



**Ngare v Teachers Service Commission (Cause E051 of 2025)
[2025] KEELRC 3457 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3457 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E051 OF 2025
JK GAKERI, J
DECEMBER 3, 2025**

BETWEEN

CALEB NGARE CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The claimant commenced the instant suit vide a Memorandum of Claim dated 19th June 2025 received by the court's Registry on 24th October 2025.
2. The claimant's case was that he was employed as a teacher by the respondent in 1987, served diligently and rose to become the Principal at xxxxx Mixed Secondary School. The claimant stated that he was interdicted on 14th September 2021 on allegations of sexual misconduct and/or inappropriate behaviour with four minors who were students at the school, was arrested but no charges were preferred and disciplinary proceedings thereafter without due compliance with the Code of Regulation of Teachers as the claimant was not accorded the opportunity to cross-examine the accusers, and was not given adequate time prior to the hearing and was removed from the teachers roll in June 2022 and notified of the dismissal in October 2022 which had taken place on 18th February 2022.
3. The claimant's case is that the dismissal was unfair as it contravened *the Constitution* of Kenya, *Teachers Service Commission Act* and the Fair Administrative Action Act and prayed for:
 - i. A declaration that termination of employment was unlawful and unfair.
 - ii. A declaration that removal of the claimant name from the Register of Teachers without notice and fair hearing violated his constitutional rights.
 - iii. Damages for unfair termination of employment.....Kshs.1,625,328.00



- iv. Salary in lieu of notice.....Kshs.135,444.00
- v. Unpaid salary for October 2021 to December 2023 (27 months).....
Kshs.3,656,988.00
- vi. Severance pay.....Kshs.2,302,548.00
- vii. Leave pay for 2021 – 2023.....Kshs.406,332.00
Total Kshs.8,126,640.00
- viii. Certificate of service.
- ix. Costs of the suit.
- x. Interest on above.
- xi. Any other relief the court deemed just and fit to grant.

Respondent's case

4. By a statement of defence dated 15th August 2025, the respondent contended that the suit by the claimant was devoid of merit misconceived and bad in law and ought to be struck out and the court had no jurisdiction to hear and determine it as it was contrary to the provisions of Section 3(2) of the *Public Authorities Limitation Act* and Section 89 of the *Employment Act*.
5. The respondent admitted that the claimant was its employee and after information was received that the claimant had had sexual intercourse with a student and involved or permitted three others to perform household tasks at his house, which amounted to professional misconduct, the respondent investigated the matter through the County Disciplinary Panel which interviewed the students and recorded statements from the Deputy Principal, Discipline Officer, School Watchman and the schools Chef and all parties presented their cases.
6. That the claimant was subsequently interdicted effective 14th September 2021; was invited for a hearing slated for 8th February 2022 appeared with witnesses but the student alleged to have had sexual intercourse with the claimant did not attend.
7. The claimant was dismissed thereafter and his name removed from the Register of Teachers.
8. It was the respondent's case that dismissal of the claimant from service was lawful as the respondent had reason(s) to believe that he was guilty and due process was observed.
9. On cross-examination, the claimant confirmed that he was accused of having carnal knowledge of a student and some other students were doing household chores in his house.
10. He admitted having received the notice to show cause dated 31st August 2021 but denied having been invited for any investigation by the respondent and denied having been present on 31st August 2021, but attended a meeting on 1st September 2021 which was attended by the Deputy County Director, of Education, Sub-County Director of Education (TSC) and County Director of Education, Ministry of Education and the victims and was interdicted on 14th September 2021 and equally admitted what was required of him by the letter.
11. He admitted that four (4) girls were involved and he responded to the notice to show cause and the letter of interdiction.



12. The claimant further admitted having been invited for a disciplinary hearing on 8th February 2022 and was present with his witnesses and questioned the three students who were present.
13. He admitted having asked Asha Jekesh. Is it true that I have been sending you to do activities in my house? Answer. Yes. How many times did you prepare tea in my house? Answer 2 times. How many times did your mother send you to my house? Answer. Twice. How many times did your grandmother send you to bring me paw paw? Answer. Only once, I came with them, left them at the gate with the watchman, picked them during games time and took them to your house where I found Elector, Ann and another student doing chores and I helped them.
14. He admitted that he was notified of the decision of the Commission allegedly in October 2022 and rendered services last in August 2021. The witness admitted that the student he was alleged to have had sexual intercourse with went to his house from about 6:00pm – 6:30pm and stayed for about 45 minutes. He admitted been married but was not staying with the wife in the house in school.
15. The claimant admitted having written a letter to the TSC County Director Homa Bay dated 6th September 2021 requesting for witness statements which referenced letter dated 14th September 2021 but had not receipt stamp to show that it was dispatched by Wells Fargo nor reconcile the dates as he testified that he was referring to the letter of interdiction.

