



Chomba v Board of Management (BOM) (St Aloysius Gonzaga Secondary School) & 3 others (Cause E677 of 2022) [2025] KEELRC 2640 (KLR) (29 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2640 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E677 OF 2022
HS WASILWA, J
SEPTEMBER 29, 2025**

BETWEEN

BERNARD CHOMBA CLAIMANT

AND

**BOARD OF MANAGEMENT (BOM) (ST ALOYSIUS GONZAGA SECONDARY SCHOOL) 1ST RESPONDENT
JOHN KULOBA (CHAIRMAN BOM) 2ND RESPONDENT
BEATRICE MAINA (SECRETARY BOM) 3RD RESPONDENT
FATHER TERRY 4TH RESPONDENT**

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 15th September 2021 and prays for judgment against the Respondents for: -
 - a. A declaration that the letter of suspension dated 1st July 2022 and the letter of termination dated 12th August 2022 are unfair, unlawful and therefore null and void ab initio
 - b. Unpaid salary arrears ksh 207,103.24
 - c. One month pay in lieu of notice ksh 103,551.62
 - d. Damages for unfair and unlawful termination of employment Ksh 1,449,722.62
 - e. General damages for defamation
 - f. Costs aid interests at the courts rate on b,c and d above
 - g. Costs of the suit



Claimant's Case

2. The Claimant avers that he is a professional Teacher Registered by the Teachers Service Commission (T.S.C) as required under the TSC Act.
3. He avers that he was an employee of the 1st Respondent for 14 years from January 2010 until he was unlawfully terminated on 12th August 2022. He rose through the ranks to be a Deputy Principal in charge of discipline. At the time of the termination, he was earning a monthly gross salary of Ksh 103,551.62.
4. During the course of his employment, he enjoyed a medical cover as well as an Individual Retirement Benefits Scheme with ICEA LIONS at a monthly contribution rate equivalent to 5% of his basic salary with the 1st Respondent contributing an equivalent amount.
5. The Claimant avers that at the time of the unlawful termination, he was under a renewed three (3) year contract of employment commencing that commenced on 1st January 2022 to 31st December 2024.
6. The Claimant avers that on 17th June 2022, he was summoned to the 2nd Respondent's office in the presence of 4th Respondent, the School Chaplain and verbally accused of engaging inappropriate conduct with students whereby he was given the option of resigning or face investigations and he opted to be investigated.
7. However, despite persistent demands he was never given the particulars of the alleged inappropriate conduct. On 27th June 2022 he was served a letter dated 24th June 2022 which contained allegations of inappropriate conduct of sexual harassment against unnamed person' who appeared to be a non-student.
8. The Claimant avers that he responded to the allegations vide a letter dated 27th June 2022 and reasonably expected that he would be given an opportunity to defend himself but to his surprise, he was served with a letter of suspension pending investigations on 1st July 2022.
9. Vide a letter dated 14th July 2022, the Claimant was invited to appear before the Board of Management on 19th July 2022. He attended the hearing; however, the complainants were not in attendance and he was not given an opportunity to cross examine them.
10. The Claimant avers that despite numerous demands, he has never been supplied with particulars of the charges against him, complainants' statements nor have the complainants been identified to him.
11. The Claimant avers that on 17th August 2022, he was served with a letter dated 12th August 2022 terminating his employment contract on grounds of sexual harassment and inappropriate behavior. This was in contravention of clause 25.1.7 and Article 47 of *the Constitution* and the Fair Administration Act as he was denied an opportunity to defend himself.
12. It is the Claimant's case that his termination was based on mere allegations and third level hearsay as he never met the alleged victims and/or saw their statements. Additionally, the termination of his contract on the grounds of inappropriate conduct offends the Provisions of the Teachers service Commission Code of Conduct.
13. The Claimant avers that his termination was malicious, unfounded and based on fabrications that has no basis either in law or in fact.
14. It is the Claimant's case that the Respondents' conduct has caused him financial loss, mental anguish as well as ridicule from the general members of the public.



