



**Kudheiha Workers v Mombasa Educational and Development Services  
t/a Kimbilio Academy (Employment and Labour Relations Cause  
E022 of 2025) [2026] KEELRC 330 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 330 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E022 OF 2025  
K OCHARO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**KUDHEIHA WORKERS ..... CLAIMANT**

**AND**

**MOMBASA EDUCATIONAL AND DEVELOPMENT SERVICES T/A KIMBILIO  
ACADEMY ..... RESPONDENT**

**JUDGMENT**

**Background**

1. By the Statement of Claim dated 12th March, 2025, the Claimant seeks judgment against the Respondent for;

- I. A declaration that the respondent unfairly, wrongfully and maliciously terminated the services of the grievant.
- II. Payment of terminal dues to the grievant, including leave days for 3 years, 20 public holidays worked and not compensated as per the law, and underpayment of wages from the date of employment to the date of termination.

Tabulated as:

One month's salary in lieu of notice Ksh.10,000 Annual Leave for 3 years

10,000 x 3=Ksh.30,000.00

Salary from February 2024 to 8th March 2024 during suspension 48 days

333 daily rate x 48days=Ksh.15,984.00

20 public holidays worked during the term of employment



$20 \times 333 \times 2 = \text{Ksh.}13,320.00$

Underpayment of wages  
January 2021 to April 2022 (minimum wage order for 2018)

$\text{Ksh.}13,572 - \text{Ksh.}10,000 = 3,572 \times 16 \text{ months} = \text{Ksh.}57,152.00$   
May 2022 to Feb 2024

$\text{Ksh.}15,201 - \text{Ksh.}10,000.00 = \text{Ksh.}5,201.00$

$\text{Ksh.}5,201 \times 22 \text{ months} = \text{Ksh.}114,422.00$

Maximum compensation for unfair termination  $10,000 \times 12 \text{ months} = \text{Ksh.}120,000.00$

III. Costs of this suit be borne by the respondent.

IV. Any other or further relief that this Honourable Court may deem fit and just to grant.

2. The Respondent resisted the claim through a Response to Statement of Claim dated 29<sup>th</sup> April, 2025. The Respondent admits employing the Claimant and states that her employment was never unfairly or constructively terminated. The reliefs sought are unmerited.

### **Claimant's case**

3. The Claimant's case is that the grievant, Josephine Chepkurui Sigei, was orally employed by the Respondent, Mombasa Educational and Development Services, on 8th January 2021 as a security guard earning a monthly salary of KShs. 10,000. During the course of her employment, she performed dual roles as a security guard and caretaker, but was remunerated for only one role.
4. She served the Respondent continuously until February 2024, when her employment was unfairly terminated by the Respondent.
5. The Claimant asserts that during her employment, the Respondent did not meet statutory labour requirements. Specifically, she was underpaid against minimum wage regulations, worked overtime and public holidays without receiving pay, and was only permitted to take unpaid leave despite having accrued leave days that were neither utilised nor compensated.
6. A dispute arose on 14th February 2024 when the grievant was issued with a warning letter and suspended from duty for four weeks without pay, effective 15th February 2024, for alleged mistakes that were not explained to her. She was not afforded the opportunity to respond to any allegations prior to the suspension.
7. When she returned to work on March 19, 2024, she faced a panel of senior management in what was called a disciplinary hearing, even though she had received no prior notice, details of the alleged misconduct, or a chance to prepare or be accompanied. During the meeting, she was not permitted to speak.
8. Following the meeting, the grievant was instructed to return home and await further communication, which was never received. Her salary remained unpaid. The Claimant asserts that this conduct constitutes constructive dismissal and an unfair termination without just cause or due process.
9. The matter was subsequently reported to the union, which attempted an amicable resolution and later referred the dispute to the Ministry of Labour for conciliation. However, the Respondent failed to cooperate, resulting in a certificate of unresolved dispute. The Claimant therefore asserts that the termination was unjust and unlawful, constituting a breach of sections 41, 45, and 46 of the [Employment Act](#). Consequently, the grievant is entitled to the reliefs sought.



10. Cross-examined by Counsel for the Respondent, the Grievant testified that she had been informed that, in her role as a security officer, she would not be entitled to compensation for holidays worked.
11. She further testified that all her children received their education at Kimbilio Academy, where she was serving at the time of separation. She paid their school fees and was issued receipts for those payments. One of them dropped out of school because the sponsor of goodwill, who was paying his school fees, withdrew the sponsorship. There was no agreement between her and the Respondent that part of her salary would be withheld/deducted to pay school fees for her children.
12. She admitted that after the suspension period, she appeared before the Respondent's Directors. She explained to them what had happened. Further, during the meeting, she spoke in her mother tongue, Kalenjin, because the Head Teacher and his Deputy were Kalenjin.
13. She further testified that the suspension letter had details of the accusations that the Respondent had levelled against her.
14. In her evidence in re-examination, she stated that the suspension letter equally indicated that upon her return after the suspension period, there were to be further deliberations.

