



**LWB v Teachers Service Commission (Cause E038 of 2023)
[2026] KEELRC 548 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 548 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E038 OF 2023
J RIKA, J
FEBRUARY 27, 2026**

BETWEEN

LWB CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, amended on 9th May 2024.
2. He avers that he was employed by the Respondent as a Teacher in the year 1995, having graduated from Kenyatta University with a Bachelor of Science degree, in education.
3. As at the time the Respondent terminated his service on 21st August 2021, the Claimant served as the School Principal, Chebotoi Mixed Day Secondary School, in Olunguruone, Nakuru County.
4. He was alleged to have engaged in sexual intercourse with his form 4 Student [anonymized as M.C.], at his house, on 14th April 2021.
5. He denied the allegations, attributing them to the Area Chief Kiptagitch, who he alleged had been supplying the School with foodstuff at inflated price. The Claimant implemented measures that cut off the Chief and his colleagues from exploiting the School. In revenge, the Chief orchestrated the allegations against the Claimant.
6. He avers that the Chief was joined in the conspiracy by some Teachers who worked under the Claimant, including Kenbun Isaac, a Teacher the Claimant had issued a letter to show cause for disciplinary infractions; and Lily Chepkoech, who had at one time acted as Deputy Principal.
7. Further, some members of the School Board of Management were conscripted by Lily Chepkoech, to oppose the reforms introduced at the School by the Claimant.



8. The Claimant avers that the Area Chief, the particular members of teaching staff, with the aid of Police Officers from Kiptagich Police Station, conspired to have the Claimant lose his job, because he was not a member of the local ethnic community. They assumed that he was an outsider, who was reaping material benefit from their School.
9. The Claimant avers that the members of the Board, and some Teachers incited one Jared Osoro, who had done some repairs at the School, to demand a payment of Kshs. 5,000 from the Claimant, while the School had not received capitation balance from the government. Osoro demanded that the Claimant pays him, from his own pocket, and threatened to kill the Claimant if he did not, a matter the Claimant reported to the Police.
10. The members of the Board and some Teachers colluded with the Police Officers to have the Claimant arrested on 10th February 2021 and 17th February 2021, on allegation that the Claimant had failed to pay casual Employees Edwin and Julius, their wages. He was only released upon the intervention of the Subcounty Director of Education.
11. He went on sick leave to his home in Kitale on 24th March 2021. His Deputy was appointed the Centre Manager, to oversee examinations at the School.
12. He was called by the Respondent's Subcounty Director Kuresoi South on 12th April 2021, and instructed to report to the School immediately. He returned to the School on 13th April 2021.
13. He was at the School on 14th April 2021 until 2.00 p.m. when the form 4 Students completed their examinations.
14. He drove his Deputy, examination staff, and some Students to Saptet junction. He informed his Deputy that he wished to return to his home in Kitale to recuperate.
15. He then drove to a petrol station, near his house, where he found the form 4 Student, M.C. She was among Students who had just cleared examinations. She enquired if the Claimant was headed back in the direction of the School.
16. He told her that he was fuelling his vehicle, and heading for his home in Kitale. She told him that she had purchased a bag of fertilizer, and requested him to help her transport the fertilizer. He could do this by dropping her at Saptet junction, which was near her home.
17. He drove with M.C. and parked his car near his house. He left M.C. in his car. He went to his house to collect his traveling bag.
18. As he returned to his car and was about to drive off, the Area Chief Wycliff Too and an Assistant Chief from Chebotoi Sublocation, Reuben Bett suddenly appeared.
19. They informed the Claimant that they wished to have a conversation with him, inside his house. He was shown a short text message by the Chief, which was from Kenbun Issac, the disgruntled Teacher at the School. The message alleged that the Claimant had a School girl in his car.
20. The Chief ordered the girl out of the car. She and the Claimant were compelled by the Chief to sit next to each other in the house. The Claimant resisted, and was slapped and roughed up by the Chief. The Assistant Chief took pictures of the Claimant and the girl, sitting next to each other.
21. The Chief and the Assistant, tried to coerce the Claimant and the girl to admit that they had sex. They both declined.