Respondents' Case

15. In opposition to the Claim, the Respondents filed a Response to Memorandum of Claim dated 11th January 2024.
16. The Respondents admitted that the Claimant was its employee and avers that he was summoned on 17th June 2022 and was informed of the allegations levelled against him with a promise to investigate and interrogate the matter then communicate to him any feed back.
17. The Respondents aver that in the course of the investigations, other students came forward and made similar allegations against the Claimant and it was decided the issue be placed before the Executive Committee for deliberations.
18. The Executive Committee was convened on 24th June 2022 where it was decided that the Claimant be sent a show cause letter to answer to the alleagations that were turning to be a threat to the scholl's reputation and it was further agreed that because of the sensitivity of the matter and in order to protect the victins who were minors, their names will not be disclosed.
19. The Respondents deny that the Claimant made any demands to be supplied with the particulars of the allegations and aver that the 3rd Respondent sent the Claimant the show cause letter which entailed the details of the allegations levelled against him.
20. The Respondents aver that upon receipt of the Claimant's response, another Executive Committee meeting was convened on 30th June 2022 where it was resolved that for good order, the Claimat be suspended from school effective 1st July 2022 pending a hearing of the entire board of management.
21. It is the Respondents' case that the Claimant was invited for a hearing that took place on 19th July 2022 before the board of management, however, he failed to address himself on the issues and digressed as he resorted to highlight wrangles between him and other board members and thereafter gave the board his condition that seemed to suggest that he had made up his mind to be uncooperative.
22. The Respondents aver that the Claimant's employment was terminated vide a letter dated 12th August 2022 and that the termination was procedural and lawful.
23. It is the Respondents' case that due to the sensitivity of the matter, the age of the victims sand fear of victimization, their names were omitted in the letters, however, the Claimant was able to identify all the instances

Evidence in Court

24. The Claimant (CW1) adopted his witness statement dated 22nd July 2024 as his evidence in chief and produced his filed bundle of documents dated 15th September 2022 and further list of documents dated 22nd July 2024 as his exhibits.
25. During cross examination, CW1 testified that the allegations against him were ambiguous and concerned people who were not students or members of the school.
26. CW1 testified that one allegation was made by his cousin who is not a student and the other two accusers were not students at the time. However, the allegations occurred when they were students in the school.



27. CW1 testified that he currently works with TSC at Upperhill Secondary School as he was employed on 27th August 2022. He had applied for this job during the disciplinary process and the Respondents terminated his employment on 12th August 2022.
28. CW1 testified that he sued the 2nd to 4th Respondents as Chair of the Board, Secretary to the Board and School Principal respectively. The three serve on behalf of the school, and he is aware people in these positions change from time to time.
29. The Respondents' witness (RW1) Beatrice Wairimu Maina stated she has been a Principal at the 1st Respondent since 2010 and adopted her witness statement dated 4th July 2024 as her evidence in chief and produced the Respondents bundle of documents dated even date as her exhibits.
30. During cross examination, RW1 testified that it is normal to frisk students but not in the private areas.
31. RW1 testified that electronic gadgets were not allowed in school and if a student carried one, he surrenders it to school.
32. RW1 testified that the Claimant was the chair of the admissions committee that interviewed new students and that the Respondents had parents summoned to disciplinary issues.
33. RW1 testified that at the time of the Claimant's termination, he never met his accusers as they were students and the Respondents feared they might be exposed.
34. The Respondents' second witness, Gabriel Rigo (RW2) adopted his witness statement dated 12th July 2024 as his evidence in chief.
35. RW2 testified that he could have an electrical gadget as a computer student and they were using flash disks which was confiscated by the Claimant. However, he did not state in his witness statement that they had permission.
36. RW2 testified that it was not illegal to have a flash disk and he did not engage his computer teacher and he was not an indiscipline student.
37. The Respondent's third witness, Joseph Makokha (RW3) adopted his witness statement 12th July 2024 as his evidence in chief.
38. RW3 testified that he knew it was illegal to have a phone in school, however, when he was being interviewed by the Claimant, he had a phone, the Claimant searched him and found the phone.
39. RW3 testified that he had a phone when coming for the interview as he needed to communicate with his parents.
40. RW3 testified that searching students was only mandatory in indiscipline cases and at the time he was being interviewed to join the school as a student.
41. The Respondent's fourth witness, Sylvester Angwenyi (RW4) adopted his witness statement 12th July 2024 as his evidence in chief.
42. RW4 testified that there was time the Claimant called his parents without his consent and he was not happy because the Claimant invited his parents to school.
43. RW4 testified that he did not share with his mother what he was undergoing in school.
44. On re-examination, RW4 testified that his disagreement with the Claimant began when he told him that he likes him. When he opened up to the Claimant about his family and himself, the Claimant encouraged him but later told his parents things that were personal to him.



45. RW4 testified that the Claimant asked him strange things such as the size of his penis and even touched his genitals.

