



**Munyao v Teachers Service Commission (Cause 191 of 2019)  
[2025] KEELRC 3455 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3455 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 191 OF 2019  
CN BAARI, J  
DECEMBER 4, 2025**

**BETWEEN**

**DAVID MUNYAO ..... CLAIMANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This judgment relates to the Claimant's Memorandum of Claim dated 25<sup>th</sup> March, 2019, and lodged in court on 28<sup>th</sup> March, 2019. The Claimant seeks the following reliefs as against the Respondent:-
  - i. A declaration that the Claimant's termination was wrongful and unfair
  - ii. Reinstatement to his previous position
  - iii. Accrued salary from 17<sup>th</sup> May 2027 to the date of reinstatement
  - iv. Salary in lieu of notice
  - v. Compensation for unlawful loss of employment
  - vi. Service pay
  - vii. Interest on 2-6 at court rates
  - viii. Certificate of service
  - ix. Costs of the suit
2. The Respondent filed a Memorandum of Defence dated 18<sup>th</sup> July, 2019, denying the Claimant's claim.



3. The Claimant's case proceeded for hearing on 24<sup>th</sup> February, 2025, when the Claimant and his two witnesses, namely Beatrice Nzembi Matuku and Japheth Kidiavai, testified in support of the claim. The Respondent's case was subsequently heard on 30<sup>th</sup> June, 2025, with the taking of the evidence of Michael Keffa and Lawrence Kigen.
4. Submissions were filed for both parties, and which have been duly considered.

### **The Claimant's Case**

5. The Claimant's case is that he was employed by the Respondent on 2<sup>nd</sup> September 1997, as a teacher at a monthly salary of Kshs.14,000/- on a probationary contract. He avers that he was confirmed into the Respondent's permanent service on 10<sup>th</sup> March, 1998.
6. It is his case that he was initially posted at Tanganyika Primary School in Kitui County, where he served for 3 years, and was later transferred to Syunguni Primary School at Mutumo Sub-County within Kitui County.
7. The Claimant states that he took an undergraduate degree and was promoted upon his graduation to job group K in 2007, and appointed Head teacher at Kinakoni Primary School at Mutumo Sub-County, where he served for 3 years.
8. It is his case that his position as a Head Teacher was ratified on 10<sup>th</sup> December, 2014. He avers that he was transferred to Mutumo Primary School in September 2014 as a Head teacher, after being promoted to job group M, on a monthly salary of Kshs.85,840/-.
9. The Claimant states that on 19<sup>th</sup> April, 2017, he was falsely accused of defiling a lady named BNM and was arrested and taken to Mutumo police station. He states that on 20<sup>th</sup> April, 2017, he was taken to the Senior Principal Magistrates' Court at Mutumo, where he was charged with the offence of attempted rape contrary to Section 4 of the [Sexual Offences Act](#), 2006.
10. The Claimant states that concurrent with the criminal case, the Respondent carried out its own investigations on the matter, and invited him for a disciplinary hearing on 17<sup>th</sup> May, 2017, at the Mutumo Sub-County TSC offices. He avers that he attended the disciplinary hearing on the scheduled date together with his alleged victim, BNM.
11. It is his case that during the hearing, his alleged victim denied knowing him and further denied that the incident occurred and admitted that the allegations against the Claimant were false.
12. The Claimant avers that despite the denial by the alleged victim, the Respondent interdicted him vide a letter dated 18<sup>th</sup> May, 2017. He further avers that he was acquitted of the criminal offence before the Senior Principal Magistrates' Court on 2<sup>nd</sup> May, 2017.
13. It is his case that, based on the acquittal and the confirmation by the alleged victim that the accusations against him were false, he wrote to the Respondent requesting that his interdiction be lifted, but instead of lifting the interdiction, the Respondent issued him with a second letter of interdiction dated 15<sup>th</sup> December, 2017.
14. The Claimant avers that he was invited for a second disciplinary hearing on 6<sup>th</sup> February 2018, at the County Director's office at Kitui. He avers that the Respondent refused and/or neglected to consider the outcome of the criminal case and also declined the evidence of the alleged victim.