22. The Chief spoke to the girl in his and the girl's mother tongue Kipsigis, and the girl started to change her story, agreeing that she had sex with the Claimant.
23. The Claimant continued to protest his innocence. The Chief and the Assistant then extorted Kshs. 500,000 from the Claimant to let him go. The amount was later scaled down to Kshs. 50,000.
24. The Claimant would not budge. He and the girl were presented before Kiptagich Police Station. Police Officers took the pair to Kiptagich Medical Centre. The girl was examined, but he was not.
25. The Chief and his colleague, continued to extort the Claimant. He demanded to be given the Claimant's phone and the M-pesa PIN. After being tortured, the Claimant gave them his PIN code. They illegally attempted to withdraw Kshs. 15,000 and Kshs 14,900 which was unsuccessful for want of funds. They however managed to withdraw Kshs. 14,800.
26. The Doctor who initially examined M.C. Dorcas Rono, found no evidence of sexual offence. There was no evidence of penetration. P3 form, filled on 14th April 2021, did not have evidence of penetration. The Officer in Charge of the Station [OCS] attempted to have Dorcas Rono change her findings, which she declined.
27. The OCS then approached another Medical Officer Sylvester Nyabayo, who without consulting Dorcas Rono, altered the P3 form, to indicate that M.C. had been penetrated.
28. The OCS also caused the 2nd Medical Officer to fill a second P3 form, to indicate that there were lacerations of labia majora and labia minora in M.C.'s genitalia.
29. The Claimant states that a DNA test carried out on his clothing including underwear, did not match DNA collected from M.C.'s genitalia.
30. The Claimant was arraigned before the Molo Chief Magistrate's Court on 21st April 2021, and charged with the offences of rape, abuse of authority and committing and indecent act, under the [Sexual Offences Act](#).
31. He was heard and acquitted on 18th January 2023.
32. He was simultaneously taken through administrative process by the Respondent over the allegations of having sex with a Student, culminating in his dismissal and deregistration as a Teacher.
33. He faults the disciplinary process. He states that the offence was alleged to have been committed on 14th April 2021. Investigations by the Respondent took place the following day, on 15th April 2021.
34. He was not given the mandatory 7 days, to prepare his defence.
35. He was not present when the girl was interviewed by the investigators. He was not given the opportunity to adduce evidence, and challenge the evidence against him. He was summoned after the panel had interviewed M.C. and her witnesses. He had not been informed of the allegations against him, at the time he was summoned. He was not warned of incriminating evidence against him. He was presumed guilty from the beginning.
36. He was interdicted on 23rd April 2021, through a letter dated 16th April 2021. He was invited for disciplinary hearing, scheduled on 13th August 2021.
37. He was not provided with the complainant's witness statement and the investigations report in preparation for the hearing, despite having put a request for the documents.