Claimant's Submissions

46. The Claimant submitted on two issues: - whether the reason advanced for termination of the Claimant's employment were valid and proven under the law; whether the Claimant was lawfully, fairly, reasonably and procedurally terminated; and what remedies are available to the Claimant.
47. On the first issue, the Claimant submitted that from the evidence tendered before the court no valid reasons were advanced. There were mere allegations with no attempt made by the employer to prove the allegations.
48. The Claimant submitted that it is not in dispute that he was the Respondent's employee for a period of 14 years in which he rose to the rank of Deputy Principal in charge of discipline. Additionally, three former students were at different times at loggerheads with him for various violations of school rules like possessing phone, electronic gadgets or misconduct that warranted summoning of parents which greatly offended the students by their own admissions.
49. The Claimant submitted that he was neither supplied with particulars of the charges against him nor was he granted an opportunity to cross examine his accusers who were never identified to him.
50. On the second issue, the Claimant submitted that he had no idea of the nature of the charges or his accusers. He only came to know of the three witnesses who recorded statements in this suit were his accusers when they filed their witness statements.
51. The Claimant submitted that his response to the alleged accusations dated 27th June 2022, clearly shows he was in the dark as to the nature of the accusations. Unfortunately, even after the Respondent being privy to the actual nature of the accusation, they made no attempt to inform him of the particulars of the accusation. Thus, it begs the question whether there were any valid complaints at the time or they were just fabricated for defending the present suit.
52. The Claimant submitted that he was not availed with any witness statements, particulars of the charges or even identity of the accusers. The 1st Respondent just used their own reports to charge, prosecute and convict the claimant even without involvement of the alleged accusers. He placed reliance in *Ouma v Faulu Microfinance Bank Limited* [2023] KEELRC 2809 (KLR) wherein the court held: ".....The Claimant in his response to the Show cause letter had requested to be supplied with copies of the witness statements of his accusers, but the Respondent did not respond to the said request and went ahead to invite the Claimant to a hearing where he had no knowledge of offences against.

I agree with the Claimant that the Respondent's disciplinary panel was the Accuser, the Prosecutor and charge, having failed to provide the Claimant with the copy of the full particulars of allegations against him, and relying on the investigations report they had prepared to interrogate the Claimant who was unaware of its contents at trial and arrived at a decision."

53. On the final issue, the Claimant submitted that he was not paid his salary from the date of his suspension on 1st July 2022 to the date of his termination on 17th August 2022, thus he was not paid his salary for the month of July and August.



54. He further submitted that Clause 25.1.9 of his employment contract dated 1st July 2022 provides for one month pay in lieu of notice upon termination of employment by either party. He therefore prays for the sum of Kshs. 103,551.62 as he was never issued with any notice.

Respondents' Submissions

55. The Respondents submitted on three issues: - whether the Claimant committed gross misconduct by sexually harassing students; whether due process was followed in the termination of the claimant's employment as laid out in the Employment Act; and whether the claimant is entitled to terminal dues and benefits.
56. On the first issue, the Respondents submitted that the basis of the Claimant's termination was as a result of several sexual abuse complaints from various students at the school received by the 1st Respondent and the insubordination of the management when they inquired about his inappropriate behavior; which acts were against the laid-out school policy.
57. The Respondents submitted that as a consequence, the executive committee of the board of management held a meeting on 24th June 2024 where it was decided that a show cause letter be issued to the Claimant in order to respond to the said sexual harassment complaints laid against him by the students.
58. The Respondents submitted that the victims (now adults) who are former students of St. Aloysius Gonzaga Secondary School testified as witnesses in this case. RW2, Gabriel Rigo testified of how the Claimant on one early morning, forced him to lower his pants and peeped on his genitals in the disguise of an inspection. This act left the students traumatized and lowered his self-esteem noting that he found it strange for a teacher requesting him to strip naked in his presence.
59. The Respondents submitted that RW3, Sylvester Angwenyi testified of how the Claimant would ask him strange questions like the colour of his urine, whether he was attracted to boys or girls and whether he has a boyfriend or girlfriend. The witness further testified that the Claimant would occasionally tell him that he loved him followed by a seductive look. The Claimant further informed the witness that he only admitted him to the school because he loved him. This behaviour by the Claimant affected his overall performance in school (both curriculum and extra-curriculum), as he was mentally and emotionally disturbed as a result of the sexual harassment by the Claimant to a point of contemplating suicide.
60. The Respondents submitted that RW4, Joseph Makokha testified that at the time he was undertaking his entry exams to the school in the year 2021, the Claimant asked him, "kwa shule yenu naskia kuna ushoga mwingi sana." That question caught the witness by surprise as he did not expect such a question from a teacher. To make the situation even more awkward, the Claimant while frisking him before he undertook his exams, he touched his genitals which act shocked the witness a lot. The witness further testified that on one occasion in the year 2022, the Claimant told him that he loved him while delivering to him an assignment that he had given him to undertake. Those words shocked that witness and thereafter, he chose to distance himself from the Claimant as he did not expect such utterances from his teacher.
61. It is the Respondents' submission that the Claimant's behaviour amounted to gross misconduct that violated the Teachers Service Commission's Code of Conduct and the school's Safeguarding Policy for Children and Vulnerable Adults. The policy specifically provides for poor practices that all staff members should not engage in. The practices include unnecessary spending excessive amount of time alone with young people away from others, allowing or engaging in inappropriate touching of any form