### **Respondent's case**

15. The Respondent's case is that, at all material times, the Grievant was employed as a security guard under an oral contract at a mutually agreed gross monthly salary of KShs. 10,000. However, her employment was not unfairly or constructively terminated, as she asserts.
16. The Respondent maintains that the Grievant was only engaged as a security guard and not in any dual role, and that her remuneration was agreed upon by the parties. Further, at all material times, the Grievant was on paid annual leave and was duly compensated in accordance with the law. No overtime or Public holidays were worked and were not compensated.
17. On 14th February 2024, the Grievant was lawfully issued with a suspension letter, effective from 15th February 2024 to 18th March 2024, in line with the Respondent's human resource policy, following allegations of gross misconduct. The suspension was intended to allow investigations into the allegations against her and to give her sufficient time to prepare for a disciplinary hearing. It asserts that the Grievant was informed of the reasons for her suspension both verbally and in writing. The allegation that the Grievant was not paid during the suspension period is untrue.
18. It is the Respondent's case that the meeting held after the suspension period was not a final disciplinary hearing but an initial sitting to assess the seriousness of the allegations and pave the way for a substantive disciplinary hearing, if need be.
19. The Respondent also asserts that the Grievant was provided sufficient time to prepare and an opportunity to present her case, contrary to her claims. It further argues that no decision had been made when the Grievant was asked to wait for further communication, as the disciplinary panel was still reviewing the evidence and planned to share its decision within seven days.
20. Before its internal disciplinary process could be concluded, the union[the Claimant] and the Labour Office issued summons for dispute resolution. In their view, the action was premature, since no decision had been communicated to the grievant. It did not refuse to engage with the union; however, it raised concerns that the summons was issued on extremely short notice, which called into question the fairness and impartiality of the initiated conciliation process.



21. The Respondent also states that the Grievant failed to attend a rescheduled disciplinary meeting, instead walking away from the process.
22. Furthermore, the Respondent contends that the Grievant's employment was never terminated and that accusations concerning unpaid leave are baseless, as no salary deductions were applied during her leave periods. It also clarifies that, beyond her salary, the Grievant received complimentary education for her five children through the school's scholarship program as part of her remuneration.
23. Cross-examined, the Respondent's witness testified that the Grievant's contract of employment was orally made. Further, the arrangement between her and the Respondent concerning her children's school fees was orally entered into, too. Were she not having children in the Respondent's school, her salary would be more than KShs. 10,000. The Respondent, as her employer, required authorisation to deduct her salary for the payment of fees.
24. The suspension was investigatory.

### **Claimant's submissions**

25. The Claimant submits that every employer is entitled to receive remuneration in accordance with the terms of their employment contract, and where minimum Wage Orders apply, not less than the minimum wages provided. Moreover, where an employer contends that the employee's remuneration was made through payment in kind, such an arrangement must be demonstrated to have been in strict conformity with the requirements of the law. The Respondent did not prove it.
26. It is contended that the Respondent failed to prove that the grievant consented to payment in kind, that such arrangement was lawful or customary, or that statutory valuation limits were observed. Consequently, the Claimant maintains that the allegation of underpayment stands uncontroverted.
27. Regarding unfair termination, the Claimant argues that the Grievant was condemned without a hearing, as the suspension letter allegedly predetermined her guilt before any disciplinary process, contrary to section 41 of the *Employment Act*. It is submitted that the Grievant was not properly informed of the allegations, denied an opportunity to respond, and not allowed representation, rendering the process procedurally unfair. Reliance is placed on *Samsung Electronics East Africa Ltd v KM* [2017] eKLR to underscore the centrality of the right to be heard.
28. The Claimant further submits that the one-month suspension without pay constituted an unfair labour practice, asserting that suspension without pay is unlawful and that an employee remains entitled to wages while in employment. Reliance is made on *Njuguna v Sybrin Kenya* (2024) eKLR to support this position.
29. It is also argued that the Respondent unilaterally varied the terms of employment by indicating that the grievant would resume work under new job functions and conditions without consultation or consent, contrary to section 10(5) of the *Employment Act*. The Claimant contends that this amounted to repudiation of the employment contract and constructive dismissal. To buttress this submission, reliance has been placed on *Board of Governors v Khaemba* [2016] eKLR and *Osebe v Nyangena Hospital* [2025] eKLR.
30. The Claimant submits that allegations of gross misconduct were never proven, noting that no investigations or evidence were presented to justify the suspension or intended disciplinary action, contrary to section 43 of the *Employment Act*. Reliance is placed on *Macharia v 680 Operations Ltd* (2022) and *Owuor v Sarova Hotels* (2023) for the principle that, in a dispute regarding the termination of an employee's employment, both a valid reason and fair procedure must be established.