38. He was heard before the County Director. M.C. testified, confirming that the Claimant had sex with him. Assistant Chief Reuben Bett, likewise stated that he found the Claimant having sex in his house, with M.C. The Claimant was only given an opportunity to ask 3 questions to M.C. When he attempted to ask more questions, the panel directed M.C. not to answer.
39. He presented 2 witnesses, his wife Charity Namalwa Wafula and Police Officer David Onunga from Keringet Police Station. They were not allowed to give evidence. The Claimant gave evidence. Onunga was to explain the evidence gathered by the Police, but was completely prevented from telling his story. Likewise, his wife Charity, was closed out.
40. On 25th August 2021, he received a letter of dismissal and notice of deregistration from the Respondent.
41. He applied for disciplinary proceedings. They were not availed. He lodged an appeal which was heard on 22nd November 2022. It was declined.
42. The Claimant states that his arrest, prosecution and dismissal was a malicious scheme, designed by some Teachers, local administration, local Officers of the Respondent, and some Police Officers.
43. His last gross monthly salary, was Kshs. 135, 444.
44. He prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Reinstatement with full salaries and benefits.
 - c. Unpaid salaries from 16th April 2021, to the date of Judgment or any other date the Court may direct, with costs and interest.
 - d. Equivalent of 12 months gross salary in compensation for unfair termination, at Kshs. 1,625,328.
 - e. Alternatively, the Claimant is paid his salary, inclusive of any increment effected by the Respondent from the date of termination, to the date of retirement, plus all his benefits.
 - f. Certificate of service to issue.
 - g. Costs and interest.
45. The Respondent filed its Statement of Response dated 24th October 2023.
46. It is admitted that the Claimant was a Teacher, employed by the Respondent.
47. The Respondent is mandated under Article 237 of *the Constitution*, and the *Teachers Service Commission Act*, 2012, to exercise disciplinary control over Teachers, and terminate their service.
48. The Respondent has issued a Code of Regulations, governing the conduct of Teachers. Procedure to be followed in case of allegations of breach, is established under the Code of Regulations.
49. On 29th April 2010, the Respondent issued Circular No. 3 of 2010 titled "Protection of Pupils / Students from Sexual Abuses."
50. The Claimant was advised at paragraph 6 of his employment letter, that his employment was subject to the Regulations.



51. In April 2021, the Respondent received information that the Claimant, while serving as the Principal Chebotoi Mixed Day Secondary School, was found with a form 4 Student M.C. in his house, at Kiptagich Shopping Centre.
52. The Respondent initiated investigations through its County Director and the Ministry of Education. A joint team visited the School on 15th April 2021.
53. Chief Reuben Kiprotich, Assistant Chief Wycliff Kipkurui, M.C., Damaris Chepngetich, Deputy Principal Francis Ogedi, M.C.'s father Richard Tegeret and the Claimant were interviewed.
54. M.C. gave a detailed account of her relationship with the Claimant.
55. She recounted that on 14th April 2021, she finished her examination and went home, accompanied by her classmate Damaris Chepngetich, who was also her aunt. She parted ways with Damaris at Kiptagich Shopping Centre, at around 3.00 p.m.
56. She received a call from the Claimant asking where she was. She informed him that she was at Kiptagich, near Transnational Bank. He came for her, and drove her to his house.
57. He offered her bread and soda at the house, before retiring to his bedroom, where he made love to her.
58. He gave her Kshs. 1,000 after having sex. They came out of the house to the Claimant's car, where they were found by the Chief.
59. They were taken to Kiptagich Police Station and to Kiptagich dispensary for medical examination.
60. The Assistant Chief corroborated this evidence, stating that he received anonymous information, that the Claimant had been sighted ferrying a female Student in his car, heading for his house.
61. The Assistant Chief and the Chief intervened, and upon interrogating the Claimant and M.C. found out that the 2 had been having sex in the Claimant's house frequently.
62. The Investigators concluded that: -
 - a. The Claimant confirmed that he picked M.C. at Kiptagich Shopping Centre, and drove her to his house, which is contrary to Circular No. 3 of 2010.
 - b. He had sex with M.C. after which the pair proceeded to the Claimant's car.
 - c. The Chief and his Assistant arrived shortly, and apprehended the couple.
 - d. M.C.'s father confirmed that she was late in going home from School.
 - e. The father enquired from Damaris where M.C. was. She confirmed that she had parted ways with M.C. earlier, and was not aware about where she had gone to.
 - f. The father was later informed that his daughter was at the Police Station.
 - g. She told him that the Claimant had taken her to his house, promising to give her a job.
63. The Claimant was interdicted. He was invited to make a defence statement in writing within 21 days. He was invited for hearing scheduled for 13th August 2021, through a letter dated 5th July 2021. He was advised to attend in the company of his witnesses if any.
64. He attended without any witness. He was given the opportunity to give evidence and cross-examine witnesses.
65. The panel found: -



- a. M.C. did not recant her evidence at the investigations. She was consistent in her evidence at the disciplinary hearing.
 - b. The Claimant had an illicit relationship with M.C. He would call her to his house frequently, through his phone, contrary to Circular No. 3 of 2010.
 - c. He admitted to have picked M.C. at the shopping centre and driving her to his house.
 - d. He confirmed that the Chief and his Assistant found him with M.C. at his house.
 - e. M.C. confirmed that the Claimant had obtained her phone number and used to call her. On 14th April 2021, he called her, drove her to his house, and had sex with her.
 - f. The Claimant did not contradict the evidence given by M.C.
 - g. M.C. gave explicit evidence about her session with the Claimant.
 - h. All witnesses presented before the panel, were credible and gave consistent evidence.
 - i. Their evidence was not challenged by the Claimant.
66. A decision was made to terminate the Claimant's service.
 67. The Respondent states that it acted fairly, in protection of a Learner's constitutional right to free and basic education, and protection from any form of sexual abuse, under Article 53 of *the Constitution*. It acted in protection of public policy and interest. Its decision was in the interest of protecting the nobility of the teaching profession. The Claimant's statement of defence was fully considered.
 68. He applied for review of the decision on 30th July 2022. He was heard and his application declined.
 69. Termination was based on valid reason, and was fairly executed.
 70. Regulation 139 [3] of the Code of Regulations for Teachers, allows the Respondent to take disciplinary action against a Teacher where criminal proceedings are pending in Court, or where a Teacher has been acquitted in a criminal trial.
 71. The outcome of the criminal case at the Chief Magistrate's Court Molo, is not relevant to the disciplinary process.
 72. The Respondent prays the Court to dismiss the Claim with costs.
 73. The Claimant gave evidence, and closed his case, on 12th November 2024. Hellen Chirure, Respondent's Director of Disciplinary Management, gave evidence on 25th March 2025 and 26th September 2025. Her Assistant Mathias Okumu and Assistant Chief Reuben Kiprotich Bett, gave evidence in between Hellen's evidence, on 15th May 2025. The Respondent closed its case on 26th September 2025, after Hellen gave her evidence.
 74. The Claim was last mentioned on 17th December 2025, when the Parties confirmed filing of the closing submissions.
 75. The Claimant told the Court that he is presently unemployed, and resides at Kitale. He adopted his witness statement and 2 sets of documents, [exhibits 1-34], in his evidence-in-chief. He emphasized that the witnesses allegedly presented by the Respondent at the disciplinary hearing, were not present when the Claimant appeared. He never interrogated them.