Respondent's evidence

16. RWI, Mr. George Lukibya confirmed on cross-examination that he was a Sub-County director, Teachers Service Commission since 2020 and investigated the claimant's conduct having been dispatched to God Marera Secondary School in 2021 together with Mr. Mutai and Hellen Madala and prepared a report dated 1st September 2021. That three people signed the report. He admitted that they recorded statements from the victims and the school watchman and attend the disciplinary hearing at the County level on 1st September 2021 and the claimant had been invited by sms or call. He was not sure and admitted that he had no evidence of the invitation and the three persons constituted the County Disciplinary Panel and no meeting took place on 31st August 2021.
17. On re-examination, Mr. Lukibya testified that the three of them conducted investigations and prepared a report dated 31st August and 1st September 2025, and they were at the school on 31st August 2021 and 1st September 2021 and the claimant and the victims were present and the claimant admitted having been aware of the purpose of the invitation and cross-examined the witnesses present.
18. RWII, Mr. David Mukui confirmed that he was a Deputy Director TSC Discipline Directorate for the last 2 years. He confirmed that any deviation from the Code of Regulation for Teachers in disciplinary matters amounted to an illegality. The witness confirmed that the TSC issued a notice to show cause dated 31st August 2021 to the claimant through the County Director.
19. That there was no complaint against the teacher. It was RWII's evidence that prior to interdiction the School Board of Management (B.O.M) required to meet, adding that it depended on the position of the teacher and the school's B.O.M was involved during investigation as the report stated but it did not interdict the teacher, the County Director Homa Bay. That the misconduct disqualified the claimant from half salary as it was unprofessional.
20. RWII further testified that although the girl the claimant was alleged to have had sexual intercourse with did not attend the hearing, she appeared during the investigation and her statement had not been withdrawn and the procedure adopted by the respondent was in accord with the Code for Regulation of Teachers.



21. The witness testified that the claimant had right to cross-examine the student but she did not attend the hearing and dismissal took place after the hearing on 18th February 2022 and the decision was arrived at on the same day and dispatched through postal address 3499 and copy sent by email but the witness could not recall the date it was sent.
22. The witness admitted that there was no evidence of postage of the letter of dismissal but stated that the postal address was obtained from the information the claimant provided in response to the letter of interdiction.
23. The witness confirmed that the claimant was removed from the Register of Teachers on 22nd June 2022 and it was communicated to him but had no evidence of the letter having been posted.
24. On re-examination RWII testified that the issue emerged after it was learnt that a student had been to the Principal's house one evening. The witness testified that the claimant received the documents sent to him vide post Office Box 3499 Code 40100 and availed the same on record.
25. According to RWII, the case against the claimant was proved and was guilty as charged and was consequently terminated from employment.

Analysis and determination

26. It is not in dispute that the claimant was until interdiction vide letter dated 14th September 2021 serving as the Principal of xxxxx Mixed Secondary School under the respondent's employment.
27. It is equally not in contest that by a notice to show cause dated 31st August 2021, the respondent accused the claimant of having sexual intercourse with a student named JAO Adm. No. 9XXX Form 3 Mars aged 17 years on the night of 27th August 2021. He was also accused of allowing students by the name AJ Adm. No. 10XXX Form 3, IAO Adm. NO. 9XX Form 3P and EA Admin. No. 9XX Form 3P to perform chores in his house and serving visitors. A response was required within 7 days and the claimant responded but did not avail a copy of his response.
28. It is also common ground that the claimant was issued with a letter of interdiction dated 14th September 2021 and a similar letter dated 21st September 2021 which modified the 1st charge to lead immoral behaviour, but the effective date remained 14th September 2021.
29. The letter required the claimant to inter alia respond within 21 days, avail exculpatory evidence, and provide his contact address, email and telephone number.
30. I revert to this issue shortly.
31. The claimant testified that he responded to the letter of interdiction by letter dated 22nd September 2021 and requested for witness statements to prepare a response.
32. In his undated response, the claimant denied having had sexual intercourse with Joygan Akoth Otieno stating that his relationship with her was teacher/student. He did not deny that the student was in his house on the night of 27th August 2021. He dismissed the incident as a witch-hunt but did not explain what the student was doing in his house at night. He equally denied that the other three Form 3 students were doing chores in his house as Mama Elector used to do it.
33. While the interdiction letter bore the postal address 75 – 40309 Asumbi as the claimant's address and he received the letter on 16th September 2021, his response bore a different postal address, No. 3499 – 40100, Kisumu, email callebngare@gmail.com and cell phone No.0721209305 as requested by the letter.



