



**Kenya National Private Security Workers Union v Board of Management AIC Kosirai Girls High School (Cause E028 of 2024) [2026] KEELRC 341 (KLR) (6 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 341 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E028 OF 2024  
MA ONYANGO, J  
FEBRUARY 6, 2026**

**BETWEEN  
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION ..... CLAIMANT  
AND  
BOARD OF MANAGEMENT AIC KOSIRAI GIRLS HIGH  
SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the [Labour Relations Act](#) to represent employees in the private security sector.
2. The Respondent is described in the Memorandum of Claim as an A.I.C Church sponsored Public High School in Mosoriot, within Nandi County.
3. The Claimant filed the Memorandum of Claim dated 13<sup>th</sup> June 2024 herein on behalf of four Grievants, namely, James Sugu, Nicholas Kipkemboi Bitok, Benjamin Malakwen Kimeli and Edwin Kiprono Kemboi, all employees of the Respondent engaged on different dates as security guards.
4. The Claimant avers that on 12<sup>th</sup> November 2023, the Grievants were issued with suspension letters following an incident on 4<sup>th</sup> November 2023, in which an intruder gained unlawful entry into the students' dormitory and broke into their boxes. The Grievants aver that since being issued with the suspension letters, the Respondent has not communicated on the fate of the employment of the Grievants.
5. The Claimant sought the following remedies in the Memorandum of Claim: -
  - i. Declare the suspension of Messr. James Sugu, Nicholas Kipkemboi Bitok, Benjamin Malakwen Kimeli and Edwin Kiprono Kemboi as unfair and unlawful.



- ii. Order the Respondent to reinstate the Grievants to their previous employment without loss of any benefits
  - iii. Order the Respondents to pay accrued salaries while on suspension
  - iv. Grant any other relief deemed fit and just to meet the ends of justice
  - v. Costs of the claim be awarded to the Claimant
6. The Respondent filed a Reply to the Statement of Claim dated 11<sup>th</sup> October 2024 through the Office of the Attorney General and contended that it is entitled to suspend employees to facilitate investigations concerning matters affecting the relationship between the parties.
  7. The Respondent stated that declaring the suspension unfair or illegal would be unjust, as the Grievants are facing a criminal case pending determination.
  8. It is the Respondent's assertion that being a public institution, it adheres to the public service discipline manual, which provides that employees facing criminal charges cannot continue serving and should be suspended or interdicted.
  9. In response to the Claimant's prayer for reinstatement, the Respondent contended that the prayer is untenable given the pending criminal charges against the Grievants in Kapsabet CR. E655/2024.
  10. With respect to the Claimant's claim for accrued salaries, the Respondent maintained that it was justified in withholding the Grievants' remuneration, citing the seriousness of the allegations that led to their suspension.
  11. On this basis, the Respondent averred that the Grievants are not entitled to any of the reliefs sought and urged the court to dismiss the suit with costs.

### **Evidence**

12. The suit was heard on 3<sup>rd</sup> December 2024 when the Grievants testified. The Respondent's witness, Ruth Musyoki, testified on 9<sup>th</sup> June 2025 as RW1.
13. James Kiplimo Sugu testified as CW1 and stated that he was employed by the Respondent on 5th July 2013, and his last salary was Kshs. 7,650 per month. He averred that on 12<sup>th</sup> November 2023, a thief broke into the dormitory and forced open a padlock, though nothing was stolen. He told the Court that he was taken to the police station to record a statement but was not charged at that time. He further stated that he was later arrested and arraigned in court in June 2024. CW1 testified that he was suspended from employment and was not paid half salary, as the Respondent indicated that payment would await the conclusion of the criminal case. He sought payment of the withheld salary.
14. During cross-examination by the State Counsel Ms. Rop, CW1 stated that he had not been dismissed from employment.
15. Nicholas Kipkemboi Bitok testified as CW2 and stated that he was employed by the Respondent in October 2010 as a security guard, and his last salary was Kshs. 8,000 per month. He told the Court that he was on duty during the night of the alleged incident and denied that there was a theft incident. CW2 sought payment of his withheld salary.
16. During cross-examination, CW2 stated that no intrusion occurred at the school, that he and the other Grievants recorded statements on 12<sup>th</sup> November 2023 and were suspended on the same day. He consequently sought payment of half salary pending the determination of the criminal case.