76. M.C. was not found in his house. She was in his car. The Chief Reuben Kiprotich, took her to the Claimant's house. The Claimant had 2 witnesses, who were denied audience by the disciplinary committee.
77. Cross-examined, the Claimant told the Court that he was the School Principal, and was expected to uphold certain standards. He was aware of Circular No. 3 of 2010, on protection of learners against sexual abuse.
78. He conceded that on 14th April 2021, he was found with his Student M.C. in his car. She asked him to assist her ferry fertilizer. He agreed to assist, but told her he needed to pass by his house. He used to give other Students lifts, but had not been arrested for it.
79. The Chief found M.C. in the Claimant's car, and asked her to go into the Claimant's house.
80. M.C. confirmed at the disciplinary hearing that the Claimant had sex with him, in his house. He was arrested and charged at Molo Chief Magistrate's Court. He was not aware if the Respondent was party to the criminal proceedings. He was interdicted 3 days after the allegations were made. He was not given adequate time to respond to the allegations.
81. He was invited for disciplinary hearing. He attended. He was advised to carry his own documents. He testified. Others including M.C., testified. He cross-examined M.C. She was advised not to answer certain questions. He had about 40 questions, yet she only answered 3. He was given more than 1 month to prepare for the hearing. This was not adequate time.
82. He had 2 witnesses. He did not have their witness statements. M.C. was prevailed upon by the Chief to accuse him falsely. The Claimant was not shown other witness statements. He did not see the witness statement of Damaris.
83. Redirected, the Claimant told the Court that M.C. did not go to his house. She was in his car, adjacent to his house. He did not have sex with her. It was confirmed by P3 form. He was not allowed to freely ask questions at the disciplinary hearing. He was presumed guilty. The incident took place on 14th April 2015, and investigated the following day. M.C. was coerced to incriminate the Claimant.
84. Hellen Chirure relied on her witness statement dated 12th February 2024. She was the equivalent of prosecutor at the Claimant's disciplinary hearing. She adopted documents filed by the Respondent [1-15] and [16-27] as exhibits. The Claimant was interdicted for immoral behaviour. He had sex with a Student. He was charged in a criminal case with rape and abuse of office. The Respondent was not a party to the criminal case. The criminal case did not bar the Respondent from disciplining the Claimant.
85. Cross-examined, she told the Court that she did not know the outcome of the criminal case. The Ministry of Education and the Respondent set up an investigation panel. Investigation took place on 15th April 2021. The incident happened on the previous day. He was not given 7 days' notice to appear before the investigation panel.
86. The Claimant and M.C. were medically examined. Chirure was not aware that it was concluded that there was no penetration. The Respondent's Regulations allow the Respondent to use general statements from witnesses, in disciplining Teachers. The Respondent is not bound by strict rules of evidence.
87. Chirure was not aware that the Claimant was on sick leave, and was summoned from his home. He was advised that he was free to present his own evidence. One of his proposed witnesses did not have proper identification documents, while his wife was not presented. It is not true that the Claimant was



- restricted to asking 3 questions only, at the disciplinary hearing. Chirure was not aware that M.C. was advised not to answer some questions.
88. Redirected, she told the Court that the Claimant was given adequate time to defend himself. Being sick did not excuse the Claimant from facing disciplinary process. He was fairly heard.
 89. Mathias Okumu likewise relied on his witness statement and documents filed by the Respondent, in his evidence-in-chief.
 90. On cross-examination, he corroborated the evidence given by Chirure, right from the investigation of the complaint, to the date the Claimant was dismissed and deregistered. He was a member of the investigation team. Circumstances demanded the team moves swiftly. The local community was baying for the Claimant's blood. He was not aware that M.C. was 21 years. The Claimant called her to his house.
 91. Redirected, Okumu told the Court that the Claimant was under arrest on 14th April 2021. The investigating team asked for him on 15th April 2021. He was interrogated swiftly, because M.C. was a candidate and the local community was baying for the Claimant's blood. The medical report dated 14th April 2021 confirmed that there was sexual intercourse between the Claimant and his Student.
 92. The last witness for the Respondent, Bett Reuben Kiprotich, was the Assistant Chief, Chebotoi Sublocation, Nakuru County. He adopted his witness statement and documents filed by the Respondent, in his evidence-in-chief.
 93. Cross-examined, he affirmed the evidence of Chirure and Okumu. He received report of sexual intercourse involving the Claimant and M.C. anonymously, on 14th April 2021. Report did not originate from M.C.'s parents. He visited Kiptagich centre, and found M.C. in the Claimant's house. It is not true that M.C. admitted sexual intercourse, only after Kiprotich spoke to her in the local Kipsigis language. The Chief took photos of the Claimant and M.C. The Respondent sent an investigations team who interrogated witnesses, on 15th April 2021. Kiprotich could not comment on medical evidence.
 94. Redirected, he told the Court that he reported the complaint to the Chief. The Chief called him, and they proceeded to Kiptagich, where they found M.C. in the Claimant's house, not in his car.
 95. The issues are whether the Claimant was dismissed and deregistered as a Teacher fairly and lawfully; whether there was valid reason to justify termination and deregistration; and whether he merits the prayers sought.

