Kenya Union of Domestic, Hospital, Educational Institutions and Allied Workers Limited v Board of Management Murang'a High School (Civil Appeal 180 of 2020) [2026] KECA 72 (KLR) (30 January 2026) (Judgment)

Neutral citation: [2026] KECA 72 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NYERI

CIVIL APPEAL 180 OF 2020

W KARANJA, S OLE KANTAI & WK KORIR, JJA

JANUARY 30, 2026

BETWEEN

KENYA UNION OF DOMESTIC, HOSPITAL, EDUCATIONAL INSTITUTIONS AND ALLIED WORKERS LIMITED ..... APPELLANT

AND

BOARD OF MANAGEMENT MURANG'A HIGH SCHOOL ..... RESPONDENT

(Being an appeal from the Judgment of the Employment and Labour Relations Court at Nyeri (Nzioki Wa Makau, J.) dated on 24{{^th}} April, 2020 in E.L.R.C. Case No. 32 of 2016.)

JUDGMENT

1. This is a first appeal from the decision of the Employment and Labour Relations Court (hereinafter "ELRC") at Nyeri, which dismissed the appellant's claim. Our duty as a first appellate court involves the consideration of issues of both law and fact. This mandate is provided by Rule 31 (1)(a) of the Court of Appeal Rules which provides:

> " 31.
>
> (1) On an appeal from a decision of a superior court acting in the exercise of its original jurisdiction, the Court shall have power-
>
> (a) to re-appraise the evidence and to draw inferences of fact ..."

2. We shall set out the facts hereunder as we consider this appeal.

3. The appellant Union filed the claim at the ELRC on behalf of 20 claimants who were working for the respondent school in various non-teaching roles. The claimants sought orders for the release of

their January 2016 salaries which they claimed had not been paid, an order to restrain the respondent (employer) from terminating or victimizing them and for an order that the respondent must remit their Union dues to the appellant.

3. The claimants asserted at the trial court that the respondent was undertaking unfair labour practices against non-teaching staff at the school, especially with regard to their terms of wages and conditions of employment. The respondent Board of Management (B.O.M.) was accused of failing to pay wages when due, underpaying the workers and failing to deduct Union dues despite having a Memorandum of Understanding (MOU) with the Union. The Union stated that in June 2015, they had 13 members who were employees of the respondent but they continued to recruit more members thereafter.

4. In January 2016, the appellant Union alleged that the shop steward, who was a librarian by profession, was transferred to the school farm, an action which the Union read mischief. The same month, the claimants reportedly never had their salaries sent to the bank as usual but they said were paid on 4th January, 2016, in the school parking lot, by the school bursar and three strangers. All the claimants were then reportedly asked to reapply for their jobs.

5. The appellant stated that since the claimants joined the Union, the shop stewards had been receiving threats and intimidation while they had never had any issues with their employer before joining the Union. They also faulted their employer for failing to give them appointment letters despite working for several years.

6. The respondent opposed the claim at the ELRC and stated that the aggrieved claimants were general cleaners, security guards and a carpenter, some of whom were in present employment at the school. The respondent told the court that it was a stranger to the averments regarding meetings with Union officials or payment of salaries in a parking lot. It was also the respondent's case that previously the school did not have resources to hire trained security guards but since they became elevated to a national school, they had outsourced security services. The respondent told the court that they attempted to formalize the employment of non-teaching staff with the strict policies of the Ministry of Education guidelines but the appellant Union advised its members to resist the changes, following which the workers failed to resume duty on 17th February 2016, against a court order.

7. The respondent further stated that the Union failed in its claim to specify which claimants were threatened and to give the particulars of the said threats, and that none of the alleged threatened claimants had sworn an affidavit to that effect. The respondent gave instances of its personal good will where two shop stewards had various allegations against them dismissed and resumed duty and only one shop steward was dismissed, which he did not contest in court and was not one of the claimants in the suit. They asked the court to dismiss the claim with costs.

8. The respondent also filed a counterclaim for restitution of funds which it had paid certain claimants in settlement of their claim but the appellant Union reneged on the understanding and refused to mark the matter as settled. It sought a declaration that the settlement amounts were obtained by way of deceit and the same should be returned.

9. The Judge considered the issues before the court and in a judgment delivered on 24th April, 2020, the court noted that the appellant's members had a court order in their favour but opted not to resume work, based on the advise of the Union, and they therefore negotiated themselves out of work. With regard to the claim for Union dues, the Court found mischief in the manner in which the appellant filed numerous forms filled with errors in member numbers and signatures and did not state what Union arrears it was claiming. The claim was dismissed.

10. With regard to the counterclaim, the court stated that the monies claimed were paid under the strength of a court order and there was no merit in seeking a refund of the same.

11. The appellant was aggrieved by the judgment of the ELRC and filed the present appeal. The memorandum of appeal is dated 20th November, 2020 seeking to have the judgment of the ELRC set aside and the claim allowed. The appellant invites this Court to fully assess damages due to the claimants. The appellant faults the ELRC for finding that the claimants did not show their entitlement to the positions and also erred in failing to calculate damages. It faults the trial court for failing to make a finding on the respondent's counterclaim, failing to resolve all issues and delivering a judgment against the weight of evidence. The court is further alleged to have erred in finding that the claimants negotiated themselves out of work and in the finding that there was no evidence that the claimants were being underpaid.