15. The Claimant states that after the hearing of 6<sup>th</sup> February, 2018, he received a final dismissal letter dated 28<sup>th</sup> February, 2018. He avers that he worked well for the Respondent during the years in which he was at their service.
16. He avers that the Respondent did not pay him his terminal dues upon dismissal. He states that he has suffered mental anguish owing to the false accusations and ill treatment by the Respondent.
17. On cross-examination, the Claimant told the court that his employment was governed by the Code of Regulations for Teachers, which provides instances of disciplinary action. He confirmed that he was notified of the allegations against him through the amended interdiction letter. He told the court that he did not know that the Respondent had a right to amend letters of interdiction.
18. He further stated that the amended interdiction letter listed the charges as immoral behaviour, which he confirmed is an offence under the Code of Regulation for Teachers.
19. On further cross-examination, the Claimant told the court that he was arrested at Makuti Bar & Restaurant in Mutumo town. He further confirmed that he knew BNM and that she was also arrested at the same venue and date.
20. He confirmed that the criminal case was prosecuted by the DPP and not the Respondent. He told the court that he did not know Regulation 148 of the Code of Regulations for teachers, and does not know whether it provides for the payment of salaries during interdiction.
21. The Claimant confirmed that it is more than 3 years since he was dismissed. He told the court that he appeared before the County and Sub-County disciplinary panels. He confirmed on cross-examination that he was allowed 21 days to respond to the charges and that he did respond.
22. It is his case that the Respondent presented two witnesses at the disciplinary hearing, whom he cross-examined.
23. On re-examination, the Claimant testified that the criminal case was withdrawn for lack of evidence, and that it is the same case he was interdicted on.
24. CW2, BNM, told this court on cross-examination that she went to Makuti Bar & Restaurant within Mutumo town. Although she initially stated that she did not know the Claimant, she confirmed on further cross-examination that she now knows him and had seen him at Makuti Bar & Restaurant.
25. CW2 confirmed that she was arrested in the washrooms at Makuti bar & restaurant and that she had gone to relieve herself. It is her testimony that she was presented with a statement by the police and asked to sign it, but she again confirms that the handwriting on the statement is hers.
26. CW3, the investigating officer in the criminal case, told the court that CW2 (BNM) told him that she had been told to falsely accuse the Claimant. He further testified that there was no evidence of false accusations and no evidence that CW2 was forced to falsely accuse the Claimant. He further confirmed that he did not testify in the criminal case.
27. CW3 further confirmed that he arrested CW2 in the toilets of Makuti bar & restaurant, on the same day he arrested the Claimant. He further told the court that the criminal case was withdrawn under Section 87A of the Criminal Procedure Code, which he confirmed does not extinguish the case and could still result in a rearrest. He confirmed that the Claimant was not acquitted.
28. On re-examination, CW3 told the court that the case was withdrawn on account of CW2 (BNM) recanting her statement. He further told the court that only the Claimant and CW2 (BNM) were at Makuti bar & restaurant at the time of the arrest.