The Court Finds: -

96. There is no dispute that the Claimant was employed by the Respondent as a Teacher in 1995.
97. He was posted to various Schools.
98. He was transferred to Chebotoi Mixed Secondary School Olenguruone, Nakuru County, where he held the position of Principal.
99. He was dismissed on 25th August 2021, on the allegation that he had engaged in immoral behaviour, by having sexual intercourse with a form 4 female candidate from his School.
100. Procedure. The record shows that the incident is alleged to have taken place on 14th April 2021.
101. The Respondent and the Ministry of Education quickly sent an investigation team to Kiptagich, on 15th April 2021.



102. The team interrogated the Claimant, M.C. herself, and other witnesses, including the Chief and Assistant Chief. Statements were recorded from these witnesses.
103. The Claimant was interdicted on 23rd April 2021, upon completion of investigation.
104. The letter specified the employment offence, and facts, which led to interdiction.
105. About 3 months later, on 5th July 2021, the Claimant was invited for disciplinary hearing, to be held on 13th August 2021.
106. The Claimant attended hearing, and was granted a hearing.
107. A decision was made to dismiss him from service. The decision was communicated through a letter dated 13th August 2021.
108. He states that he was given an opportunity to appeal or seek review of, the decision.
109. He was heard on review, on 7th November 2022. His appeal was unsuccessful.
110. Regulation 146 [1] of The Teachers Service Commission Code of Regulations for Teachers, 2015, requires that the Respondent shall, upon receiving a complaint, institute investigations, either directly or through its agents.
111. The Claimant states that he was alleged to have had sex with M.C. on 14th April 2021, and was interrogated on 15th April 2021.
112. Regulation 146 [6] [c] calls on the investigations team to give the accused Teacher at least 7 days' notice, to prepare his defence.
113. The Respondent explains the short notice given to the Claimant, on the ground that he was in custody, and the local community was baying for his blood, warranting the accelerated investigation process.
114. The Court accepts this explanation by the Respondent. The Claimant was not prejudiced by being interrogated a day after he allegedly slept with his Student. He was in custody. He did not satisfy the Court that there was something the investigation team missed, by not according him the recommended 7 days' notice. There was no dispute that he was found with his Student in his car, within his house, or in the house. He was not a free man, accessible to the investigating team freely. The team took his evidence when it could.
115. Regulation 146 [8] requires the investigation team to prepare a report at the end of investigation. The investigation report is exhibited.
116. Regulation 146 [10] [c] provides for interdiction. The Claimant was issued a letter of interdiction.
117. The Respondent delayed disciplinary hearing, from April to July 2021, when the Claimant received notice of disciplinary hearing. Hearing took place in August 2021. There was ample time to prepare for the disciplinary hearing. Any prejudice suffered by the Claimant, on account of a short notice at the interrogatory stage, was cured by the long period given for him to prepare, between interrogation and the actual disciplinary hearing.
118. The main guidelines on disciplinary proceedings are captured under Regulation 139. The Respondent is required to presume the Teacher innocent; inform the Teacher of the charges; give the Teacher adequate time to present his defence; and accord the Teacher the opportunity to be heard in person, unless the nature of the offence makes it impossible to hear the Teacher in person.
119. These procedural steps were followed.



