



REPUBLIC OF KENYA



KENYA LAW
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**Ongugo v Mombasa Parents Club (Cause E122 of 2024)
[2025] KEELRC 2968 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2968 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E122 OF 2024
M MBARÚ, J
OCTOBER 30, 2025**

BETWEEN

TONY OCHIENG ONGUGO CLAIMANT

AND

MOMBASA PARENTS CLUB RESPONDENT

JUDGMENT

1. The claimant is a male adult and a teacher by profession. The respondent is the proprietor of Nyali School, which is run by a management committee elected for a 2-year term. The management committee oversee operations within the respondent school.
2. The respondent employed the claimant as the Deputy Principal for Nyali Primary School and Kindergarten on 16 June 2023. His monthly salary was Ksh. 150,000, house allowance of Ksh. 50,000, responsibility allowance of Ksh. 40,000, car running expenses of Ksh. 15,000, and an entertainment allowance of Ksh. 10,000. The respondent also provided health insurance for the claimant and his family.
3. The respondent also offered a non-practice allowance of Ksh. 10,000 per month, a travelling allowance of Ksh. 40,000 annually, and at the end of his employment contract, a gratuity of 18% of his cumulative monthly salary.
4. The claim is that on 18 June 2024, the claimant reported to work, and the management board of the respondent, together with the parents and members of the school, made his work environment hostile and dangerous. The actions arose out of an election dispute between the outgoing management board and the newly elected board. The management committee created a hostile working environment and terminated the claimant's employment. This was followed by acts of vandalism and threats to his life, and he was forced to seek police assistance.



5. The claim is that the claimant was unable to resume his duties after reporting the acts of violence against him to the police. There was a break-in to his office, forcing an eviction from the school, and smashing his motor vehicle screen by goons sent by the respondent.
6. The acts of threats against the claimant included the respondent management committee sending him threatening messages and slandering him as an inept teacher. At the time, the management committee had an ongoing case in the Mombasa High Court, Petition No. E012 of 2024, but it disregarded the orders issued and proceeded to cause rioting at the school compound.
7. The claimant reported all these incidents at the Nyali Police Station and was assigned OB Numbers 39/30/3/24, 36.30/3/24, 40/24/10/24. Without any police assistance, the claimant had no option but to seek safety for his life and hence was forced to abandon his contractual obligations with the respondent. This resulted in the unlawful and unprocedural termination of his employment, and in the respondent failing to address any concerns procedurally and within lawful channels.
8. There was no justice as the respondents forced the claimant out of his employment. He suffered loss and damage, which is payable by the respondents. His claim is for payment of terminal dues;
 - a. Notice pay Ksh.150, 000.
 - b. 12 months' compensation Ksh. 1,800,000.
 - c. Unpaid 24 months house allowance Ksh. 1,200,000.
 - d. Unpaid 24 months' responsibility allowance Ksh. 960,000.
 - e. Unpaid 24 months car expenses Ksh. 360,000.
 - f. Unpaid 24 months entertainment allowance Ksh. 240,000.
 - g. Unpaid 24 months leave travelling allowance Ksh. 960,000.
 - h. Unpaid 24 months non-practice allowance Ksh. 240,000.
 - i. Unpaid 24 months 18% of the monthly gratuity Ksh. 648,000.
 - j. Unpaid 24 months' health cover.
9. The claimant is also seeking his costs of the suit.
10. The claimant testified that the respondent employed him as the Deputy Principal, but following management changes and changes to the board, his duties were disrupted. He received death threats from management committee members, parents and even students were involved. He was forced to have police officers in plain clothes at the place of work as his life was under threat. Some parents accosted him and would trail him home, leading to an incident where a motorcycle rider smashed his vehicle's windshield. He made various reports to the police.
11. The claimant testified that he was appointed acting Principal, but Mr. Terik, Babu, and Farouk arrived at the school with a panga and attempted to accost him. The Board chairperson accompanied him. The claimant had to abandon his duties due to death threats. He reported the matter to the police station, but no action was taken.
12. The claimant testified that at the time when he was accosted, there was a court order under Mombasa High Court Petition No. E012 of 2024, but the respondent did not respect it. They continued to harass him and make threats to his life. Since 18 June 2024, he has not been able to resume his duties. He has since secured new employment.



