



**Mauti v Oshwal College (Cause E753 of 2023)
[2025] KEELRC 2854 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2854 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E753 OF 2023
SC RUTTO, J
OCTOBER 21, 2025**

BETWEEN

BENARD NYAMAMBA MAUTI CLAIMANT

AND

OSHWAL COLLEGE RESPONDENT

JUDGMENT

1. By a Memorandum of Claim dated 15th September 2022, the Claimant avers that he was employed by the Respondent in 2010 as a lecturer under an open-ended contract of service and that he served the Respondent continuously and diligently throughout his employment.
2. The record bears that the Claimant's employment was terminated on 19th May 2023 on grounds of gross misconduct arising from allegations of sexual harassment leveled against him. The Claimant maintains that his termination was irregular, unlawful, unjustified, and in blatant violation of the *Employment Act*, the principles of natural justice, and the terms of his employment contract with the Respondent.
3. On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondents:
 - a. A declaration that the Respondent's actions were wrongful and amounted to unfair and unlawful dismissal of the Claimant's employment.
 - b. Damages for unfair termination of employment in the sum of Kshs. 1,224,000/= being twelve [12] months' basic salary.
 - c. The Claimant be awarded Kshs. 204,000/= being two [2] months' salary in lieu of notice.
 - d. Unpaid leave for the entire duration of service being an amount of Kshs. 910,000/=.



- e. Compensation for breach of contract in a sum of Kshs. 22,746,000/=, being the wages for the remainder of the contract period from 1st May, 2023 until retirement age of 60 years.
 - f. Salary for the month of May, 2023 being Kshs. 102, 000/=.
 - g. Pensions payable to the claimant amounting to Kshs.3,000,000/=.
 - h. All the terminal dues payable to the Claimant.
 - i. The Respondent be ordered to reinstate the Claimant's employment in terms as existed prior to the unfair termination of 19th May, 2023.
 - j. Interests on [d], [f], [g] and [h] above at the commercial rates from the date of unfair termination of the claimant's employment or an earlier period as determined by this court.
 - k. Certificate of service be given by the Respondent.
 - l. Costs of the suit and interests at the court rates.
 - m. The Honourable Court be pleased to award such other orders that it may deem fit in the interest of justice.
4. In response to the Memorandum of Claim, the Respondent avers that the termination of the Claimant's employment was conducted in accordance with the law and was therefore fair and lawful, on account of breach of the *Employment Act* and the Respondent's Human Resources Manual by the Claimant.
 5. The Respondent contends that the Claim is speculative, frivolous, and an abuse of the court process, arguing that it discloses no reasonable cause of action. Accordingly, the Respondent prays that the Court dismisses the Claim in its entirety.
 6. The matter proceeded for hearing on diverse dates, during which both sides called oral evidence in support of their respective cases.

Claimant's Case

7. The Claimant testified in support of his case as CW1 and, at the outset, adopted his witness statement as his evidence in chief. He further produced the list and bundle of documents filed on his behalf, which were admitted as his exhibits before the Court.
8. The Claimant testified that on 26th April 2023, he was summoned to the Principal's office in the presence of the Academic Registrar, where he was informed that he was under investigation based on student appraisal forms.
9. The Claimant stated that the Principal, through threats and intimidation, failed to fully disclose the nature of the investigation and did not allow him to view or examine the said appraisal forms, which allegedly contained claims of sexual harassment made against him by students.
10. He further testified that on 28th April 2023, without prior notice, he was summoned to appear before a panel and informed that he was under investigation for sexual harassment allegations made by certain students.
11. The Claimant contended that the panel, which he considered irregular and incompetent, interrogated him unlawfully without providing adequate or clear particulars of the allegations, including the identities of the complainants, the specific nature of the accusations, or any supporting evidence such



as complainant statements, CCTV footage, or reports. Despite this lack of disclosure, he answered the panel's questions and categorically denied all allegations.