34. He also attached witness statements including the police report.
35. The letter inviting the claimant for the disciplinary hearing dated 5th November 2021 was addressed to the claimant through his preferred postal address 3499 – 40100, Kisumu. It was scheduled for 9th December 2021.
36. The hearing did not take place and was rescheduled to 8th February 2021 and the claimant was invited vide letter dated 3rd January 2022 sent through the TSC County Director, Homa Bay County.
37. The claimant attended the meeting and as adverted to elsewhere in this Judgment Joygan Akoth Otieno did not attend.
38. The letter of dismissal dated 18th February 2022 was addressed to the claimant vide postal address 3499 – 40100 Kisumu.
39. Similarly, a Notice of removal from the Register of Teachers dated 18th February 2022 was addressed to the claimant via address 3499 – 40100, Kisumu.
40. The claimant tendered no evidence of having appealed the decision or review as advised by the dismissal letter.
41. The claimant faults the dismissal on the ground that:
 - i. No criminal charges were preferred against him after interdiction.
 - ii. Was interdicted without pay from 14th September 2021.
 - iii. Was not accorded adequate notice or disclosure of evidence prior to the disciplinary hearing.
 - iv. Was not accorded an opportunity to face or cross-examine his accusers.
 - v. The disciplinary process did not conform with the respondent’s Human Resource Manual and/or Code for Regulation for Teachers.
 - vi. Was removed from the Register of Teachers without notice of termination.
42. First, the fact that the claimant as not charged for any offence did not exculpate him from the alleged immoral behaviour and misusing his students to perform house chores in his house.
43. Arrest, charge and prosecution falls under public law and is a state affair conducted by the police and office of the Director of Public Prosecutions. The claimant’s relationship with the respondent was contractual, a private law matter.
44. The police may have decided not to proceed with the matter for any number of reasons. After all, it was not their duty to charge. The decision is made by the Office of the Director of Public Prosecutions (ODPP) and no letter from the ODPP was produced as evidence.
45. Most significantly, the claimant was a Principal of a Secondary School, a person upon whom the employer and the public had entrusted with infants students as they undertook their studies.
46. He was a professional bound by a strict code of ethics which he had to abide by.
47. Relatedly, while the standard of proof in criminal cases is beyond reasonable doubt, which is exceedingly onerous, it is on a balance of probabilities in civil cases.



48. A perusal of OB No. 03/28/2021 reveals that the report made to the police related to a missing school girl aged 20 years who had gone to buy a CD but did not return home, which would appear to suggest that the police were never informed about the alleged sexual intercourse with the Principal as the main reason for the report. It arose as a by the way.
49. In sum, the fact that the police did not pursue the matter further did not exculpate the claimant from the accusations he had to confront.
50. On interdiction without half-salary, the claimant prided himself as a professional teacher with over 34 years of service without blemish and was thus aware of the provisions of the Code of Regulation of Teachers which excluded certain interdictees from half-salary, especially those accused of desertion, chronic absenteeism, jail or custody, misappropriation or mismanagement of public funds fraudulent claims and receipt of funds, use of false certificates and immoral behaviour, which the claimant was accused of under the Code of Regulation for Teachers. The claimant did not qualify for half-pay and did not argue that it was unconstitutional or violated his rights under Article 41 of *the Constitution* of Kenya.
51. As to whether the claimant was accorded adequate notice or disclosure of evidence prior to the disciplinary hearing, documentary evidence revealed that the notice to show cause dated 31st August 2021 was received and responded to.
52. The request for witness statements dated 6th September 2021 made reference to a letter written after it and thus unclear as to when it was written or whether it was indeed served on the TSC County Director.
- 5.3 Equally, evidence showed that after the claimant received the Letter of Interdiction dated 14th September 2021, he by letter 22nd September 2021 sought written evidence against him for purposes of a response.
54. Intriguingly, in his undated response, the claimant did not indicate whether the evidence he had requested for was provided.
55. Notably, for purposes of the investigation at the County level on 31st August 2021 evidence revealed that the claimant was present and participated in the meeting and was issued with a notice to show cause on the day the investigation took place and accorded 7 days to respond.
56. After the hearing slated for 9th December 2021 failed to take off, the disciplinary hearing took place on 8th February 2022.
57. In the court's view, the duration accorded to the claimant to prepare for the disciplinary hearing was sufficient.
58. The foregoing notwithstanding, this turns on whether the claimant's suit was statute barred.
59. Strangely, the claimant did not address this issue in detail.
60. This is a threshold issue as it implicates the court's jurisdiction to hear and determine the suit, which is the foundational norm.
61. It is trite law that jurisdiction is everything as aptly captured by Nyarangi JA in Owners of the Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd [1989] KLRI.