13. On the counterclaim, the claimant testified that he did not abscond from duty. He was violently ejected from his office by members of the management board and parents on 18 June 2024. He was unable to continue his employment.
14. The claimant testified that he was not paid in May and June 2024. The records of payment attached by the respondent do not relate to his bank account, which he changed after securing a loan facility with Kenya Commercial Bank and informed the respondent. He had an ongoing repayment plan through his salary.

Response and counterclaim

15. In reply, the respondent admitted that the claimant was employed as Deputy Principal through a contract dated 16 June 2023. There was no termination of employment on 18 June 2024 as alleged.
16. The response is that the claimant was appointed as the acting Principal of the Respondent's school until 29 March 2024, when he was relieved of his duties as the acting Principal, instructed to hand over to Mr. Omar Babu and return to his position as a Deputy Principal. The allegations of threats, eviction, or termination of employment lack proof.
17. the Claimant was never terminated from his employment on the alleged 18 June 2023 or on any other date. Such allegations are not only malicious but are also frivolous because, Before 16 June 2023, when the Claimant was employed there was already an ongoing election and school management dispute between the former Management Board of the Respondent, the members of Respondent Club and or the parents of the Nyali School in High Court Case No. 47 of 2022 Dr. Jean Uzel & 8 Others v Benjamin Gitonga & 5 Others, which dispute caused tensions and conflict at the Nyali school which affected the children, the school staff and the school at large till when the dispute was finally resolved in Court.
18. Upon the Claimant's employment, he offered his services at the school as the acting Principal, under the guise of Deputy Principal Status, resulting in a Contempt application in case HCCC NO. 47 OF 2022 pursuant to which on 17 November 2023, the Court declared that the recruitment of the Claimant was illegal and found the former members of the Management Board of the Respondent, in their personal capacity, to be guilty of contempt of its Court orders of 28 July 2022.
19. The response is that, despite the Claimant's employment having been declared illegal by the Court on 28 July 2022, the Respondent allowed the Claimant to continue with his employment term, and he continued to offer his services as Acting Principal.
20. On 29 March 2024, the Respondent appointed another member of its staff; Mr. Omar Babu, to the position of Acting Principal of its school in place of the Claimant and instructed the Claimant to hand over to new Acting Principal and resume his actual position of a Deputy Principal as per the employment contract of 16 June 2023, allowing the Claimant to continue with his employment term. The claimant declined to hand over as instructed and instead absconded from his duties to date without lawful justification.
21. In late May 2024, the Respondent discovered that the Claimant had been appointed as an employee by the Lizar School in Naivasha as its Junior School Grade 7-9 Principal.
22. The allegations and claims made are without merit. There was no destruction of property as alleged. the particulars of vandalism, threats, impunity, and unfair termination enumerated are without evidence.