12. The Claimant further testified that on 4th May 2023, he received a Show Cause Letter from the Respondent, notifying him that investigations into the alleged misconduct had been concluded and that findings suggested he may have contravened the Respondent's Human Resources Manual.
13. He asserted that he was granted only three days to respond to the Show Cause Letter, yet he had not been furnished with full and detailed particulars of the sexual harassment allegations, including the names of the complainants, the specific allegations, the evidence relied upon such as appraisal forms, investigation reports, and witness statements or a copy of the Human Resources Manual cited in the letter.
14. The Claimant added that the Show Cause Letter required him to appear before a disciplinary committee for an "open discussion" on 10th May 2023, despite his lack of sufficient information to prepare a proper defence, which caused him mental anguish and embarrassment.
15. He further claimed that the letter did not adequately inform him of his procedural rights, particularly his right to be accompanied by a union representative during the hearing.
16. In his view, this demonstrated that the Respondent had no intention of affording him a fair hearing.
17. The Claimant testified that on 5th May 2023, he wrote to the Respondent challenging the legality and fairness of the process and requesting full disclosure of the allegations and the evidence being relied upon. In response, the Respondent only provided an investigation report dated 2nd May 2023 and four written statements from the alleged complainants, without any further clarification or supporting information.
18. Despite the limited time provided, he submitted his response to the Show Cause Letter via email to one Mr. Brian on 8th May 2023, which was duly acknowledged.
19. Upon reviewing the investigation report, the Claimant learned that he was being investigated for sexual harassment of students and that the alleged complainants were Aditi Mehta, Mili Bhatt, and Ziyah Dada, while one Jiya Patel was listed as a "collaborator," a term he did not understand.
20. According to the Claimant, the complainants' statements were fabricated and backdated to appear genuine after he had demanded them during his interrogation by the panel. He maintained that no valid or credible sexual harassment complaints existed against him, describing the allegations as hearsay, unfounded, and maliciously concocted.
21. He further averred that on 10th May 2023, he appeared before the disciplinary committee without any internal or union representative but requested that the proceedings be video recorded and that he be provided with a copy for his own record. The Claimant contended that while the proceedings were indeed recorded, he alleged that the Respondent had to date ignored his repeated requests for a copy of the recording without providing any explanation.
22. The Claimant asserted that the hearing process violated the principles of natural justice, the law, and the Respondent's Human Resources Manual. He added that the *Sexual Offences Act* and *Employment Act* were merely read out to him without explanation or provision of copies, leaving him uninformed about the proceedings.
23. He further testified that he requested the panel to have each complainant appear individually, but the Respondent declined. Instead, three students [Adil Mehta, Mili Bhatt, and Jiya Patel] appeared



- together and refused to be questioned separately, while the other complainant, Ziyah Dada, did not appear at all.
24. The Claimant further stated that the disciplinary committee neither interrogated the complainants nor provided reasons for the absence of Ziyah Dada. Moreover, he was denied adequate time and opportunity to cross-examine the complainants, who refused to answer his questions.
 25. He contended that the committee disregarded the issues he had raised in his responses to the Show Cause Letter dated 5th and 8th May 2023, as well as those raised during the disciplinary hearing.
 26. The Claimant maintained that the panel failed to produce any credible evidence during the hearing despite his express requests for such materials. It was the Claimant's view that the entire process was a sham designed not to accord him a fair hearing but to legitimize a predetermined and biased decision by the Respondent.
 27. On 19th May 2023, he was summarily terminated from employment for alleged gross misconduct, without being informed of or granted the right to appeal, contrary to the Respondent's Human Resources Manual.
 28. Following his termination, the Respondent deactivated his official email address, thereby denying him access to crucial correspondence and documents relevant to his case.