12. Both parties filed written submissions which we have duly considered.

13. The appellant's submissions are dated 13th January, 2025. They assert that the claimants were employees with valid verbal appointments thus subject to protection by the law and that they were irregularly declared redundant due to outsourcing of security functions at the school. They state that the court ought to have assessed damages despite dismissing the claim and that the court did not give a conclusive judgment on the respondent's counterclaim. They also submit that the court did not give due regard to the appellant's witness statements, exhibits and pleadings and did not resolve the issues raised for determination.

14. The respondent's submissions are dated 1st July, 2025 where it avers that the appellant never proved any discrimination, underpayment or unfair labour practices as alleged. It asserts that the court gave due regard to all issues and rendered itself fully in the judgment. It also states that the allegations of victimization of Union members were unfounded as it undertook fair disciplinary processes and there are Union members in employment who are not facing negative repercussions. The appellant was accused of inciting some workers not to return to work despite having a court order in its favour.

16. This appeal was heard on 14th July, 2025 on the Court's virtual platform. Learned counsel Mr. Macharia appeared for the appellant while learned counsel Mr. Rugo appeared for the respondent. The counsel chose to rely on their written submissions entirely without finding it necessary to highlight any issue.

17. We have considered at length the record of appeal, the submissions by the parties and the relevant law.

18. Section 41 of the *Employment Act* provides that an employee ought to be given fair hearing before termination on grounds of misconduct. The Act states:

> " 41. Notification and hearing before termination on grounds of misconduct
>
> 1. Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
>
> 2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or

> summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make."

19. It is not disputed that friction between the parties herein began with the entry of the Union into the workplace of the respondent. The argument given by the appellant is that the respondent victimized Union members while the counter-argument is that the Union incited the workers to frustrate their employer. We are of the considered view that the latter position is more likely in this case.

20. We say so while guided by the manner in which the respondent went to great lengths to accommodate and incorporate the non-teaching staff at the school despite administrative changes. This can clearly be seen because several non-teaching staff answered the call to continue working and did not suffer any loss of privilege and it was not said that they ceased being Union members. In doing so, the respondent complied with the court order of 17th February, 2016 and continued to pay those workers who returned to work.

21. The other aggrieved workers did not return to work yet continued to claim dues until 2018 yet they were not working. Further, it was reported that even when the school brought in the new security company, there was chaos and violence as certain non-teaching staff attempted to block the security team from serving the school. There was also a claimant who was accused of assisting students to cheat in the exams. In the record of appeal, it is confirmed and uncontested that meetings were held involving staff, the respondent and Union representatives in a bid to keep the peace, maintain order and settle the issues herein. This action by the respondent satisfies the requirements of section 41 of the *Employment Act* and we are convinced that the claimants affected and their Union were engaged and given an opportunity to be heard in the course of events. This in itself proves that the claimants chose not to co-operate or negotiate with the school management, and therefore they cannot turn around and blame the school for being unable to work with them. The claimants were heard in the presence of Union representatives and there was no breach of the requirements of section 41 of the said Act at all.

22. The claimants additionally make claims for compensation up to the year 2018 but it is worth noting that those who opted to stay away from work stayed away from February 2016 and it is uncertain why they should be paid in those circumstances where they absented themselves from work without permission and where there was a court order ordering status quo in the matter. The claims for compensation for salary when one is not working is untenable and we decline to award the same. We are in agreement with the learned Judge that the appellant's members by their own actions frustrated their employment unlike their colleagues who opted to adapt to the dynamics of the evolving workforce and resumed duties.

23. With regard to the prayer for deduction and non-remittance of Union dues, we are of the view that no evidence was brought forward to show which Union dues were deducted and never forwarded. Similarly, regarding the issue of underpayment, the Union did not plead this claim with specificity. Furthermore, once again, the claimants seek underpayment for periods when they were not working and this would amount to unjust enrichment.

24. We also note that the claimants were said to have been paid remuneration while the matter was in court, something which they have not denied. They did not specify to the trial court what is the extent of their current claim separate from what they had already been paid. We are not convinced that the appellant made out a case that would have succeeded. Subsequently, we hereby find that this appeal is unmerited.

25. The respondent did not file a cross-appeal on the issue of dismissal of their counterclaim and we shall not speak much of it save to confirm that it paid the counterclaimed amounts after an agreement during the pendency of the suit at ELRC and it did so with the belief that they had paid the claimant's rightly calculated dues. The respondent cannot be heard to renege on this goodwill and the court was correct to dismiss the counterclaim in the circumstances.

26. This appeal has no merit and is dismissed with costs to the respondent.

DATED AND DELIVERED IN NYERI THIS 30TH DAY OF JANUARY, 2026.

W. KARANJA

JUDGE OF APPEAL

.....

S. ole KANTAI

JUDGE OF APPEAL

.....

W. KORIR

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR