



Othoo v Aga Khan Education Service Kenya & another (Constitutional Petition E108 of 2022) [2025] KEELRC 2995 (KLR) (30 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2995 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E108 OF 2022**

**BOM MANANI, J
OCTOBER 30, 2025**

BETWEEN

PAUL MBOYA OTHOO PETITIONER

AND

AGA KHAN EDUCATION SERVICE KENYA 1ST RESPONDENT

BOARD OF MANAGEMENT, AGA KHAN EDUCATION SERVICE

KENYA 2ND RESPONDENT

JUDGMENT

Background

1. The Petitioner filed this case to challenge the legality of the Respondents’ decision to terminate his contract of service. He contends that the decision was without justification and violated the principles of procedural fairness.
2. The Petitioner avers that the Respondents hired his services as a teacher with effect from 16th January 2019. He contends that the parties signed a contract dated 14th January 2019 to evidence the employment relation.
3. The Petitioner contends that his starting salary was Ksh. 45,000.00. However, on exit, he avers that the amount had been increased to Ksh. 47,250.00 (in the Petition, he mentions Ksh. 50,790.00as his exit salary).
4. The Petitioner avers that on 27th May 2022, the Respondents served him with a letter of show cause requiring him to explain why disciplinary action should not be taken against him for physically abusing and humiliating one of his learners. He contends that he responded to the letter on 30th May 2022.
5. The Petitioner avers that on 2nd June 2022 around 4.40 PM, the Respondents served him with another letter dated the same day inviting him for a disciplinary hearing the following day at 9.00 AM. He



- contends that he attended the session and requested for it to be adjourned to enable him to prepare his defense and procure the attendance of his witnesses but to no avail. As such, he avers that he was forced to proceed with the hearing.
6. The Petitioner avers that he could not arrange for his witnesses to attend the hearing due to the very short notice he was given for the session. As such, it is his case that the trial violated his rights to fair hearing and fair administrative action.
 7. In the premises, the Petitioner prays for a declaration that the disciplinary proceedings were unconstitutional and unlawful. He prays for compensation for breach of his constitutional rights and contract of employment.
 8. In addition, the Petitioner contends that during the currency of his service, the Respondents did not pay him house allowance. He contends that all that the Respondents did was to pay him basic pay. As such, he seeks payment of accrued house allowance.
 9. The Respondents do not admit the claim. They contend that the Petitioner was employed by the 1st Respondent to serve as a teacher as from January 2019. It is their case that the engagement was for a fixed term that was to end on 31st December 2020 but was renewable.
 10. The Respondents aver that the Petitioner's consolidated salary was agreed at Ksh. 45,000.00. They further aver that the Petitioner was to execute his duties in accordance with the 1st Respondent's human resource policy and code of conduct that were in force at the time.
 11. The Respondents aver that the aforesaid instruments forbid teachers from administering corporal punishment on learners. They contend that this restriction in the policy and code of conduct is in consonance with article 53 of *the Constitution* and section 4 of the *Basic Education Act* which protect children from all forms of violence, inhuman treatment and punishment.
 12. The Respondents aver that the Petitioner's contract of service was extended for two years with effect from 1st January 2021. They aver that the contract was to come to an end on 31st December 2022.
 13. The Respondents contend that on 24th May 2022, the 1st Respondent received an email from a parent protesting mistreatment of her son in the school. They aver that the parent accused the Petitioner of having physically assaulted, discriminated and humiliated the minor.
 14. The Respondents contend that upon receipt of the complaint, the 1st Respondent served the Petitioner with a letter asking him to show cause why disciplinary action should not be taken against him for the aforesaid infraction. They contend that the Petitioner responded to the letter and admitted having administered corporal punishment on the child albeit that he contended that it was light.
 15. The Respondents aver that after the 1st Respondent considered the Petitioner's response, it resolved to summon him for a disciplinary hearing. As such, it wrote to him inviting him for a disciplinary session on 3rd June 2022.
 16. The Respondents contend that the Petitioner was informed of his right to attend the meeting in the company of his witnesses. However, they contend that he elected not to call witnesses to the session.
 17. The Respondents aver that during the hearing, the Petitioner was accorded an opportunity to ventilate his case. They contend that the Disciplinary Committee considered his defense and found it unsatisfactory leading to his summary dismissal from employment.
 18. The Respondents aver that the Petitioner did not object to the hearing on account of inability to procure witnesses. They further contend that he did not ask for time to prepare for his defense. As such,



they contend that he is estopped from raising the issue of inadequacy of time to prepare his defense now.