Respondent's Case

29. The Respondent presented oral evidence through Brian Odhiambo Ojiem and Jayashree Prathab, who testified as RW1 and RW2, respectively. Mr. Odhiambo, who testified first, identified himself as the Respondent's Human Resources Manager. He adopted his witness statement as his evidence in chief and produced the initial and supplementary list and bundle of documents filed on behalf of the Respondent, as exhibits before the Court.
30. RW1 testified that by signing the contract of service, the Claimant became subject to the Respondent's Staff Manual, which sets out the principles, policies, and rules governing the administration of staff and defines their terms and conditions of service.
31. RW1 stated that the Respondent first received a complaint regarding the Claimant's conduct involving sexual harassment, specifically, an incident in which he kissed a student in the library. The Claimant acknowledged his misconduct and, by a letter dated 23rd August 2010, tendered a written apology, undertaking that such behaviour would not recur.
32. The Respondent, by a letter dated 25th August 2010, acknowledged receipt of the Claimant's apology and informed him that such allegations constituted grounds for summary dismissal.
33. RW1 further testified that on 17th July 2014, the Respondent received another complaint from a parent alleging that the Claimant had been sending inappropriate text messages to her daughter, which made the student uncomfortable. Once again, the Claimant admitted to the conduct, apologized, and was cautioned regarding his behaviour and its potential consequences.
34. RW1 further averred that on 4th March 2020, the Respondent's management convened a meeting with the Claimant to discuss documented complaints of sexual harassment lodged by several students.
35. The complaints alleged that the Claimant had inappropriately touched a female student, solicited and received a gift from her, and made unwarranted phone calls to another student pursuing a BTEC IT program.



36. During the meeting, the Claimant admitted to receiving the gift and communicating with the BTEC IT student through messages and calls. He was reminded of the College's duty to maintain a safe and respectful learning environment and was issued with a final warning, cautioning that any further breach of the institution's ethical or welfare standards would lead to immediate termination of his employment.
37. RW1 averred that, despite repeated cautions and written warnings, the Claimant failed to reform and continued to engage in inappropriate conduct, notwithstanding his acknowledgments and apologies.
38. RW1 testified that on 20th March 2023, the Principal of the Respondent institution held a routine meeting with BTEC Business Level 3 Semester 2 students as part of the College's quality assurance practices.
39. During that meeting, students raised concerns about the Claimant's unethical behaviour, alleging that he made sexual comments and remarks that made female students uncomfortable and that he hugged and touched them inappropriately.
40. An evaluation of the Claimant's conduct revealed a recurring complaint pattern of sexual harassment and inappropriate behaviour towards female students, creating an uncomfortable learning environment.
41. On 29th March 2023, the Principal, Mrs. Prathap, reported the incident to RW1, who directed that the affected students submit formal written statements regarding the alleged harassment.
42. RW1 further stated that on 14th April 2023, the Human Resources Office constituted a three-member investigation committee to inquire into the allegations, during which three students who had previously submitted written statements were interviewed.
43. On 24th April 2023, the Principal conducted further interviews with six BTEC female students, one of whom disclosed that the Claimant had touched her inappropriately.
44. RW1 stated that the Claimant appeared before the investigation panel on 28th April 2023. The report by the investigation panel concluded that evidence from the complainants and a corroborating witness proved the Claimant had breached Section F of the College Human Resource Manual on Professional Conduct by engaging in acts of sexual harassment, including giving unwanted sexual attention to female students.
45. The investigation panel recommended disciplinary action against the Claimant. Consequently, on 4th May 2023, a show cause letter was issued requiring him to explain why action should not be taken for gross misconduct and breach of the College's Code of Conduct.
46. According to RW1, the notice outlined the specific allegations against him, the date and venue of the disciplinary hearing, his right to be accompanied by an internal representative, and a three-day window to submit a written response. The hearing was scheduled for 10th May 2023 at 9:30 a.m.
47. The Claimant responded to the show cause letter, and a disciplinary hearing was convened on 10th May 2023, where he appeared before the disciplinary committee.
48. RW1 averred that the disciplinary committee comprised six independent members, distinct from those who conducted the investigations.
49. According to RW1, the Claimant voluntarily waived his right to be accompanied by a representative and consented to proceed alone.



50. RW1 further stated that the Claimant was given the opportunity to cross-examine the complainants but he declined to do so.
51. After considering the Claimant's oral and written responses, the committee found his explanations unsatisfactory and took into account the substantial evidence presented against him.
52. The disciplinary committee found the allegations of sexual harassment proven and determined that the Claimant's conduct constituted gross misconduct. Accordingly, it resolved to terminate his employment, which was communicated to him through a letter dated 19th May 2023.
53. RW1 maintained that the Claimant was accorded both substantive and procedural fairness throughout the disciplinary process.
54. The Respondent directed the Claimant to complete a proper handover and return all institutional property by 20th May 2023. However, he failed to clear with the institution and did not collect his final dues or certificate of service despite being advised to do so after his summary dismissal for gross misconduct.
55. RW1 further testified that as of 19th May 2023, the Claimant had accrued seven leave days, of which he had utilized two and a half days, leaving a balance of four and a half unutilized days.
56. He added that all employees and former employees are eligible to access their pension benefits upon initiating the withdrawal process.
57. Ms. Prathab, who testified as RW2, identified herself as the Respondent's Principal. She stated that she issued the warning letter dated 24th July 2014 to the Claimant, who acknowledged receipt.
58. She further testified that she authored the warning letter dated 15th July 2020, which was also received by the Claimant.
59. Consequently, RW2 sought to rely on the foregoing letters to constitute her evidence.

Submissions

60. Following the conclusion of the hearing, the parties filed written submissions.
61. It was submitted by the Claimant that he rightly instituted proceedings against the Respondent, as the contract of service established an employer-employee relationship solely between him and the Respondent. He contended that no such relationship existed between him and the Oshwal Education Relief Board, and therefore, there was no basis for suing the said Board. Accordingly, the Claimant urged the Court to dismiss the Respondent's Objection with costs.
62. The Claimant further argued that the allegations made against him were unfounded and unsubstantiated. He contended that the Respondent unfairly terminated his employment without valid or fair reasons, thereby breaching its statutory obligation under Section 45[2] of the [Employment Act](#), which requires termination to be based on valid and fair grounds. In support, the Claimant relied on the case of *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR.
63. The Claimant further contended that the investigation report was incomplete and unreliable. It was his position that the investigation committee failed to fulfil its intended purposes, rendering the allegations and findings therein both unsubstantiated and invalid.
64. Additionally, the Claimant argued that the Respondent failed to establish, on the balance of probabilities, that there were valid and fair reasons for his dismissal. In the Claimant's view, he had



- demonstrated on a balance of probabilities that the grounds for dismissal relied on by the Respondent were baseless and unsubstantiated.
65. Referring to the decision in *Adil Hussain Gulam v Mombasa County Chief Officer, Medical Services & 2 Others* [2022] eKLR, the Claimant submitted that the show cause letter issued to him was invalid due to lack of clarity and specificity.
 66. The Claimant further argued that the Respondent's failure to provide all crucial documents or evidence relevant to the disciplinary proceedings breached the principles of natural justice and his constitutional right to a fair hearing. This failure hindered his ability to adequately respond to the show cause letter and prepare for the disciplinary hearing.
 67. He further submitted that the time allocated to respond to the show cause letter and prepare for the disciplinary hearing was insufficient.
 68. In support of his position, the Claimant relied on *Okoth v Jamii Telecommunication Limited* [Cause 1556 of 2018] [2023] KEELRC 1643 [KLR] [10 July 2023] and *Kiilu v Isinya Resorts Limited* [Cause E022 of 2021] [2022] KEELRC 13240 [KLR] [17 November 2022].
 69. The Claimant further submitted that the composition of the disciplinary committee breached the provisions of the Human Resources Manual and principles of natural justice.
 70. It was the Claimant's further contention that he was denied the opportunity to cross-examine all four complainants/accusers.
 71. To this end, the Claimant urged the Court to find that his termination was procedurally improper and contrary to the requirements of Sections 41 and 45 of the *Employment Act* and the Human Resources Manual.
 72. On its part, the Respondent submitted that the suit should have been instituted against members of the Oshwal Education Relief Board in their proper representative capacity. In support, the Respondent relied on the decision in *Supreme Council of Kenya Muslims [SUPKEM] & another v Registrar of Societies; Omar & 2 others* [2024] KEHC 1320 [KLR].
 73. It was further contended that the suit against the Respondent, being an unincorporated body, is untenable. To this end, the Respondent cited *Mwanyagetinge Monontwa Welfare Association v Cabinet Secretary Ministry of Interior & Coordination of National Government & 2 others* [2024] KEHC 8337 [KLR] to reinforce this position.
 74. Referring to *Thomas Sila Nzivo v Bamburi Cement Limited* [2014] eKLR, the Respondent submitted that it had valid and fair reasons for terminating the Claimant's employment.
 75. The Respondent further asserted that the Claimant's conduct amounted to sexual harassment and that it had discharged its burden of proof in demonstrating that the grounds for dismissal were both valid and fair. To support this position, the Respondent invited the Court to consider the decisions in *Kenya Power & Lighting Company Limited v Aggrey Wasike* [2017] eKLR and *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] KECA 300 [KLR].
 76. Consequently, the Respondent urged the Court to find that it had reasonable, fair, and valid grounds for dismissing the Claimant, noting that he had been a known miscreant since 2010, the year of the first recorded sexual harassment incident.
 77. The Respondent further submitted that it complied with the statutory procedure under Section 41 of the *Employment Act* and satisfied the threshold for procedural fairness.