120. The Claimant's submission that he was limited in calling of witnesses, or cross-examination of witnesses, including M.C., appears to have no weight, in light of Regulation 139 [1] [d], which empowers the Respondent to act on general evidence, on conduct of the Teacher concerned.
121. Regulation 139[1] [d] further states that the Respondent shall not be bound to receive and consider evidence only admissible in a form and manner in a Court of law. It shall not be bound by strict rules of evidence.
122. The hearing is not shown by the Claimant to have deviated from the procedure under Regulations 139 and 153.
123. Witnesses were presented and the Claimant allowed to cross-examine them. He was at liberty to present his own evidence.
124. The disciplinary panel would not be violating fair procedure, by cautioning a Student who is a victim of sexual abuse, not to answer certain questions from an accused predator. Perhaps they were improper questions, or proper questions offensively presented. The Triers of facts, including Courts, have a duty to caution victims of sexual abuse, against answering certain questions from their violators. The Claimant did not specify to the Court what kind of questions he posed to M.C., and was not given an answer, or which questions he wished to pose, but was prevented by the disciplinary panel from asking.
125. The minutes of the disciplinary hearing do not show that he presented his wife as witness. No witness statement of any proposed witness by the Claimant, was exhibited before the disciplinary committee.
126. One of his witnesses is said to have presented himself at the hearing, but without the requisite identification documents. Regulation 153 of the Teachers Service Commission Code of Regulation for Teachers, 2015, requires witnesses are identified.
127. Regulation 156 creates a review mechanism, which the Claimant invoked. He was granted a review hearing, and dismissal decision upheld.
128. The Teachers Service Commission [Code of Conduct and Ethics for Teachers] Regulations], Legal Notice 162 of 2015, requires only that investigations are carried out within a reasonable time, and that the findings of the investigations are implemented within 90 days.
129. The Claimant relied heavily on his latter day acquittal by the Chief Magistrate's Court at Molo, to suggest that the Respondent ought not to uphold its decision to dismiss and deregister him.
130. The Courts have clarified in a catena of decisions, that the criminal process and its outcome, does not affect the disciplinary process, unless there is a provision for the criminal process in the law governing the disciplinary process, or unless there is a specific clause in the contract of employment, or other labour instrument, requiring that the disciplinary process is bound to the outcome of the criminal process.
131. One such recent decision of this Court on the subject is *Gakuo v. Bomet University College, KEELRC 2282 [KLR]*. The Petitioner in this decision sought to stop disciplinary proceedings brought against him by his Employer, which arose from allegations of defilement. He argued that he had been charged for defilement in a criminal case, and that continuing with the disciplinary proceedings simultaneously, would violate his right to a fair hearing, and expose him to double jeopardy. The Court denied him conservatory measures, adopting the principle that disciplinary proceedings and criminal proceedings, founded on the same set of facts, are separate processes.



132. Regulation 139[1] [e] makes it clear to accused Teachers, that disciplinary action or punishment, shall not be a bar to a criminal charge or process under any other written law.
133. Regulation 139 [3] amplifies this principle, stating that the Respondent may take disciplinary action against a Teacher whose criminal proceedings are pending, before a Court of Law, or who has been acquitted by a Court of Law, for an offence which the Respondent is handling.
134. The Claimant cannot therefore invoke the criminal case where he faced the charge of rape, and which ended in his acquittal after he had already been taken through the disciplinary process, to have absolved him of the disciplinary process and outcome.
135. The Court is satisfied that fair procedure under the TSC Act, the Regulations, the Code of Conduct and Ethics, the Circular No 3 of 2016, and the *Employment Act* Sections 41 and 45, was followed. There were no significant procedural departure, that would lead the Court to conclude that termination was unfair.
136. Validity of reason. The Claimant was dismissed through a letter dated 25th August 2026. He was deregistered through a letter similarly dated, 25th August 2021.
137. The reason justifying the decision is given in the letter of dismissal to be: -
“You are of immoral behaviour in that, in the afternoon of Wednesday 14th April 2021, from around 3.30 p.m., you had sexual intercourse with [M.C.] Adm No and Index No. [indicated], a form 4 Student at Chebotoi Secondary School, in your house at Kiptagich Centre, while you were the Principal, Chebotoi Secondary School.”
138. The offence is contained in the 3rd Schedule under Section 34 of the Teachers Service Commission [TSC] Act. Paragraph [a] of the Schedule describes immoral behaviour to include, but not restricted to: -
- a. Sexual intercourse.
 - b. Sodomy.
 - c. Lesbianism; and,
 - d. Sexual harassment or flirtation.
139. Regulation 22 of the Code of Conduct and Ethics for Teachers, Legal Notice No. 162 of 2015, prohibits sexual relations between Teachers and Learners.
140. A Teacher shall not:-
- a. Engage in any sexual activity whatsoever with a Learner, regardless of whether the Learner consents;
 - b. Make a request to, or exert pressure on a Learner for sexual activity or favour;
 - c. Flirt with a Learner;
 - d. Send Learners to their personal residences for whatever reason;
 - e. Induce, coerce threaten, or intimidate a Learner and particularly in regard to their academic performance, in exchange of sexual relations;
 - f. Facilitate non-disclosure of coverup of cases of sexual abuse against a Learner.