31. On remedies, the Claimant urges the Court to declare that the grievant was unfairly and constructively dismissed, award compensation including salary for the suspension period, relief for the unilateral variation of contract terms, and compensation equivalent to twelve months' salary, together with the costs of the suit, on the basis of the Respondent's unlawful and procedurally flawed actions.

### **Respondent's submissions**

32. The Respondent identifies two issues for determination, namely whether the Claimant's employment was terminated, and whether the reliefs sought are merited.
33. On termination, the Respondent submits that the Grievant's employment was never terminated. They didn't make any final determination to terminate her employment. and that no final disciplinary decision had been made. They argue that the Claimant prematurely interfered with an ongoing internal disciplinary process by escalating the matter to the Labour Office and court before the process had run its course. The Claimant did not discharge the legal burden, demonstrating prima facie that a termination had occurred. Their case should fail on account. Reliance is placed on *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] KEELRC 323 (KLR).
34. The Respondent further submits that courts should not interfere with internal disciplinary processes unless there are exceptional circumstances involving illegality or grave injustice. It relies on *Onsongo & 2 Others v Naivasha Water Sewerage & Sanitation Company Limited* (Petition E020 of 2023) [2024] KEELRC 76 (KLR), *Fredrick Saundu Amololo v Principal Namanga Mixed Day Secondary School & 2 Others* [2014] eKLR, and *Kizito M. Lubano v KEMRI Board of Management & Others* [2015] KEELRC 227 (KLR) to support this position. According to the Respondent, no such exceptional circumstances were demonstrated.
35. The Respondent asserts that the suspension imposed on the grievant was administrative and lawful, designed to facilitate investigations into allegations of gross misconduct and to provide her with sufficient time to prepare for a disciplinary hearing.
36. The Respondent contends that the grievant frustrated the disciplinary process by declining to cooperate during the hearing, responding in a language not understood by most panel members, remaining silent when questioned, and ultimately walking out despite being granted a further opportunity to be heard.
37. Regarding remedies, the Respondent states that because no termination took place, the Claimant is not eligible for a declaration of unfair termination, notice pay, compensation, or salary during the suspension. It contends that the Grievant did not work while suspended and, consequently, is not entitled to wages for that time. Additionally, evidence was presented indicating that the Grievant took paid annual leave.
38. The Respondent invokes section 107 of the *Evidence Act* to contend that the Claimant has not sufficiently demonstrated its allegations. Furthermore, the Respondent asserts that courts should refrain from revising agreements between parties, referencing the case of *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR.

### **Analysis and determination**

39. I have carefully considered the Parties' pleadings and evidence in this matter, and their Counsel's respective submissions, and the following issues emerge for determination,
- I. Whether the Grievant's employment was terminated by the Respondent.



- II. If the answer to [I] is in the affirmative, was the termination unfair?
- III. Is the Grievant entitled to the reliefs sought?

**Whether the Grievant's employment was terminated.**

40. Section 47(5) of the Act provides that, in complaints of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.
41. The Court of Appeal in *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] KECA 225 (KLR), held that,

“So that, the appellant in this case had the burden to prove, not only that his services were terminated, but also that the termination was unfair or wrongful. Only when this foundation has been laid will the employer be called upon under section 43 (1): “to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.”
42. In *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] KEERC 323[KLR], the Court aptly put it;