78. In this regard, the Respondent contended that the Claimant was afforded the opportunity to respond to the allegations during the investigation process, thereby ensuring fairness and preserving the integrity of the proceedings.
79. The Respondent stated in further submissions that the allegations outlined in the show cause letter were sufficiently specific to enable the Claimant to respond. That upon request, he was provided with adequate documentation to formulate a response. To buttress this argument, reference was made to *Migwe v Muthaiga Country Club* [Cause E377 of 2023] [2025] KEELRC 938 [KLR].
80. Still on procedure, the Respondent argued that the Claimant never requested additional time to submit a written response to the show cause letter, nor did he seek extra time to prepare for the disciplinary hearing.
81. Finally, the Respondent submitted that the disciplinary committee was composed of members independent of the investigation committee, ensuring impartiality and procedural fairness. According to the Respondent, the Claimant's allegations of irregularities as afterthoughts.

Analysis and Determination

82. Upon considering the pleadings, the evidence on record, and the parties' respective submissions, the Court isolates the following issues for determination:
 - i. Whether the Respondent's Notice of Preliminary Objection dated 2nd July 2024 has merit;
 - ii. If the answer to [i] is in the negative, whether the Respondent has demonstrated a valid and fair reason for terminating the Claimant's employment;
 - iii. Whether the Claimant was accorded procedural fairness before the termination; and
 - iv. Whether the Claimant is entitled to the remedies sought.

Merit in the Preliminary Objection?

83. The Respondent raised a Notice of Preliminary Objection dated 2nd July 2024, contending, among other grounds, that being owned and managed by a charitable organization registered under the *Societies Act*, the Oshwal Education and Relief Board is not a legal person with capacity to be sued in its own name.
84. The Preliminary Objection was canvassed through written submissions.
85. In support of the Objection, the Respondent argued that Oshwal College is owned and managed by the Oshwal Education and Relief Board and, therefore, the suit ought to have been instituted against the members of that Board.
86. Opposing the Objection, the Claimant maintained that he correctly sued the Respondent, as his contract of employment established an employer-employee relationship with the Respondent, not with the Oshwal Education and Relief Board.
87. Upon review of the record, the Court notes that the employment contract establishing the relationship between the parties was executed between the Claimant, designated as the "employee," and Oshwal College, designated as the "employer."
88. Notably, the Court was not referred to any contract executed between the Claimant and Oshwal Education and Relief Board or any of its members.



89. Given the Respondent's claim that it is unincorporated, the question arises as to the capacity in which it entered into the employment contract with the Claimant. If indeed it lacked legal personality, how then did it validly contract?
90. Apart from asserting that the College is managed by the Oshwal Education and Relief Board, a charitable organization registered under the *Societies Act*, the Respondent did not clarify its own legal status or the manner of its existence as an entity.
91. Moreover, having entered into a contract of employment in its own name, the Respondent cannot now disown that capacity and claim to be unincorporated or incapable of being sued.
92. The record further shows that during cross-examination, RW1 testified that the Respondent is registered under the *Companies Act* and with the Ministry of Education, thereby rendering its objection on legal capacity inconsistent and unclear.
93. For these reasons, the Court finds no merit in the Respondent's Preliminary Objection dated 2nd July 2024, which is accordingly overruled.