17. CW3 was Benjamin Kimeli Malakwen who stated that he was employed in February 2014 and that his last salary was Kshs. 7,500. He testified that he was suspended on 12<sup>th</sup> November 2023 without being accorded a hearing. He therefore sought payment of the withheld salaries.
18. Edwin Kiprono Kemboi testified as CW4 and stated that he was employed by the Respondent in 2013, and his last salary was Kshs. 10,000 per month. He testified that he was on duty during the night of the alleged incident. He denied that any intrusion occurred. He further stated that he, together with CW1, CW2 and CW3, were charged after reporting their prolonged suspension to the Claimant.
19. During cross-examination, CW4 confirmed that the suspension letters stated the reasons for suspension but did not indicate the duration.
20. For the Respondent, its Principal and Secretary Ruth Musyoki, testified as RW1 and adopted her witness statement dated 11<sup>th</sup> October 2024 as her evidence in chief. The Respondent's witness told the court that the disciplinary process against the Grievants had not been concluded and that they remained on suspension pending disciplinary action. She further stated that the Board had not decided whether to dismiss or reinstate the Grievants.
21. Under cross-examination by Mr. Odima for the Claimant, RW1 stated that the Respondent had not convened to determine whether the Grievants should be dismissed, reinstated, or paid partial salary. She conceded that the Grievants had not been paid any salary since their suspension.
22. After the close of the Respondent's case, the court directed parties to file written submissions. The Claimant's submissions are dated 19<sup>th</sup> June 2025. The Respondent did not file submissions.

### **Analysis and Determination**

23. I have considered the pleadings, the evidence adduced in court and the submissions on record. In my view, the issues for determination are: -
  - i. Whether the suspension of the Grievants was fair and lawful
  - ii. Whether they are entitled to payment of accrued salaries during the period of suspension
  - iii. Whether the Grievants are entitled to reinstatement

### **Whether the suspension of the Grievants was fair and lawful**

24. It is common ground that the Grievants were employees of the Respondent and were suspended from employment on 12<sup>th</sup> November 2023. It is further common ground that they had not been paid any salary from the date of suspension.
25. The Respondent contends that the suspension was justified under the Public Service Discipline Manual, which allows interdiction of employees facing criminal charges. The Respondent further asserts that the suspension was necessary to facilitate disciplinary and investigative processes arising from an alleged intrusion into the students' dormitory.
26. The Claimant on the other hand states that the suspension of the Grievants was indefinite, without pay and that the Grievants were not accorded a hearing before suspension. CW1, CW2, CW3 and CW4 confirmed that although the reasons for their suspension was communicated in the letters, the duration was not specified, and no subsequent communication on their employment status was provided. The Respondent's witness, RW1, in her testimony informed the court that the Board was yet to convene to determine whether the Grievants should be dismissed, reinstated, or paid.



27. It is trite that when an employer has considered suspending an employee, the employer is obligated to inform the employee of the reasons for suspension, ensure that the suspension is temporary pending investigation or disciplinary action, act expeditiously to conclude the process, and avoid undue deprivation of salary unless justified by law or agreement. While the Public Service Discipline Manual permits interdiction of employees facing criminal charges, the manual does not authorize indefinite suspension without pay. Employees are entitled to procedural fairness and timely resolution of the matter.
28. Further, the Grievants are not employees of the Public Service Commission and no evidence was adduced to the effect that they were employed as such or on terms applicable to employees under the Public Service Commission. Indeed, the Respondent which is a School Board of Management, is the employer of the Grievants, and not the Public Service Commission. Further, the Respondent was not clear whether the Grievants were on interdiction or suspension, which under the Public Service Regulations are applied in different circumstances and have different consequences on the pay of the employee.
29. This court in the case of *Roselyne Atieno Ogolla v Kibos Sugar Industries & Allied; Industries Limited* [2017] KEELRC 861 (KLR) observed as follows: -
- “Suspension is not provided for in the *Employment Act* and can therefore only be resorted to if provided for in the Claimant's terms of employment which were not referred to or submitted to the court. Secondly suspension cannot be verbal unless again specifically provided for in terms and conditions of employment. Thirdly, the letter of suspension states the suspension was indefinite. An indefinite suspension is unfair unless there is valid reason that has been communicated to the employee explaining the same. An employee must not be subjected to uncertainties with regard to their employment status or discipline as this would subject the employee to undue suffering that would constitute unfair labour practice which is unconstitutional. Section 12 of the *Employment Act* requires employers to specify disciplinary rules applicable to an employee in a document accessible to the employee which must set out the disciplinary process.”
30. See also the decision in *Evans Osiemo Marita v Radar Limited* 2018KEELRC81(KLR) on the position when an employer decides to await the outcome of criminal proceedings against an employee.
31. In the present case, a perusal of the suspension letters issued to the Grievants shows that the Respondent did not provide them with a clear or definite duration for their suspension. The letters outlined the reasons for suspension but did not indicate when or how the suspension would end, leaving the Grievants in a state of uncertainty. Furthermore, the Respondent did not convene the disciplinary board to determine the outcome of the suspension or provide the Grievants with an opportunity to be heard, despite this being a necessary requirement for procedural fairness. The evidence also indicates that the Grievants were not paid their salaries during the entire period of suspension, notwithstanding the absence of any criminal conviction or formal disciplinary finding against them.
32. While the court appreciates that the Respondent was entitled to take disciplinary action against the Grievants and to ask them to step aside pending investigations, the indefinite nature of their suspension, coupled with the failure to act expeditiously in concluding disciplinary proceedings, rendered the indefinite suspension unfair. A criminal trial does not necessarily determine whether or not an employee ought to be dismissed from service. An employer should carry out independent investigations and use the same for disciplinary action against an employee. An employer should not