- and making sexually suggestive comments to a young person. Further, the policy defines child abuse to include sexual abuse which entails using a child and vulnerable adults to meet one's own sexual needs. The policy also provides that the welfare of the child and vulnerable adult is of paramount importance throughout, and as such supersedes when it comes to disciplinary issues.
62. The Respondents submitted that the conduct and behavior by the Claimant on various occasions towards students as was demonstrated herein were extremely gross and inappropriate, tolerance of such behavior would encourage other employees to engage in similar behavior. Therefore, the board's decision was valid and based on fair reason. It also served as a deterrence in order to ensure that professionalism is upheld in the school and mutual respect. They placed reliance in place on the case of Francis Nyongesa Kweyu v Eldoret Water and Sanitation Company Limited [2017] KEELRC 1330 (KLR).
 63. On the second issue, the Respondents submitted that the Claimant was given a chance to defend himself. After receiving the show cause letter, the Claimant responded to the allegations via a letter date 27th June, 2024 whereby he stated facts in his defense. Consequently, on 30th June 2024, the 3rd Respondent convened another meeting whereby she tabled the Claimant's response to the show cause letter. It was then decided by the 1st Respondent that the Claimant be suspended since the allegations were sensitive in nature and involved students at the school.
 64. The Respondents submitted that as a consequence of the resolution by the 1st Respondent to suspend the Claimant, the 3rd Respondent wrote to the Claimant a suspension letter dated 1st July 2022 suspending him from his duties pending investigations of the allegations against him. The Claimant was later invited on 19th July 2022 where the charges were read to him and he was given a chance to be heard which fact the Claimant does not deny. However, the Claimant chose to dwell on other issues and attacked the members of the 1st Respondent.
 65. It is the Respondents' case that the show cause letter contained comprehensive details of the charges against him. In fact, the Claimant was able to identify all the incidences and the students involved as outlined in the show cause letter going by his response to the said allegations. Regarding the identity of the students, the names of the students could not be revealed at the time of the hearing noting that they were minors and needed to be protected. Further, the Claimant was the deputy principal thus, held a higher power than the students and their safety was of paramount importance as provided by the public policy.
 66. The Respondents submitted Claimant's victims are currently adults who testified in court; and they did so because they are no longer minors as they were when the incidents occurred. Consequently, Claimant's allegation of the accusers' non-involvement is unfounded based on the fact that they were minors and the school was only protecting them and promoting the best interest of a child as per the internationally accepted standards of protecting minors, the *Children Act* and the school policy.
 67. The Respondents submitted that the 1st Respondent on 11th August, 2022 held another meeting where it was informed that more students had reported that the Claimant touched their genitals, and he said students had reported the incidents to the police station and recorded statements. The board was further informed that the Claimant had demanded Kshs.7.4 Million for subjecting him to disciplinary hearing and he had already secured new employment at Upper Hill Secondary School and he was to report by 1st September, 2022. As a consequence, the 1st Respondent resolved to terminate the Claimant's employment.
 68. The Respondents submitted that the Claimant's employment was terminated by the resolution of the board vide a letter dated 12th August 2022 on the grounds of sexual misconduct and insubordination