29. It is the Claimant's prayer that his claim be allowed.

### **The Respondent's case**

30. The Respondent states that its operations are governed by *the Constitution* of Kenya, the *Teachers Service Commission Act*, 2015, the Code of Regulations for teachers 2015 (CORT), the Teachers Service Code of Conduct and Ethics, the Public Officers Ethics Act, and the *Leadership and Integrity Act*.
31. The Respondent states that it employed the Claimant in 1997 as a P1 teacher at a monthly salary of Kshs. 14,000 and allocated TSC No.386591. It avers that he initially taught at Tanganyika Primary School and was later posted to Syunguni Primary School in Mutumo Sub-County, Kitui County. The Respondent further states that the Claimant was again transferred to Mutumo Primary School as a Head Teacher on 9th September, 2014, by which time he had been promoted to job group M with a salary of Kshs. 85,840/-.
32. It is the Respondent's case that sometime in 2017, while the Claimant was teaching at Mutumo Primary school, the Respondent received information alleging that the Claimant had engaged in immoral behaviour, having been found in a lodging with a form one student from Mutumo Upper Hill Secondary school.
33. It avers that in compliance with Regulation 146 of its CORT, it initiated independent investigations to confirm the veracity of the allegations. It avers further that it constituted a panel of officers who obtained written statements and evidence on the matter, and that a comprehensive statement was obtained from BNM, the alleged victim.
34. It is its further case that it received a report from its County Human Resources officers who did the investigations, and which report recommended that the Claimant had a case to answer.
35. The Respondent states that it convened a disciplinary committee chaired by the County Director for Kitui, where the Claimant and various witnesses, including teachers and students, were invited. It states that the Claimant was allowed to cross-examine the witnesses presented. At the end of the said hearing, the committee resolved that the Claimant be interdicted for engaging in immoral behaviour with a student. It is the Respondent's position that the Claimant was then interdicted, premised on the evidence collected and the investigation report.
36. The Respondent states that the Claimant was allowed 21 days to respond to the accusations, and he did so vide a letter dated 29th May, 2017, denying the allegations and insisting that the same were baseless.
37. It is the Respondent's case that it realised an anomaly in the framing of the professional charge in the interdiction letter and that, in a bid to rectify the anomaly, it did amend the interdiction letter and served the amended letter upon the Claimant on 15<sup>th</sup> December, 2017 and further invited the Claimant to make his defence, which again, he did.
38. The Respondent states that it convened a disciplinary hearing meeting on 6<sup>th</sup> February, 2018, where the Claimant was present on invitation. It avers that upon hearing the Claimant, considering and evaluating statements made and the evidence presented during the hearing proceedings, and further given the gravity of the Claimant's conduct, a resolution was arrived at to dismiss the Claimant and to further remove him from the register of teachers.
39. It is the Respondent's position that the Claimant was timeously informed of the decision to dismiss him from the teaching service through a letter dated 28<sup>th</sup> February, 2018, which letter further informed him of the reasons for his dismissal.



40. The Respondent avers that its disciplinary proceedings are exclusive and distinct from the criminal proceedings as the Regulations provide that the Respondent, in determining a teacher's disciplinary case, is not bound by the finding of a court in a criminal matter relating to the disciplinary proceedings, as the standard of proof in the two is inherently different.
41. The Respondent further avers that its mandate is restricted to professional culpability and hence any action by the police cannot in any way diminish its mandate under the Act.
42. The Respondent submits that the nature and the circumstances of the Claimant's case and the allegations against him, warranted his dismissal as the allegations were ascertained to amount to breach of his employment contract. The Respondent further submits that in handling the Claimant's disciplinary case, it acted within the confines of the law.
43. On cross-examination, RW1 told the court that he did not interview anyone from Makuti bar & restaurant and did not proceed to find out who the person in charge of bookings at the bar was. He further averred that he referred to a report from the health centre, which is not before the court.
44. It is RW1's position that he interviewed members of the public and security at Makuti Lodge.
45. On re-examination, RW1 told this court that the girl (BNM) was at the bar and was looking for her teacher, and further stated that the girl and the Claimant were at the same location. It is his evidence that the girl's statement confirmed the correctness of the allegations and that she had signed it.
46. It is the Respondent's prayer that the court dismiss the Claimant's claim.

### **Analysis and Determination**

47. I have considered the pleadings, the witnesses' oral testimonies, the evidence adduced, and the parties' rival submissions. The issues for determination are: -
  - i. Whether the Claimant's dismissal was lawful and fair; and
  - ii. Whether the Claimant is entitled to the remedies sought.

### **Whether the Claimant's dismissal was lawful and fair**

48. The Claimant contends that on 19<sup>th</sup> April, 2017, he was falsely accused of defiling a lady named BNM and was arrested and taken to Mutumo police station, and later charged on 20<sup>th</sup> April, 2017, at the Senior Principal Magistrates' Court at Mutumo, with the offence of attempted rape.
49. It is his assertion that despite the denial of the accusations by the alleged victim, the Respondent interdicted him vide a letter dated 18<sup>th</sup> May, 2017, invited him for a second disciplinary hearing on 6<sup>th</sup> February 2018 at the County Director's office at Kitui, and subsequently dismissed him vide a letter dated 28<sup>th</sup> February, 2018, which dismissal he contends is wrongful and unfair.
50. A termination/dismissal is unfair and wrongful where the employer fails to adhere to the tenets of fair process and the substantive justification for the dismissal/termination requirement under Sections 41, 43, 45, and 47 of the [Employment Act](#), 2007.
51. Section 41 of the [Employment Act](#) provides that an employer, before terminating the services of an employee on the grounds of misconduct, poor performance, or physical incapacity, must explain to the employee in a language the employee understands the reasons for which the employer is considering termination/dismissal.



52. It is not disputed that the Respondent convened a disciplinary committee meeting where the Claimant was invited, together with various witnesses, and a decision was reached to interdict the Claimant.
53. It is also not in dispute that the Respondent proceeded to interdict the Claimant pursuant to the recommendations of the disciplinary committee through a letter dated 18<sup>th</sup> May, 2017, which letter was amended by yet another interdiction letter dated 15<sup>th</sup> December, 2017. The court record further shows that the Claimant was allowed 21 days to respond to both the initial interdiction letter and the latter one of 15<sup>th</sup> December, 2017, and which the Claimant confirmed having responded to.
54. In the case of *Hosea Akunga Ombwori v Bidco Oil Refineries Limited (2017) eKLR*, the court expounded on the provisions of Section 41 thus:-
- “To satisfy the requirements of Section 41 of the *Employment Act*, 2007, an employer issues what is called in ordinary parlance a show cause notice/letter. Such a letter or notice should outline the allegations or charges against the employee and also request him to respond within a reasonable time.
27. The notice also ought to inform the employee that disciplinary action which might lead to termination of employment is under consideration.”
55. The court record confirms that the Claimant was issued an interdiction letter which spelt out the allegations against him, allowed 21 days to respond to the charges, which he undeniably did, and invited to a disciplinary hearing accompanied by a representative of his choice vide a letter dated 5<sup>th</sup> January, 2018.
56. The court notes that the Claimant’s only issue with the procedure adopted by the Respondent is the amendment of the interdiction letter, which the Respondent told the court was due to an anomaly with the initial interdiction letter. I further note that the Claimant was again allowed 21 days to respond to the amended interdiction letter, and which he did.
57. In my view, having been allowed opportunity to respond to the amended letter of interdiction, I find that the amendment did not impair the procedure, as the Claimant was fully aware of the charges against him and had given his written representation on the amended charges, and appeared physically for a disciplinary hearing.
58. In *Silvester Malei Kyengo v Kenya Meat Commission (2019) eKLR*, the Court opined;
- “In this case the Claimant was first served with a show cause letter stating the charges against him, interdicted pending investigation, accorded an oral hearing in the company of another employee of his choice, and finally served with a termination letter confirming that his defence was considered but his services terminated for reasons cited in the letter. Such procedure in my view passes the test of procedural fairness.....”
59. Other than confirmation that he was aware of the charges against him, had responded to the charges, and appeared for a disciplinary hearing, the Claimant confirmed that he had the opportunity to cross-examine the witness presented by the Respondent.
60. In light of the foregoing, it is my considered view, that the Claimant’s dismissal from the service of the Respondent is procedurally fair, and so I hold.
61. The second limb in the determination of the fairness of termination/dismissal is the substantive justification test. In *British American Tobacco (K) Ltd v Kenyan Union of Commercial Food and*



Allied Workers (Kucfaw) [2019] eKLR, the court quoted with approval the decision in Anthony Mulaki V Addax Kenya Limited, Cause No. 822 of 2012, for the holding that: -

“In examining validity of reasons, the court was correctly directed by the Respondent to the case of British Home Stores Ltd V Burchell (1980) LC.R. 303 E.A.T., where it was held that for the court to uphold the decision by the employer as being fair, it must be shown that: -

- a. The employer must believe at the time of termination that the employee is guilty of the allegations against him/her
- b. The employer had reasonable grounds upon which to sustain that belief; and
- c. The employer carried out as much investigation as reasonable in the circumstances, the employer need only be satisfied on the balance of probability (emphasis own).”