19. The Respondents aver that the Petitioner took his annual leave and utilized his public holidays as and when they fell due. They further contend that he was paid consolidated salary and is not entitled to claim house allowance. In the alternative, they contend that the above claims are time barred and should be rejected.

Issues for Determination

20. After evaluating the pleadings and evidence on record, the following issues arise for determination:-
 - a. Whether the Petitioner's contract of service was unlawfully terminated.
 - b. Whether the Petitioner is entitled to the reliefs which he seeks through these proceedings.

Analysis

21. Section 4 of the *Basic Education Act*, inter alia, protects children from corporal punishment, cruel and inhuman treatment and torture. On the other hand, article 53 of *the Constitution* guarantees every child the right not to be subjected to violent and inhuman treatment. It therefore needs no gainsaying that corporal punishment against children is outlawed.
22. The Respondents accuse the Petitioner of having administered corporal punishment on a learner in contravention of the 1st Respondent's policies and the law. The record shows that 1st Respondent issued the Petitioner a letter dated 25th May 2022 in which it set out particulars of the accusations against him.
23. The evidence on record further shows that the Petitioner responded to the letter on 30th May 2022 and confirmed that he had indeed administered strokes of the cane on the minor for alleged failure to return his homework for grading. He contends that the punishment was light and fatherly.
24. In cross examination, the Petitioner attempted to disown this admissions by asserting that the 1st Respondent's Deputy Head teacher instructed him on what to write. However, the court finds this contention unconvincing given the fact that the Petitioner is an adult of sound mind and was in a position to respond to the show cause without being guided.
25. The Petitioner's actions contravened the law and *the Constitution*. It is immaterial that the punishment which he administered on the minor was light. What is critical is that he administered corporal punishment on the minor in violation of the law. As such, the court finds that his (the Petitioner's) conduct provided the 1st Respondent a substantive ground to consider terminating his contract of service.
26. The foresaid notwithstanding, the 1st Respondent was duty bound to uphold procedural fairness whilst processing the Petitioner's release from employment. Under section 4 of the *Fair Administrative Action Act*, the 1st Respondent was under duty to ensure that the Petitioner was: afforded adequate notice and time to present his defense; and allowed an opportunity to adjourn the hearing in order to prepare his case. Under section 41 of the *Employment Act*, the 1st Respondent was obligated to facilitate the Petitioner to attend the proceedings in the company of a fellow employee of his choice.
27. The Petitioner contends that the Respondents denied him these rights. He avers that the Respondents did not give him sufficient time to prepare for his case. It is his case that the 1st Respondent served him with a letter dated 2nd June 2022 at 4.40 PM on that date inviting him for the disciplinary hearing



- which was slated for 3rd June 2022 at 9.00 AM. He avers that this deprived him of the chance to prepare for the case and to secure the attendance of his witnesses.
28. The Petitioner avers that when he arrived at the venue for the disciplinary meeting, he requested for the session to be adjourned to no avail. He contends that the Disciplinary Committee informed him that some of its members had travelled from Nairobi and required to travel back to attend to other duties. As such, he avers that the Committee insisted that the hearing had to proceed.
 29. The Respondents deny the Petitioner's assertions. They contend that he submitted to the disciplinary hearing without any objections. As such, they contend that he cannot raise the issue of inadequacy of time to prepare his defense at this moment.
 30. I have studied the minutes of the disciplinary proceedings. I note that they were not signed by the Petitioner to confirm that they are an accurate account of the disciplinary proceedings. As such, I am unable to rely on them to come to the conclusion that the Petitioner did not object to the proceedings on account of inadequacy of time to prepare for his defense.
 31. The law obligates an employer to provide an employee with reasonable time to prepare his defense to a disciplinary case against him. This is necessary in order to allow the employee the opportunity to gather evidence in support of his case including securing attendance of his witnesses.
 32. From the evidence on record, it is not in dispute that the Petitioner was invited for the disciplinary hearing on 2nd June 2022 at 4.40 PM. He contends that this did not afford him adequate time to secure attendance of his witnesses.
 33. The court notes that the duration between the time that the Petitioner was handed the invitation to attend the disciplinary session and the time the trial was to commence was less than twelve hours. To be precise, the Petitioner had less than two (2) working hours to prepare his defense and secure witnesses. This left him with no time to prepare his defense.
 34. In a recent decision by the Supreme Court in the case of Judicial Service Commission & another v LMN [2025] KESC 53 (KLR), the learned Judges of the court observed that upholding fairness in a disciplinary process at the workplace is now a constitutional imperative which employers must comply with. The court observed that giving an employee a one day notice to prepare for a disciplinary hearing was grossly inadequate and violated the dictates of article 47 of *the Constitution*.
 35. Having regard to the foregoing, I agree with the Petitioner's contention that the Respondents deprived him of adequate time to prepare his case. As such and on this account, I declare the disciplinary process and the resultant dismissal of the Petitioner from employment unfair.
 36. The Petitioner has prayed for a number of reliefs. These include a declaration that the decision to terminate his contract of service violated his constitutional right to fair administrative action under article 47 of *the Constitution* and contravened sections 41, 43 and 45 of the *Employment Act*.
 37. As has been noted earlier in the decision, the 1st Respondent did not uphold procedural fairness in terminating the Petitioner's employment. Accordingly, the court declares that the process violated the Petitioner's right to fair administrative action under article 47 of *the Constitution* and further contravened sections 41, 43 and 45 of the *Employment Act*.
 38. The Petitioner has further prayed for pay in lieu of notice to terminate his contract of employment. However, the court declines to grant this plea on account of the fact that but for the procedural lapses which the 1st Respondent committed in the process that resulted in the termination of the Petitioner's contract of service, the impugned decision would have stood the test of time.