Counterclaim

23. In the counterclaim, the respondent claims that the Claimant, without any just cause or excuse, breached the employment contract dated 16 June 2023.
24. The claimant breached his employment contract by absconding and deserting his duties as the Deputy Principal without any lawful justification from 29 March 2024 to date. Despite the Claimant having been instructed to hand over the office of the Principal to Mr. Omar Babu on 29 March 2024, he refused and failed to obey the chain of command by refusing to hand over the said office and keys for the safe which is in the Principal's office causing the Respondent to incur expenses to the tune of Kshs. 35,000/- being the costs of opening the safe and installing new locks.
25. The counterclaim is also that Despite the Claimant having been instructed to hand over the office of the Principal to Mr. Omar Babu on 29 March 2024, he refused and/ failed to obey the chain of command by refusing to hand over a school laptop worth Kshs. 120,000 issued to him at the time of employment.
26. While still an employee of the Respondent, the claimant engaged in another gainful employment with Lizar School, in Naivasha as their Junior School - Grade 7-9 Principal in contravention to Clause 5.2 of his employment contract which prohibited the Claimant for the period of his employment from engaging in any business that directly or indirectly competed with the Respondent's business.
27. The claimant deceitfully concealed and fraudulently received and accepted the salary payments paid to him by the Respondent for the months of May and June 2024, despite being well aware that he had taken up another job where he was receiving a salary.
28. The counterclaim is that the clamant failed to notify the Respondent that he had secured new employment. He failed to issue his resignation letter to the Respondent before engaging in the new employment, for the Respondent to advertise for the vacant position of Deputy Principal.
29. As a result of the Claimant's breach of the employment contract and desertion from his duties as the Deputy Principal of the Respondent's school, the Respondent suffered loss and damages and therefore counterclaims against the Claimant:
 - a. A declaration that the Claimant breached the employment contract dated 16/6/2023.
 - b. A declaration that the Claimant absconded and/or deserted his duties from 29/3/2024 to date.
 - c. One month's salary for lieu of notice.
 - d. Damages for breach of contract.
 - e. Kes. 775,000/= being the salaries and statutory deductions paid to and for the Claimant for April, May and June 2024.
 - f. Kshs. 35,000/= being the costs of opening the Principal's office safe and installing new locks.
 - g. Kshs. 120,000/= is the cost for the Respondent's laptop, which the Claimant did not hand over.
 - h. Costs of this suit.
30. In evidence, the respondent called Ali Mohamed Salim, the current chairman, who took over the board on 16 March 2024 after the Annual General Meeting. He testified that the claimant was an employee of the respondent as the Deputy Principal, and immediately upon his employment, he was appointed the acting Principal. He held the role until 28 March 2024, when he was advised to hand over his duties to Omar Babu, who had been appointed acting Principal by the respondent, and to resume



his substantive role as Deputy Principal. The claimant refused to hand over as advised and instead absconded, abandoning duty from 2 April 2024.

31. Salim testified that in June 2024, the respondent learnt that the claimant had secured new employment with Lizar School in Naivasha. Such was in breach of his employment contract. He was still receiving a salary from the respondent without the new employment being disclosed. This was prejudicial to the respondent, who was forced to break into his office and safe to allow for operations to continue.
32. Salim testified that the claimant's allegations that he was constructively dismissed are incorrect. At the time of his employment, the claimant knew that a series of legal disputes was ongoing between management, board members, and parents. In 2022, one issue that caused heated conflict was the disagreement between the former board and parents over the removal of a principal from the school. This recreated tension and unrest at the school.
33. The conflicts led to Mombasa High Court Case No. 47 of 2022, challenging the recruitment process for the position of the school principal. On 28 July 2022, the court directed the former board chairman not to recruit anyone pending the hearing of the suit. The board went ahead to recruit the claimant in 2023 as the deputy principal and assigned him duties of acting Principal. At the time, there was an acting Principal, Omar Babu. The decision to employ the claimant led to contempt of court proceedings.
34. The allegations that he was constructively dismissed are incorrect, and there is evidence that he abandoned his employment.
35. The respondent also called Omar Babu, the current Deputy Principal of the respondent school. He testified that on 18 May 2022, he was assigned the acting principal role at the respondent after the principal had resigned. At the time, there was tension at the school due to disputes between the board and parents, and one such dispute concerned the principal's recruitment. The matter ended up in court, which issued an order stopping the recruitment until the dispute was resolved.
36. On 18 January 2023, the former board notified the respondent that it had recruited the claimant as the acting principal. The former board directed him to hand over his office to the claimant for vacating.
37. This move made a bad situation worse. There were contempt proceedings leading to the former board being punished by the court.
38. Despite this development, the respondent did not terminate the claimant's acting role as the principal.
39. Omar testified that on 28 March 2024, a new board was appointed and directed the claimant to hand over to Mr. Omar as the acting principal. He declined and vacated his office, abandoned his duties, and secured new employment. The respondent had to break into the office and the safe at great cost. The claimant breached his employment contract and continued to receive salaries in April, May and June 2024.

At the close of the hearing, both parties filed written submissions.

40. The issues which emerge for determination can be summarized as follows:
 - Whether there was an unlawful and unfair termination of employment;
 - Whether the remedies sought by the claimant should issue;
 - Whether the counterclaim has merit.