await the outcome of criminal charges as it has no control over the same, unless the employee is not prejudiced by the waiting.

33. In the instant case the Grievants were suspended by letters dated 12<sup>th</sup> November, 2023. Their claim is dated 13<sup>th</sup> June, 2024. The Grievants were charged in the criminal case on 19<sup>th</sup> June, 2024 after they filed the instant suit. In the Respondent's BoM meeting held on 15<sup>th</sup> May, 2024 the Respondent's Board resolved that the suspension of the Grievants be extended till investigations are complete.
34. Indefinite suspension is not provided for in the Public Service Commission regulations. The Grievants were subjected to undue uncertainty, financial hardship and a violation of their labour rights.
35. In light of the foregoing, the court finds that the suspension of Messrs. James Sugu, Nicholas Kipkemboi Bitok, Benjamin Malakwen Kimeli, and Edwin Kiprono Kemboi, which commenced on 12<sup>th</sup> November 2023 and continued without resolution or payment of salaries, is both unfair and unlawful.

#### **Whether the Grievants are entitled to payment of accrued salaries during the period of suspension.**

36. Suspension is not provided for in the *Employment Act* and according to section 12 of the Act, an employer is supposed to come up with its own disciplinary procedure. As already stated, the Grievants are not public servants but employees of BoM. No disciplinary rules were produced by the Respondent which provide that the disciplinary process applicable to the Grievants were those in the Public Service Commission regulations.
37. An employee who is facing disciplinary process cannot be denied his pay indefinitely when no action has been taken to resolve their case and no determination has been made of their guilt. The evidence shows that the Grievants were not paid their salaries from the date of suspension on 12<sup>th</sup> November 2023 until the hearing of this matter, despite remaining in employment and having no disciplinary finding against them. The Respondent has not justified the indefinite withholding of their salaries.

#### **Whether the Grievants are entitled to reinstatement**

38. The Claimant sought an order that the Grievants be reinstated to their positions without loss of benefits. In my view, an order for reinstatement cannot issue as the Grievants are still employees of the Respondent as confirmed by RW1, who stated that the Respondent was yet to convene the disciplinary board to determine whether the Grievants should be dismissed, reinstated, or paid their salaries.
39. In this context, what the Grievants are entitled to is the restoration of their rights as employees, including the payment of salaries withheld during the period of suspension which issue has been addressed in the determination of the second issue.
40. In the result, judgment is entered for the Claimant against the Respondent as follows: -
  - i. A declaration is hereby issued that the suspension of Messrs. James Sugu, Nicholas Kipkemboi Bitok, Benjamin Malakwen Kimeli and Edwin Kiprono Kemboi was unfair, unlawful for being indefinite and not based on valid disciplinary process.
  - ii. The Respondent is ordered to pay the Grievants all accrued salaries withheld during the period of suspension from 12<sup>th</sup> November 2023 to the date of this judgment and to continue paying the same until a final determination is reached on their disciplinary cases.
  - iii. The Claimant is awarded Kshs.100,000 as costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2026**



**MAUREEN ONYANGO**  
**JUDGE**