39. The Petitioner has prayed for compensation for unfair termination of his contract. Taking into account that his conduct substantially contributed to the decision to relieve him of his employment, the court enters judgment for him for compensation for unfair termination of his contract which is equivalent to his salary for three months only.
40. According to the pay slip for October 2021 which the Petitioner tendered in evidence, his basic salary at that time was Ksh. 47,250.00. As such, I award him Ksh. 47,250 x 3 = Ksh. 141,750.00 as compensation for unfair termination of his contract of service.
41. The Petitioner has claimed for house allowance for the duration he served the 1st Respondent. It is his case that the 1st Respondent only paid him basic salary thus omitting to remit house allowance that was due to him.
42. On the other hand, the 1st Respondent avers that the Petitioner's pay was consolidated. As such, it (the 1st Respondent) contends that it (the salary) included house allowance and the allowance was not to be paid as a standalone benefit. The 1st Respondent pleads in the alternative that the claim for house allowance is time barred and should not be entertained.
43. House allowance is a statutory benefit that accrues to every employee in terms of section 31 of the [Employment Act](#). Under the provision, an employer has a duty to either provide an employee with physical housing or an allowance, in addition to his salary, which will be applied to pay house rent.
44. The law permits the employer to infuse the allowance in an employee's salary. However, where this is done, the employer is required to include a provision in the employment contract which specifically indicates that the house allowance has been consolidated with the employee's monthly basic salary.
45. The court has previously observed that the mere inclusion of the term "consolidated" in the salary clause in an employee's contract is not sufficient proof that the employee's house allowance benefit was consolidated with his basic pay. This is because apart from house allowance, the employer may provide the employee with various other benefits such as medical, airtime and travel allowance.
46. An employee's salary which contains these other benefits qualifies to be described as consolidated even though it does not include the element of house allowance. It is consolidated because it includes the various other benefits even though it does not have the house allowance benefit.
47. Because the law requires the employer to specifically state in the contract of service that he has consolidated the employee's house allowance with the basic salary, it is up to the employer to ensure that this requirement is complied with to remove any doubts regarding the employee's house allowance benefit. It is not sufficient to merely insert the term "consolidated" in the contract because what has been consolidated with the basic salary cannot be discerned from the term.
48. Besides using the term "consolidated" in the contract between the parties to the instant case, they (the parties) did not specify what was consolidated with the Petitioner's salary. Was it medical allowance, house allowance, airtime allowance or travel allowance? Absent this clarity, asking the court to find that house allowance was included in the consolidated salary is to invite it to speculate on the matter.
49. Absent a clear clause in the contract speaking to the fact that what the parties consolidated included the Petitioner's house allowance, the court finds that the 1st Respondent has not tabled evidence to prove that it paid the Petitioner his house allowance. As such, it (the court) arrives at the conclusion that he (the Petitioner) is entitled to claim the allowance as a standalone benefit (*Njuki v Roche Kenya Limited* [2023] KEELRC 1850 (KLR) and *Kenya Union of Commercial, Food and Allied Workers v Sunmatt Ltd* [2025] KEELRC 151 (KLR)).