Valid and fair reason for termination of employment?

94. Evidently, the Claimant was summarily dismissed from employment on grounds of gross misconduct. Specifically, he was accused of inappropriate touching of female students, suggestive hugging, and using uncomfortable terms to address them, such as "darling" and "sweetheart."
95. The allegations against the Claimant stemmed from the Students' Evaluation of Lecturers, particularly from the Respondent's BTEC Business Level 3 class. In their evaluations, seven students described the Claimant as a good teacher but noted that his conduct was unethical and inappropriate. They alleged that he referred to female students as "sweetheart" or "darling," was overly touchy with them, hugged them, and whispered in their ears. One student further observed that while the Claimant spoke kindly to female students, he was notably harsh towards the male students.
96. In further support of its case, the Respondent produced statements from several students who reiterated the concerns captured in the Student Evaluation Forms and expressed discomfort with the Claimant's conduct.
97. The Claimant consistently maintained his innocence throughout the investigations, in his response to the Notice to Show Cause, and during the disciplinary hearing. He contended that the students' statements were not given voluntarily but were instead influenced and coached.
98. On the other hand, the Respondent maintained that the Claimant had previously been cautioned over similar unethical behaviour but failed to reform. In support of this position, the Respondent relied on prior warning letters and an apology letter dated 23rd August 2010, allegedly written by the Claimant in response to an earlier incident. The Claimant, however, denied ever receiving such warnings or authoring the apology letter. Cross-examined on this issue, the Claimant insisted that he had never been accused of sexual harassment.
99. A notable piece of evidence produced by the Respondent was an email dated 17th July 2014 from Rocky Sharma to RW2. In the email, the parent of a student named Rashi complained about the Claimant's conduct, stating that although the student had shared her contact details with the Claimant for purposes of receiving study notes, he instead sent her a message saying that he missed her.



100. It is worth noting that the student mentioned in the email dated 17th July 2014 was not among those who lodged complaints against the Claimant during the investigations and disciplinary proceedings leading up to his dismissal from employment.
101. Indeed, the contents of that email weaken the Claimant's assertion that he had never been accused of sexual harassment.
102. The record further shows that following the said complaint, the Claimant was issued with a warning letter dated 24th July 2014, though he maintains that he never received such a letter.
103. The Court finds the Claimant's assertion that the students were coached to write statements against him implausible. Why do I say so? after the complaint of 17th July 2014, the Respondent had sufficient grounds to terminate the Claimant's employment but elected not to do so. It is therefore unlikely that, nearly nine years down the line, the Respondent would orchestrate or coach students to fabricate allegations of sexual harassment merely to justify the Claimant's termination from employment. This is bearing in mind that the allegations made in 2014 mirror those that ultimately led to the Claimant's termination from employment.
104. In light of the foregoing, the Court finds no reason to doubt the credibility of the students' statements outlining the allegations against the Claimant.
105. Given the nature of the accusations against the Claimant, it is necessary to consider the legal definition of "sexual harassment" to properly contextualize his conduct and determine whether the reason for his termination was valid and fair.
106. According to Black's Law Dictionary [10th Edition, p. 1584], sexual harassment is defined as "a type of employment discrimination consisting in verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks and unwelcome touching".
107. Similarly, the Respondent's Human Resources Manual defines sexual harassment as any unwelcome conduct of a sexual nature or other behaviour based on sex that undermines the dignity of men and women at the workplace. The Manual further highlights examples of sexual harassment to include giving someone unwanted sexual attention and lewd, suggestive or over familiar behaviour.
108. Having reviewed the students' complaints against the Claimant, it is evident that his conduct towards them was inappropriate and amounted to sexual harassment. His actions clearly breached the boundaries of the professional student-teacher relationship expected of him.
109. As a lecturer, the Claimant was under a strict obligation at all times to maintain professionalism in all interactions with his students and to refrain from any verbal or physical behaviour of a sexual nature.
110. In this regard, the Claimant's alleged behaviour of touching and hugging female students and addressing them with terms such as "darling" or "sweetheart" was wholly improper and constituted sexual harassment within the meaning of the Respondent's Human Resource Manual.
111. It is worth pointing out that in his response to the Notice to Show Cause, the Claimant argued that the Respondent could only institute disciplinary action against him after he had been subjected to a criminal process and found guilty.
112. With due respect, this argument is misguided.
113. As a learning institution, the Respondent bore a duty of care to its students to ensure that the learning environment remained safe, both physically and emotionally. This duty required the Respondent to