- of the board when he was interrogated about the said allegations. In the school's sense, the termination was a mere formality as the Claimant had already secured another employment, therefore, there was no way they could have made any other finding.
69. The Respondents submitted that the dismissal of the Claimant's employment was within Section 44 (1) and (3) of the *Employment Act*. The Claimant's conduct fundamentally breached his obligation as provided in his contract of employment, the school policy and the law. It is noteworthy that sexual harassment is a criminal offence and it is even worse when the same involves students who are minors. Therefore, it was the responsibility of 1st Respondent's to protect the students who are under its care as required of it, thus, it had no option but to terminate the Claimant as he had already applied for and secured a job at Upper Hill Secondary school, a fact which he confirmed during cross-examination in court.
 70. It is the Respondents' submission that they due procedure and afforded the claimant the opportunity to be heard both written and orally as provided under Section 41 of the *Employment Act*. It was unfortunate that during the disciplinary hearing, the Claimant chose to highlight alleged wrangles between the board members and him and proceeded to lay conditions to the board which pointed to the fact that he was not going to cooperate. The Claimant cannot therefore, allege that he was not accorded an opportunity to be heard and defend himself.
 71. On the final issue, the Respondents submitted that have demonstrated that termination of the Claimant's employment was fair and lawful and he is not entitled to any prayer for damages as prayed for in the claim. It has also been established that the Claimant was guilty of gross misconduct making him liable for summary dismissal by the 1st Respondent.
 72. The Respondents submitted that event that the court is inclined to issue any relief to the Claimant, the only relief will be his salary for the month of July, 2022 and the 12 days that he worked in August, 2022 which a cheque was written in his name but he failed to collect the same.
 73. The Respondents submitted that the Claimant left the school without notice before his termination thus, he is the one who owes the 1st Respondent payment in lieu of notice which should be set off against the salary owed to the Claimant.
 74. The Respondents submitted that the prayer for damages for defamation is misplaced as this is an employment cause and not a defamation suit therefore, the same should be dismissed.
 75. The Respondents submitted that the Claimant wrongly sued the 2nd – 3rd Respondents who are mere members of the 1st Respondent. He has not established any specific violation committed by the 2nd – 3rd Respondents in their personal capacity that warranted their inclusion to this suit. The accusations against them are in the course of the duty as officials of the 1st Respondent and we urge the court to find that the 2nd – 4th Respondents were wrongly sued and therefore they deserve costs against the Claimant.
 76. The Respondents submitted that the fourth schedule to the *Basic Education Act*, which places liability on the school through the Boards of Management and not individual members of their Board as held in Kenya Union of Domestic, Hotels Educational Institutions Hospital and Workers v St. Peters Mumias Boys High School (Cause E006 of 2021) [2022] KEELRC 1711 (KLR) (21 July 2022) (Ruling).
 77. I have considered all the evidence and submissions of the parties herein. From the pleadings herein, the claimant was served with a show cause letter dated 24/6/2022 requiring him to respond to allegations of inappropriate conduct with students.
 78. The claimant responded to the allegations vide his letter dated 27th June 2022 denying any culpability. He averred that the allegations related to strangers and others dating back in 2012 and 2013.



79. On 1/7/2022 he was served with a letter of suspension pending investigations over this matter and on 15/7/22 he was invited for a disciplinary meeting to take place on 19/7/22.
80. The claimant attended the disciplinary hearing as scheduled on 19/7/2022. I have looked at the minutes of the disciplinary hearing of 19/7/22. During the meeting the charges leveled against the claimant were read to him as per the show cause letter and he denied them. There were no witnesses called to attest to the allegation of sexual harassment leveled against him.
81. The claimant lamented about the manner the process was conducted but his lament seems to have fallen on deaf ears. The board even made a decision to report the serious allegations to law enforcement agents.
82. It is noted that during the disciplinary hearing at the respondents premises, the victims of the alleged sexual harassment were never summoned to appear and be cross examined by the claimant. These victims only appeared before this court after recording statements in 2024 to allege the sexual harassment.
83. Section 41 of the *employment act* 2007 states as follows:
- 41.
- (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
84. It is apparent that the claimant was not subjected to a process as stated above. He was not given an opportunity to state his case and neither was he given an opportunity to face his accusers and cross examine them. It is therefore true that he was subjected to an illegal and unfair disciplinary process .
85. Section 45(2) of the *employment act* 2007 stats 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
86. Given that the disciplinary process was flawed and there could not be a determination of the existence of valid reason leading to the termination, it is my finding that the claimant’s termination was unfair and unjustified and I declare it so.
87. In view of this finding, I find for the claimant and in this claim I award him as follows:
1. 1 month salary in lieu of notice = kshs 103,551.62/-
2. Unpaid salary arrears = kshs 207,103.24/-



3. 8 months salary as compensation for the unfair termination = $8 \times 103,551.62 =$ kshs 828,412.96/-
Total = kshs 1,139,068/- less statutory deductions.
4. 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 29TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