41. Both parties have extensively argued that the claimant was constructively dismissed. I have analyzed the Memorandum of Claim, the reply to the response and counterclaim, and the claimant did not plead such a matter.
42. His case was that he was evicted from his office on 18 June 2024, following a change of the board of management. This was preceded by threats, harassment, and the destruction of his property, which he reported to Nyali Police Station, but no action was taken against the perpetrators.
43. The respondent has maintained that there was no constructive dismissal as alleged, and the claimant absconded from duty and absented himself on 28 March 2024. This was after the new board came in and directed him to hand over his duties of acting principal to Omar Babu and to resume his substantive role of Deputy Principal. He opted to abandon his employment with the respondent and secure new employment, which breached his employment contract.
44. A claim of constructive dismissal must be specifically pleaded. The particulars thereof must be outlined to allow the court to analyse and make a finding. This cannot be inferred as held in *Nganga v Kenya Kazi Services Limited* [2025] KEELRC 2717 (KLR).
45. In *Rem Ogado Ogana v Kenya Sugar Board* [2016] eKLR, the court held that a claim for constructive dismissal must be specifically pleaded, setting out the precise particulars which the employee believes compelled him or her to leave employment involuntarily, notwithstanding that the employer had not expressly terminated the employment relationship. See *Edwin Beiti Kipchumba v National Bank of Kenya Limited* [2018] KEELRC 2393 (KLR).
46. In this case, the claimant did not plead constructive dismissal. The orders sought do not seek such a finding.
47. It is not in dispute that the respondent employed the claimant as Deputy Principal by letter dated 16 June 2023. From the response, the court can infer that employment was stated earlier in 2022. At the time, there were ongoing disputes between the board and management, including parents, leading to court cases before the Mombasa High Court.
48. One of the cases was Mombasa High Court Case No. 47 of 2022 – *Dr Jean Uzel & 8 others v Benjamin Gitonga & 5 Others*. One of the issues in dispute was the recruitment of the school principal. At this point, the claimant was employed as the Deputy Principal and then appointed as the acting Principal. The matter led to contempt of court proceedings against the appointing authority, the management board.
49. It is common cause that a new board of management of the respondent was appointed and on 28 March 2024, directed the claimant to hand over his duties to Omar Babu.
50. The claimant's case is that he was confronted, accosted, threatened, and his property destroyed when the new board wanted to take over his duties. His life was in danger, leading to various reports to the police. At this point, he had been forced to seek police security at the school due to threats to his life. He was eventually evicted on 18 June 2024.
51. The respondents assert that since 28 March 2024, when the claimant was directed to hand over his duties as acting principal, he declined and abandoned his employment.
52. The employee is entitled to a conducive working environment. Once there is a breach, the employer is lawfully liable. The claimant made various reports to the police about threats to his life while at work. The respondent, as the employer, did nothing.



53. Even in the scenario where there were disputes between the board and parents within the respondent entity, the claimant, as an employee of the respondent, was entitled to a secure work environment. The respondents, Omar Badu and Ali Salim, admit that from 2022 to 2024 there was tension and operational disruptions, which led to various court cases.
54. These admissions by the respondent lend credence to the claimant's claim that he felt threatened, was harassed, and eventually evicted from his office.
55. The allegations by the respondent that the claimant abandoned his employment and that he absconded from duty are grave. An employee who is absent from work commits gross misconduct under section 44 (4) (a) of the *Employment Act* (the Act). The employer has a duty to issue a notice to show cause to the employee and to address the matter firmly and with finality, as gross misconduct should not be condoned, as held in *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR).

