end upon posting of a teacher from the Teacher Service Commission. She admitted to having applied for the post and stated that she was not interviewed for failure to be shortlisted.
21. Conversely, during cross-examination of RW1 (David Kamau Muigai), he denied having terminated the employment of the claimant via phone call or on grounds of the school facing financial difficulties. He also denied granting maternity leave to the claimant. RW1 told the court that a verbal notice was issued upon the teacher's posting by the Teachers Service Commission. During re-examination, RW1 stated that the claimant worked for the school for 10 months and was not issued an appointment letter. He explained that the practice for maternity leave is to complete a leave form. The claimant had not produced this leave form, and RW1 was unaware that she was going on maternity leave. RW1 added that the claimant was aware that her employment by the Board of Management was temporary, as permanent teachers are engaged directly by the Teachers Service Commission. The claimant had applied for a position through TSC but failed to attend the interview. After TSC deployed a teacher to fill the position held by the claimant, they informed her and agreed to pay her salary for November and December, during which she did not work, as the position had already been filled. RW1 testified that the claimant understood that her work was over once a teacher was deployed to her position and that continued employment would amount to a waste of public funds.
22. The court took into account the submission by the parties. On analysis of evidence placed by the claimant before the court as evidence of unfair termination and the defence, the claimant admitted that the verbal contract of employment was temporary as she was engaged by BOM. The claimant admitted that the Teacher Service Commission advertised for the position she held, that she applied but was not interviewed for failure to merit the position and a teacher was deployed. The respondent's position that only the Teachers service commission could employ the teacher for the permanent position was not controverted. The court was persuaded by the position of the respondent that on employment of a permanent teacher the post held on temporary basis by the claimant was not tenable and would amount to wastage of public resources. The claimant argument that she was terminated for reason of financial difficulty was defeated by her own admission that the Teachers Service Commission recruited a teacher for the post she held vide letter dated 18th November 2016 of which the claimant participated unsuccessfully. The court for the foregoing reasons finds that the claimant did not prove on a balance of probability that her contract of service was terminated unlawfully.



Procedural process.

23. The nature of employment of the claimant by the respondent was temporary as admitted by both parties. The post was filled competitively hence the temporary employment of the claimant came to an end following the recruitment. The court notes that the role of employment of teachers into permanent positions is by the Teachers Service Commission pursuant to its constitutional mandate under Article 237 (2) of the constitution to wit-“The functions of the Commission are—(a)to register trained teachers;(b)to recruit and employ registered teachers;(c)to assign teachers employed by the Commission for service in any public school or institution;” The Respondent is a public school. The Commission deployed a teacher to the position held on temporary basis by the claimant of English teacher vide letter dated 18th November 2016(R-exhibit 9). RW1 told the court the claimant was informed of the deployment of the teacher in October when the termination was effected, and she was paid the salary of November and December 2016, for which she did not work, the school having closed earlier in October 2016. Consequently, the court found that the issue of procedural unfairness does not arise.

Whether the claimant was entitled to reliefs sought

24. The claimant sought A declaration that the claimant was unlawfully dismissed from her employment and submitted that the dismissal, having been effected based on redundancy and in total disregard of section 40 of the Employment Act, the claimant is therefore entitled to the declaration by this Honourable court. The respondent submitted that the termination was not based on redundancy and relied on the decision in Elizabeth Wakanyi Kibe v Telkom Kneya Limited (2014)e KLR where it submitted the court held that redundancy must be preceded by identifiable policy, restructuring or change of employer and in this case no such event occurred.
25. Redundancy is defined under the Employment Act as "redundancy" ‘means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;’ The claimant admitted that her terms of service were temporary in nature thus redundancy cannot apply. The court already held that the termination of the temporary employment was not unlawful as it was pursuant to the exercise of a constitutional mandate by the Teachers Service Commission and the claimant participated in the process.
26. The claimant further sought for a declaration that the claimant is entitled to payment of terminal dues being notice pay, housing allowance, severance pay ,unpaid leave and underpayment and compensation for unfair termination ;
- a. On the claim for one month in lieu of notice- Kshs.15, 000. The salary payable is not disputed by the respondent. The claimant submitted that section 49 (1) (c) of the Employment Act 2007 provides for this remedy and that as evidenced from the facts presented, the claimant was never issued with a termination notice prior to her termination. The court having found the termination was valid and that that there was no issue of procedural fairness the issue of notice does not arise.
 - b. On the claim for Housing allowance- Kshs.7, 500. The claimant submitted that the respondents have not furnished any proof that they used to pay housing allowance to the claimant. Section 31(1) of the Employment Act, 2007 provides thus: “An employer shall at all times, at his own expense, provide reasonable housing accommodation for each of his



employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, as rent, in addition to the wages or salary of the employee, as will enable the employee to obtain reasonable accommodation.”

- c. Conversely, the respondent submitted that section 31 of the *Employment Act* applies where there is a contract and none was produced. The court returns that section 8 of the *Employment Act* recognizes oral contracts. The claimant pleaded that vide the oral contract she was offered Kshs. 15000 monthly salary. The court found this was a gross salary as per R-exhibit 3 being the salary schedules for the school. The claimant did not inform the court the basis of her claim for the house allowance as her pay was not itemized. The claimant did not plead her wages were protected under the Minimum Wages Regulation Order for the court to apply the 15% formula. The court then finds that the claimant was paid a consolidated salary as agreed verbally. The claim for housing fails.
- d. Claim for Severance pay- Kshs.15, 000. The claimant submitted that having been terminated on account of redundancy, the claimant is entitled to severance pay. The court returned that the termination did not amount to redundancy.
- e. Unpaid leave days- Kshs.12,115. The claimant submitted that it is not disputed that the claimant never went on leave while employed by the respondents and is entitled to the same. Conversely, Respondent stated that the claimant did not work in November and December 2016 and was paid. The schools had closed in October. In *Edward W. Obuya v M.M. Shah & M.V. Shah Academy & another* [2016] KEELRC 201 (KLR) as concerns claim for leave by a teacher it was held-‘The Court has in the past held the position that Teachers’ annual leave is normally programmed to be utilized during school vacations, to ensure schools are not hampered in meeting their academic objectives.’ I apply the forgoing decision to hold that the claim for leave was not merited.
- f. Claim for underpayment- Kshs.206, 339. - During examination in chief the claimant informed this court that her salary was to be harmonized after 3 months to reflect the salary paid by TSC at the time. The respondent stated that the issue of harmonization of salary was not supported by documentation. The court did not find prove on balance of probabilities of such assertion.
- g. On the claim for compensation, the court having not found a case of unfair termination, the same fails.

Conclusion

27. In conclusion, the claim is held to be, on a balance of probabilities, without merit and is dismissed. The court, taking into account the nature of employment and the respondent being a public institution represented by the state, makes no order as to costs.

28. It is so ordered

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno



Claimant: absent

Respondent: absent