50. The Respondents contend that the claims for, inter alia, house allowance are in any event time barred. As such, the court should not entertained them.
51. This argument is rejected for two reasons. First, this action was filed as a constitutional petition. Ordinarily, constitutional petitions are not subject to the strict timelines that are set by statute law on limitation of actions albeit they are subject to the equitable doctrine of laches. As such, unless it is demonstrated that the petition was filed after undue delay, it cannot be defeated on account of laches (see *Janmohammed (SC) (Suing as the Executrix of the Estate of the Late H.E. Daniel Toroitich Arap Moi) & another v District Land Registrar Uasin Gishu & 4 others* [2024] KESC 39 (KLR)).
52. Second, according to the Court of Appeal decision in the case of *G4S Security Services (K) Limited v Joseph Kamau & 468 others* [2018] eKLR, time for filing suit to recover accrued employment benefits begins to run from the date of termination of the contract of service. As such, suit to claim the benefits should be filed within three (3) years of termination of the contract of service where the cause of action is not premised on a continuing injury claim (see also *Njuki v Roche Kenya Limited* [2023] KEELRC 1850 (KLR) & *Kenya Union of Commercial, Food and Allied Workers v Sunmatt Ltd* [2025] KEELRC 151 (KLR)). Consequently, the Respondents' contention that the Petitioner's claim for house allowance is time barred fails.
53. The Petitioner is entitled to an amount that is equivalent to 15% of his basic salary to cover his house allowance (see *Grain Pro Kenya Inc. Ltd v Andrew Waithaka Kiragu* [2019] eKLR)). From the evidence on record, he worked for the 1st Respondent for 41 months from 16th January 2019 to 16th June 2022. As such, he is awarded 15% of his monthly salary, that is to say, Ksh. 6,750.00 x 41 = Ksh. 276,750.00 to cover his unpaid house allowance.
54. The court orders the 1st Respondent to issue the Petitioner with a Certificate of Service.
55. The claim for public holidays was neither particularized nor spoken to during trial. As such, it fails.
56. The Petitioner also claimed for payment of accrued leave days. However, during trial, he admitted having utilized his leave days. As such, the claim for leave pay is rejected.
57. The Petitioner claimed for pay of salary for the remainder of his contractual term. However, there is usually no guarantee that but for the unfair termination of an employee's contract of service, he would have served his full term (*Nduru v Avenue Service Station Ltd (Employment and Labour Relation Cause 839 of 2018)* [2025] KEELRC 1939 (KLR) (30 June 2025) (Judgment)). In the premises, the prayer for salary for the unexpired term of the contract cannot be granted. It is declined.
58. The Petitioner has prayed for compensation for violation of his constitutional rights. However, the court has already compensated him for the unfair termination of his contract of service.
59. Since the circumstances which resulted in the unfair termination of the Petitioner's employment are the same ones on which he has anchored the plea for violation of his rights and since he has already been compensated for the unfair termination of his contract, the court holds the view that to award him separate damages for violation of his rights will amount to double compensation. As such, it (the court) declines this request.
60. The court awards the Petitioner interest on the amount awarded at court rates from the date of this decision.
61. The award is subject to the applicable statutory deductions.
62. The court awards the Petitioner costs of the case.



Summary of Decision

- a. The court finds that the 1st Respondent's decision to terminate the Petitioner's contract of service was procedurally unfair.
- b. As such, it (the court) declares that the decision violated the Petitioner's right to fair administrative action under article 47 of *the Constitution* and was in breach of sections 41, 43 and 45 of *the Employment Act*.
- c. The court declines to enter judgment for the Petitioner for salary in lieu of notice to terminate his contract of service.
- d. The court awards the Petitioner compensation for unfair termination of his contract of service in the sum of Ksh. 141,750.00.
- e. The court finds that the Petitioner's claim for house allowance is not time barred.
- f. The court awards the Petitioner the sum of Ksh. 276,750.00 being the accrued house allowance due to him.
- g. The court orders the 1st Respondent to issue the Petitioner with a Certificate of Service.
- h. The court declines the Petitioner's prayer for pay for work allegedly done on public holidays.
- i. The court declines the Petitioner's prayer for pay in lieu of accrued leave.
- j. The court declines the Petitioner's prayer for salary for the unexpired term of his contract of service.
- k. The court declines the Petitioner's prayer for payment of damages for violation of his constitutional rights.
- l. The court awards the Petitioner interest on the amounts awarded at court rates from the date of this judgment.
- m. This award is subject to the applicable statutory deductions.
- n. The court awards the Petitioner costs of the case.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF OCTOBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Petitioner

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