“The interpretation given to the section by courts is that all the employee needs to do in order to discharge the burden of proof on him/her is to place before the court prima facie evidence suggesting that a termination has occurred and that the said termination lacks a substantive justification and or is procedurally flawed.”
43. Undoubtedly, where the employee [in the context of this case, read the Union] fails discharge the legal burden under Section 47[5], his /her case shall fail at that moment of failure. In fact, the Court would not proceed any further to consider whether the termination was procedurally fair and substantively justified.
44. In the instant matter, it is clear to me that, although the Claimant pleaded that the Grievant's employment was terminated by the Respondent, the Respondent at no point reached a decision to terminate the Claimant's employment or communicated that the Grievant's employment had been terminated. The Grievant testified in court that after the deliberations at the meeting on 19th March 2024, she was instructed to go home and wait for a communication regarding the outcome.
45. It is further clear from the minutes of the meeting that the panel eventually decided to give the Grievant a chance; in essence, the decision reached wasn't to terminate his employment. The minutes as a whole, or that item containing the decision, were not challenged. I have no reason to doubt the minutes or the Respondent's assertion that they reflect the fact that the Grievant's employment was not terminated.
46. In the circumstances of this matter, I have no hesitation in concluding that the Claimant acted in impatience and haste, rushing to complain and lodge a dispute, while the Respondent hadn't made any decision regarding the termination of the Grievant's employment.
47. In their quest to represent their members in disciplinary proceedings or generally, they should be ever cautious and strategic, avoiding actions that unnecessarily imperil their members' interests, whether individually or corporately.



48. The Claimant asserted that the Grievant was constructively dismissed. In my view, this claim was not sufficiently pleaded or proved. Given the short period of suspension and the events that occurred after suspension, which I hold were absent of malice or bad faith, I cannot hold that there was anything in it that would constitute a breach of a fundamental term of the contract, and thus reflect that the Respondents evinced an intention to no longer be bound by the terms of the contract.
49. In conclusion, I find that the Grievant was not dismissed from her employment as alleged.

**Is the Grievant entitled to the reliefs claimed?**

50. It is important to note from the outset that the remedies sought by the Claimant for the Grievant are two-fold. Remedies that depend on the claim for unfair termination, and those that do not. Having found that the Grievant's employment was not terminated as alleged or at all by the Respondent, and as such his claim must fail, the reliefs sought, like notice pay, and compensation for unfair termination pursuant to the provisions of section 49[1][c] of the *Employment Act*, cannot be availed to the Grievant, to the extent that they are dependent on a claim that has collapsed.
51. The Claimant contend that the Grievant is entitled to compensation for leave days earned but unutilized. The Respondent vehemently resisted this claim and presented documents to demonstrate that she had taken her annual leave, and that her leave wasn't unpaid as alleged. I find that this evidence was not challenged in any sufficient manner or at all by the Grievant. I decline to make any award under this head.
52. The assertion is that during the suspension period, from February 2024 to 8th March 2024, the Respondent withheld her salary. The Respondent, on the other hand, contended that during the period, the Grievant was paid her entitled remuneration. If indeed she was paid, nothing could have been easier for the Respondent to do than produce documentary evidence showing when and how the payment was made. They didn't produce any document or evidence.
53. It is also important to point out that it isn't lost on this Court that on this relief, the Respondent has given contradictory versions in defence. I note that, at some point, including in their submissions, they assert that the Grievant did not work during the period and, as such, was not entitled to remuneration. It is either that she was paid, or she wasn't. The Respondent has not been candid on this issue. I am persuaded by the Grievant's evidence that she wasn't paid.
54. The Claimants asserted that the Grievant worked for 20 public holidays, but the Respondent did not compensate her for the work. The number of public holidays worked, and the amounts not compensated, were simply thrown to the court; the Claimants did not clearly plead which public holidays the Grievant did not present any clear evidence in support of the relief. As such, I am not persuaded to make any award under this head.
55. The claim for compensation concerning underpaid wages for a specified period may be legitimately initiated by a party and subsequently granted by the court in accordance with the provisions outlined in Section 48[5] of the *Labour Institutions Act*. In instances where a Regulation of Wages Order stipulates a minimum wage or employment conditions, such stipulations become integral to the employee's contractual agreement. A minimum wage or employment condition established within a Wage Order cannot be waived or excluded through contractual agreements.
56. The Respondent argued that throughout her employment, the Grievant was paid her contractual remuneration of KShs. 10,000, while, on the other hand, the Grievant asserted that at all material times she was unlawfully paid below the relevant minimum wage. This Court notes that the Regulation of Wage Order, 2018, provides the minimum wage for a day watchman working in Mombasa as 12,926.



55, and that of 2022, KShs. 15,201. 65. In my view, therefore, for the period January 2021 to April 2022, she was underpaid by KShs. 46,824.80, and KShs. 114, 422 .00 for May 2022 to February 2024.

57. In the upshot, Judgment is hereby entered for the Grievant in the following terms;

- I. Salary for the period when she was on suspension, KShs. 15, 984.00.
- II. Salary underpayments, KShs. 161, 246. 8.
- III. Interest on the awarded sum in [I] &[II] at court rates from the date of filing this suit, till full payment.
- IV. Costs of the suit.

**READ SIGNED AND DELIVERED THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.**

**OCHARO KEBIRA**

**JUDGE**