62. Jurisdiction is such as an essential requirement that it must exist as the commencement of the suit to its determination and because of its centrality the issue can be raised at any stage including by the court suo motu as held by Karanja JA in *Lemita Ole Lemein V Attorney General & 2 others* as follows:

“In my view jurisdiction is primordial and must exist from the filing of a case to determination. The issue of jurisdiction need to be raised by the parties to a suit for the court to address its mind to it. It is incumbent upon every judicial and quasi-judicial tribunal or court to satisfy itself that it has jurisdiction to entertain a matter before setting down on hear it. In essence, therefore, a court or tribunal should not wait for a party to move it on the issue of jurisdiction for it to determine the issue.

The court can suo motu determine the issue even without being prompted by a party. Just like you cannot confer jurisdiction by ignoring the issue or side stepping it. It is omnipresent and cannot be wished away. Moreover, it being a point of law, the issue of jurisdiction can also be raised at any stage; in the trial court, first appeal or even on second or third appeal”.

63. See also *Samuel Kamau Macharia & another V Kenya Commercial Bank & 2 others* [2012] eKLR and *E. A. Assurance Co. Ltd V S. M. Thiga t/a Newspaper* [2019] eKLR, *Peter Gichuki King'ara V I.E.B.C & 2 others* [2013] eKLR, *George Co. Gichuru V Senior Private Kioko & another* [2013] eKLR and *Equity Bank Ltd V Bruce Mutie Mutuku t/a Diani Tour Travel* [2016] eKLR.

64. The respondent’s averment was that the claimant’s case is statute barred, which would mean that the court had no jurisdiction to hear and determine it.

65. According to the respondent, the instant suit was time-barred by dint of Section 3(2) of the *Public Authorities Limitations Act* and Section 89 of the *Employment Act*.

66. Section 3 of the *Public Authorities Limitation Act* provides

1. ...
2. No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.

67. Similarly, Section 89 of the *Employment Act* provides:

Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

68. This section is couched in mandatory tone to underline the fact that actions based or arising from a contract of service become time-barred after 3 years.

69. An important issue to consider is when the cause of action accrued as it determines when the three years starteds running.

70. In *George Hiram Ndirangu V Equity Bank Ltd* [2015] eKLR the court held that a cause of action for unfair termination accrued on dismissal.



71. In *Attorney General V Andrew Maina Githinji & another* [2016] eKLR the Court of Appeal held:
- The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October 2010. They had all the facts which had been placed before them in the disciplinary proceedings if they felt aggrieved by the dismissal but they did not. Having found that the cause of action arose on 2nd October 2010, it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was time-barred as at 1st February 2013 and I so hold”.
72. See also *G4S Security Services (K) Ltd V Joseph Kamau & 468 others* [2018] KECA 827 (KLR), *Rift Valley Railways (Kenya) Ltd V Hawkins Wagonza Musonye* [2016] eKLR, *Times Newspaper Ltd V O’ Regan* [1977] I.R.L.R 101 and *Beatrice Kahai Adagala V Postal Corporation of Kenya* [2015] eKLR.
73. These decisions lay it bare that in a case involving termination of employment or dismissal, the cause of action accrues on the date of dismissal or termination of employment, when the employee is notified of the same and time starts running and if no suit is filed within three years the cause of action becomes statute barred.
74. Whereas the claim dated 19th June 2025 is reticent on the date the claimant’s employment was terminated, other than the month, the written witness statement of even date stated that it took place on 8th February 2022.
75. However, both the claim and witness statement state that the claimant was notified of the dismissal vide email sometime in October 2022, which would appear to suggest that the claimant was unaware of the dismissal vide letter dated 18th February 2022 until the alleged email was received in October.
76. The crux of the matter is whether the claimant received the dismissal letter before or in October 2022 or any other time.
7. While the claimant did not provide a copy of the alleged email and the actual date of receipt of the alleged email, the respondent did not adduce evidence to show that the letter of dismissal was indeed posted to the claimant.
78. Be that as it may, from the documents filed by the parties, it is discernible that:
- i. The interdiction letters dated 14th September 2021 and the other dated 21st September 2021, which the claimant admitted having received were served from the office of the TSC County Director, Homa Bay.
 - ii. The letters required the claimant to provide a contact address, email and telephone number, which he did vide his undated response addressed to the CEO Teachers Service Commission Private Bag Nairobi.
 - iii. He gave his postal address as P. O Box 3499 – 40100 Kisumu email address callebngari@gmail.com, cell-phone 0721 209 305.
 - iv. The letter of dismissal was addressed to P. O. Box 3499 – 40100 Kisumu.
79. Strangely, the claimant did not expressly deny having received the letter of dismissal and filed a copy, but was reticent on how and when the letter was received which leads to the inference that he actually received the letter.