In this case, the respondent, as the employer, did nothing.
56. There is no notice recalling the claimant to address the cause of his absence from work.
57. The respondent was forced to break into the claimant's office after failing to hand over and hence incurred various costs in repairing the door and breaking the safe, contrary to the claimant's failure to accord the claimant due process under sections 35, 41 and 44 of the Act. Without notice, show cause to answer for the cause of absence; the evidence, by the claim that he was evicted from his office and that his employment was thus frustrated, is correct.
58. Despite the respondent facing various management challenges arising from ongoing court disputes over the recruitment process for a principal, the claimant was entitled to due process. The respondent cannot stand aside and claim the claimant absconded duty without securing itself. No notice has been issued to the claimant since 28 March 2024 or after 18 June 2024. None was made available to the court.
59. The claimant, a professional teacher, is allowed to mitigate his circumstances and secure new employment. The employee should mitigate loss of employment positively, as held in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] KECA 394 (KLR). Upon being frustrated in his employment, the claimant had good cause to put his skills to use. See *National Bank of Kenya v Samuel Nguru Mutonya* [2019] KECA 404 (KLR). Equally in *Oi Pejeta Ranching Limited v David Wanjau Muhoro* [2017] KECA 329 (KLR), the court held that upon loss of employment, the employee should not sit back and waste his skills. Securing new employment is an indicator of diligence and should be encouraged.
60. In this case, the respondent failed to address the claimant's concerns procedurally, as the employee was placed in an unproductive working environment that eventually led to his eviction from the office. The claimant was justified in not returning to his employment.
61. The court finds there was wrongful and unfair termination of the claimant's employment by the respondent. Under sections 45 and 49 of the Act, the claimant is entitled to notice pay and compensation.
62. The claimant worked for the respondent from 16 June 2023 until 18 June 2024, for a year. Compensation for 3 months' gross salary as required under section 49(2) of the Act is hereby found appropriate.

Notice pay is due at one month's gross salary.



63. The salary paid has various benefits and allowances. Basic pay Ksh. 150,000 plus Ksh. 50,000 house allowance, Ksh. 40,000 responsibility allowance, Ksh.15, 000 entertainment, and Ksh.10, 000 entertainment allowance. Gross salary is Ksh. 265,000.
- Notice pay is Ksh.265, 000.
- 3 months' compensation Ksh. 795,000.
64. On claims for payment for the remainder of the employment contract, which stipulated a term of 3 years, the court, under section 49 of the Act, may award a single or multiple claims. In this regard, the claimant has since secured new employment and mitigated his losses. The award of compensation above well places him back on his feet, as held in *D K Njagi Marete v Teachers Service Commission* [2020] KECA 840 (KLR). This position is reiterated in *Tome v Bungoma County Assembly Service Board & 2 others* [2025] KECA 1289 (KLR) and the case of *PN Mashru Ltd v Ojenge* [2023] KECA 473 (KLR).
- In this regard, the award of compensation shall suffice.
65. The leave travelling allowance is due annually and is payable at KSh. 40,000.
66. On the claim for payment of gratuity at 18% clause 3.3.7 of the contract provided for payment of such benefit upon the successful completion of the employment contract. Due to the wrongful and unfair termination of his employment, the claimant was unable to complete his contract. The cumulative salary for the period served of one year is ksh. $265 \times 12 \times 18/100$ + Ksh. 572,400, due as gratuity pay.
67. On the claim for the health cover benefit, this accrues upon illness, sickness or any matter relating to expenditure thereunder. There is no evidence that the claimant utilized or required the use of such a benefit to justify the claim therefrom.
68. On costs, the claim is successful and the claimant is entitled to his costs.

Counterclaim

69. Based on the findings above, the respondent placed the claimant in an insecure and hostile work environment. This is admitted by the witnesses called, who stated that at the time of the claimant's exit, there was tension and wrangling between the board and parents, which affected operations within the school. Eventually, the claimant was forced to leave his employment due to threats to his life.
70. By placing the claimant in an insecure working environment, the respondent breached the employment contract. The claimant was justified in seeking new employment. The claims for breach of contract and for the replacement of a door and a safe by the respondent cannot be justified.
- The counterclaim is without merit.
71. Accordingly, judgment is entered for the claimant against the respondent in the following terms:
- a. Employment terminated unfairly,
 - b. Compensation Ksh. 795,000.
 - c. Notice pay Ksh. 265,000.
 - d. Leave allowance Ksh. 40,000.
 - e. Gratuity pay Ksh. 572,400.
 - f. Costs of the suit.



And

- g. The counterclaim is dismissed. Save, the claimant shall return the property of the respondent and be cleared before payment of his dues awarded above.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30TH DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