- investigate any allegations of sexual harassment and to take appropriate disciplinary measures if such allegations were substantiated.
114. Accordingly, the Respondent was not obligated to await the conclusion of a criminal process before taking internal disciplinary action against the Claimant. This responsibility was inherent in its role as an educational institution.
 115. Indeed, had the Respondent failed to act upon the sexual harassment complaints, it risked being held vicariously liable for the wrongful acts of its employee, particularly where such acts occurred in the course of employment, as the case herein. A pertinent illustration is found in *Teachers Service Commission v WJ & 5 others* [2020] KECA 741 [KLR], where the Court of Appeal upheld the High Court's decision holding the employer [Teachers Service Commission], the State, and the learning institution jointly vicariously liable for the wrongful acts of sexual misconduct committed by an employee [teacher] against learners.
 116. In that decision, the Court of Appeal further held that an act may be regarded as having been committed in the course of employment where a close connection exists between the employee's unauthorized conduct and the duties of their employment.
 117. It should also be appreciated that the Respondent not required to prove the allegations against the Claimant beyond reasonable doubt. The applicable standard of proof in this case was a balance of probabilities.
 118. Moreover, the Respondent's Human Resource Manual expressly provides that teacher-student sexual relationships or harassment is one of the grounds for summary dismissal. Accordingly, the Respondent was well within its prerogative to institute disciplinary action against the Claimant in light of the allegations made against him.
 119. Measuring the Claimant's conduct against the legal definition of sexual harassment, the Court is satisfied that the Respondent has proved, on a balance of probabilities, that it had a valid and fair reason within the meaning of Section 45[2][a] and [b] of the *Employment Act* to terminate the Claimant's employment based on his conduct.

Procedural fairness?

120. Pursuant to Section 45[2][c] of the *Employment Act*, an employer must demonstrate that an employee's termination was carried out in accordance with fair procedure. Section 41 of the *Employment Act* sets out the procedural requirements an employer must follow to guarantee a fair hearing. These include informing the employee of the allegations against them and affording them an opportunity to respond, in the presence of a fellow employee or a shop floor union representative of their choice.
121. The Claimant has impugned the procedure employed by the Respondent in effecting his termination on several grounds.
122. One of the Claimant's grievances was that he was summoned to appear before the investigation committee on 28th April 2023 without prior notice and was questioned on unspecified allegations. He further contended that the show cause letter lacked clarity and specificity, terming it a nullity.
123. The law does not mandate that an employer provide prior notice of an investigation. What is essential is that the employee is informed of the allegations and given an opportunity to respond in the presence of a fellow employee or a shop floor union representative of their choice.