80. In the court's considered view, if indeed the claimant had not received the letter of dismissal dated 18th February 2022, he would have endeavoured to search for the alleged email, if there was one, and filed the same as prove that he was unaware of the dismissal to embellish his contention.
81. By filing a copy of the dismissal letter, the claimant was ipso facto admitting that he received it and having failed to demonstrate that he secured it by means other than its being posted to him vide P.O. Box 3499 – 40100 Kisumu, and when, the inescapable inference is that he received it and the alleged email in October 2022 was a prevarication mechanism in anticipation that the respondent would raise the issue of limitation of actions bearing in mind that, it is prima facie clear that the suit was not instituted within three years after the dismissal.
82. While it is true that the respondent had no evidence of having posted the letter or registered it, which evidence it ought to have availed as proof of service, the claimant produced the letter it posted to the address he had provided in his response to the interdiction letter, a fact RWII alluded to on re-examination.
83. Second, and significantly, both letters inviting the claimant for the disciplinary hearing dated 5th November 2021 and 3rd January 2022 were similar in content but for the date of the hearing. Neither the venue nor the timing of the meeting changed.
84. Strikingly, both letters concluded as follows:
- You are advised to contact the Teachers Service Commission if communication of the decision of the case is not communicated to you within 28 days from the date of the hearing”.
85. Being a seasoned employer and having possibly come across cases where employees allege that they did not receive the dismissal letter, the respondent had by this statement assured the claimant that he would not be on tenterhooks for more than 28 days after the hearing and had to take the initiative if no communication was received.
86. Puzzlingly, the claimant's written statement dated 19th June 2022 made no reference to the claimant having made any verifiable or unverifiable attempt to contact the respondent at any time after the hearing on 8th February 2022, to find out the outcome of his case, which reinforces the inference that he received the letter of dismissal.
87. The claimant's allegation that he was notified of the dismissal via an email dated and received on an unknown date in October 2022 and had made no effort to contact the respondent over 8 months after the disciplinary hearing does not, in the court's view sound plausible or creditable.
88. From the evidence on record, it is discernible that the claimant received the letter of dismissal dated 18th February 2022 but for unexplained reasons decided not to appeal for review within 90 days.
89. Finally, it would be injudicious in the court's view, to hold the respondent liable for not having availed evidence of having posted a letter addressed to an address the claimant had provided in writing yet the claimant had a copy of the letter which he produced in court and did not disclose how else he secured it, and failed, refused or neglected to produce a copy of the email allegedly sent to him in October 2022 informing him about the dismissal.
90. In *Rift Valley Railways (Kenya) Ltd V Hawkins Wagunza Musonye* (supra) the Court of Appeal held:
- "For us, it is clear from our reading of Section 90 aforesaid that there are no exceptions to the three year limitation period, save for cases of continuing injury or damage where action



or proceeding must be brought within twelve months after the cessation thereof. This was not a case of continuing injury or damage but one of a single act of termination...”

91. Having found as above, it is clear that the instant suit was filed on 19th June 2025 and even assuming that the cause of action accrued 28 days after the disciplinary hearing that would have accorded the claimant up to 9th March 2025 but because the case was filed on 19th June 2025, about 3 months after the three years limitation period had lapsed, it was nonetheless statute barred and the court has no jurisdiction to hear and determine it and hereby downs its tools.
92. The claim dated 19th June 2025 and filed on even date is struck out with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 3RD DAY OF DECEMBER 2025.

DR. JACOB GAKERI

JUDGE

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 has 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.

DR. JACOB GAKERI

JUDGE