62. Under the amended interdiction letter, the charge against the Claimant was that of immoral behaviour being that on 19<sup>th</sup> April, 2017, he attempted to have sexual intercourse with one BNM, a form 3 student at Mutomo Upper Hill Secondary School, a charge the Claimant denied.
63. On cross-examination, the Claimant told the court that his employment was governed by the Code of Regulations for Teachers, which provides instances of disciplinary action. He further stated that the amended interdiction letter issued to him listed the charges as immoral behaviour, which he confirmed is an offence under the Code of Regulation for Teachers.
64. The Respondent alleges that the Claimant was found at Makuti Bar with a student, and that the student BNM gave a written statement implicating the Claimant, and that further investigations by the Respondent’s committee recommended disciplinary action against him.
65. CW2 in this matter is the alleged victim who recanted her earlier statement and proceeded to testify in favour of the Claimant, whom he earlier accused of attempting to rape her. CW3, the police investigator, also turned the Claimant’s witness (CW3), told the court that there was no evidence of the alleged immoral behaviour and that the criminal case was withdrawn because the alleged victim recanted her statement.
66. A glance at the record and the Claimant’s and the victim’s (CW2) testimony on cross-examination, confirms that both the Claimant/teacher and the victim/student were at the venue of the alleged incident on the same day and time and where they were actually arrested together.
67. The coincidence of being at the same venue at the same time, and the teacher/Claimant’s statement that he was only taking a soda with the student, in my view, points to culpability on his part. For a teacher to be at a social place (a bar) with a student is, in itself, questionable and creates a connection between them and the alleged incident.
68. Further, the victim in her initial statement stated that various attempts were made to convince her to recant her statement, including threats of withdrawal of a scholarship at her school, which she confirmed was finally withdrawn for refusing to recant her statement. The Claimant’s belated change of mind, in favour of the Claimant, is not convincing, having initially written a statement that implicates the Claimant, and whose handwriting she maintains is hers up until the time of testifying in favour of the Claimant in this matter.
69. Further, the investigating officer’s evidence that the alleged victim did not show that she was forced to implicate the Claimant also creates doubt, given that he was testifying for the Claimant.



70. The minutes of the initial meeting held by the Respondent on the issue indicate that there were attempts to interfere with the case right from the police station and the coaching of the girl victim to cover up the matter. The victim variously contradicted herself, firstly by indicating that she did not know the Claimant while at the same time, admitting knowing him during her testimony before court as well as the chronology of events on the material day of the incident, which in my view confirms the Respondent's allegations of possible coaching and attempts to interfere with the case.
71. In *Charles Musungu Odana v Kenya Ports Authority* [2019] eKLR, the Court explained reasons for termination in the following words: -

“It is now clear that the burden placed on an employer by Section 43 of the *Employment Act* is to establish a valid reason that would cause a reasonable employer to terminate employment. The Court of Appeal affirmed this position in its decision in *Reuben Ikatwa & 17 Others v Commanding Officer British Army Training Unit Kenya & Another* [2017] eKLR by citing with approval the following excerpt from Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol 16(1B) para 642:-

“In adjudicating on the reasonableness of the employer's conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide whether it would have dismissed on those facts; it must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts. The basis of this approach (the range of reasonable responses test) is that in many cases there is a band of reasonable response to the employee's conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; but if it falls outside the band, it is unfair.

In assessing an employer's action, therefore, the Court is not expected to supplant its own decision with that of the employer. In other words, the Court does not ask what it would have done in the circumstances of the particular case; all the Court asks is whether overall, the employer acted responsibly and reasonably, and if the answer to this question is in the affirmative, the Court should not interfere with the employer's decision.”

72. Considering the facts of this case, specifically the Claimant's and CW2's contradictory evidence both before the court and before the disciplinary committee, and the evidence before the court, I find and hold that the Respondent has proved fair, valid, and justified grounds to dismiss the Claimant, and I proceed to hold the Claimant's dismissal procedurally and substantively lawful and fair.

### **Whether the Claimant is entitled to the remedies sought**

73. The Claimant sought a declaration that his termination was wrongful and unfair, reinstatement to his previous position, accrued salary from 17<sup>th</sup> May 2027 to the date of reinstatement, salary in lieu of notice, compensation for unlawful loss of employment, service pay, interest on at court rates, a certificate of service, and costs of the suit.
74. Other than the claim for issuance of a certificate of service, the rest of the prayers sought herein are only tenable upon a finding of a wrongful dismissal. Having held the Claimant's dismissal lawful and fair, the remedies listed herein fail, and are all dismissed.



75. On the claim for a certificate of service, this is a statutory requirement for which an employee is entitled, irrespective of the manner or grounds of the separation. This prayer is therefore allowed, and the Respondent is hereby ordered to issue the Claimant with a certificate of service within 14 days of this judgment.
76. The rest of the Claimant's claim is dismissed with no orders on costs.
77. Judgment accordingly.

**DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4<sup>TH</sup> DAY OF DECEMBER, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Ms. Kiongera present for the Claimant

Mr. Mulaku h/b for Mr. Sitima for the Respondent

Ms. Esther S-C/As