124. The record shows that the Claimant was provided an opportunity to respond to the allegations during the course of the investigation. This is what informed the issuance of the show cause letter against the Claimant.
125. Regarding the Claimant's assertion that the Notice to Show Cause lacked clarity and specificity, the record bears that upon receiving the show cause, the Claimant protested, claiming he had not been provided with sufficient details of the alleged offence.
126. While it is true that the allegations in the Notice to Show Cause were initially framed in general terms and only referenced "female students", the Claimant was subsequently provided with the complainants' statements and the investigation report, which identified the complainants by name and detailed the specific actions alleged. This effectively addressed and remedied the initial generality of the allegations.
127. Indeed, in his response dated 8th May 2023 to the show cause letter, the Claimant addressed the allegations of sexual harassment in detail and sought to refute the accounts provided by the complainants.
128. The Claimant has also argued that he was not provided with crucial documents or evidence relevant to his disciplinary case. However, the record shows that, following his request in an email dated 4th May 2023, he was furnished with the complainants' statements and the investigation report. As it is, the Claimant did not specify any additional documents that he expected but was not provided.
129. The Claimant also asserted that he sought additional time to respond to the show cause letter and prepare for the disciplinary hearing. However, a review of his responses dated 5th and 8th May 2023 does not support this claim. Notably, the Claimant was required to respond within three days from 4th May 2023. After requesting the investigation report and additional details, he submitted a second response on 8th May 2023, which was acknowledged on 9th May 2023 by RW1. There is no evidence that this response was rejected for being submitted outside the initial three-day period.
130. The Claimant further challenged the process, arguing that the Deputy Principal and the Head of Department were not part of the disciplinary committee. However, there is no basis for this claim in the Human Resource Manual.
131. The Claimant also argued that the investigators sat on the disciplinary committee. Be that as it may, this is not supported by the evidence on record.
132. Further, the investigation report shows that RW2 was not part of the investigating team; she merely received the complaints and forwarded them to RW1 for investigation. The minutes of the disciplinary hearing confirm that none of the investigators sat on the disciplinary committee to adjudicate the Claimant's case. In fact, the record of the disciplinary hearing indicates that the members of the investigation committee were available to testify. There is no indication that they were members of the disciplinary committee and were involved in the committee's decision-making.
133. The Claimant further contended that the complainants appeared at the hearing as a group. However, the minutes indicate that he was given the opportunity to cross-examine them, and he has not demonstrated any prejudice resulting from their joint appearance.
134. The Claimant also argued that one complainant, Ziya Dada, did not appear at the disciplinary hearing. It is worth pointing out that, given the similarity in the nature of the allegation against the Claimant, the Respondent required the testimony of only one complainant to proceed with disciplinary action.



Consequently, the appearance of three out of four complainants was sufficient and did not render the proceedings invalid.

135. Based on the evidence on record, the Court finds no fault with the process followed by the Respondent in terminating the Claimant's employment.
136. This conclusion is supported by the fact that the Claimant was informed of the reasons for the contemplated termination through the Notice to Show Cause and was afforded an opportunity to appear at a disciplinary hearing to present his oral representations in response to the allegations. Further, he was given an opportunity to be accompanied by a fellow employee.
137. Fundamentally, the Respondent adhered to the minimum procedural requirements for a fair hearing as stipulated under Section 41 of the *Employment Act*.

Reliefs?

138. As the Court has found that the Respondent has established, on a balance of probabilities, that there existed a valid and fair reason for terminating the Claimant's employment, the claims for notice pay, compensatory damages, and breach of contract are dismissed.
139. The claim for unpaid leave for the entire period is dismissed pursuant to Section 28[4] of the *Employment Act*, which provides that any balance of an employee's annual leave must be taken within 18 months following the end of the 12-month period in which it was accrued.
140. The claim for salary for the entire month of May 2023 is dismissed, as the record shows that the Claimant's salary was included in his final dues and computed on a prorated basis up to the date of termination. The Claimant is, however, entitled to collect his terminal dues.
141. The claim for pension is similarly dismissed, as the Claimant's pay slips show that contributions were being made from his salary to a provident fund. The Claimant is at liberty to withdraw his benefits from the provident fund.
142. Equally, the Claimant is entitled to collect his certificate of service.

Orders

143. Ultimately, the Court finds that the Claimant's termination from employment was neither unlawful nor unfair and consequently, the reliefs sought cannot be granted.
144. Accordingly, the Claimant's suit is dismissed in its entirety, with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER 2025.

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Onduso

For the Respondent Ndoigo instructed by Mr. Mumia

Court Assistant Millicent

ORDER



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159[2][d] of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* [Chapter 21 of the Laws of Kenya] which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