- g. Release a Learner from School for any reason, before notifying the Parent or Guardian; and,
 - h. Send a Learner away from School, earlier than 6.00 a.m. or later than 12.00 noon, except in cases of emergency.
141. TSC Circular No. 3 of 2010 on Protection of Learners from sexual abuse, likewise, includes flirtation by Teachers with their Learners, with or without consent, and sending of Learners to Teachers' houses for any reason, to result in an offence of immoral behaviour.
142. The Claimant concedes that on 14th April 2021, he had the company of his Student M.C. According to him, she was found in his car, but outside his house at Kiptagich, by the Chief and his Assistant. It was the Chief who took M.C. inside the Claimant's house, where the Chief made him sit next to M.C. and take a photo of the Claimant and M.C. The Claimant denied vehemently that he had intercourse with M.C., and told the Court that medical tests carried out on himself and M.C., established that he did not penetrate M.C.
143. The Court does not think that Teachers are prohibited from sending their Learners to inside of their houses only; the Regulations prohibit sending of Learners by their Teachers, to the Teachers houses. This could be inside, or within the house. The Claimant may have parked M.C. in his car, next to his house, and would be deemed to have placed her within his house. She need not have disembarked, and gone into his house. She was within his house, without any reasonable explanation of the Claimant. He admitted that he placed her there. There was damning evidence from M.C. and other witnesses however, that the Claimant took M.C. into his house. The offence of immoral behaviour, does not depend on whether the Learner was inside the house, or within the house, or whether the Learner was penetrated by her Teacher.
144. He gave a long explanation in his Statement of Claim, which verged on irrelevancies, on what led to his dismissal and deregistration.
145. In brief, he explained that, he had implemented changes at the School regarding supplies, cutting out unscrupulous suppliers who were overpricing supplies; the Area Chief was among those cut out; he issued a letter to show cause to a Teacher Kenbun Isaac, in the course of restoring high disciplinary standards at the School; Kenbun and another Teacher Lily Chepkoech incited some School Board members against the Claimant, in resisting the reform agenda; the Area Chief, Teachers, Police Officers and Board Members, conspired to have the Claimant removed from the School; they incited a repairman Jared Osoro to demand for payment from the Claimant, while they knew the School had no capitation; and that the charge of immoral behaviour was the outcome of this conspiracy.
146. He even played the ethnic card, when he explained that M.C. initially denied having sex with him, but only accepted they had sex, after she spoke to the Chief in Kipsigis language, which the Claimant, a Luhya, did not understand. He characterized himself as an outsider, who was unwanted by the local community, because they perceived him, as a beneficiary of their asset, Chebotoi Mixed Day Secondary School.
147. The Claimant alleged that the Chief and his Assistant demanded for a bribe of Kshs. 500,000. This was scaled down to Kshs. 50,000. The Chief and the Assistant Chief also forcibly withdrew about Kshs. 14,800 from the Claimant's M-pesa account. Did he report these serious crimes to the relevant authorities?
148. These explanations appear to the Court to have been dilatory. The issue in focus was why the Claimant, a School Principal, was found with his female Student, in his car or house, on 14th April 2021. The issue was whether he had engaged in immoral behaviour. Other long narratives were diversionary.



149. TSC Circular No. 3 of 2010, requires that cases of sex abuse of Learners, are reported to Head Teachers, Children's Office, TSC, the Police and the Area Chief. The Claimant was the Head Teacher, and was suspected to have abused his Learner. He ordinarily would be receiving reports of sexual abuse against his Learners. Complaint was made, that he had himself turned into a sexual abuser. There was nothing wrong in making report against him, to the Area Chief, TSC and the Police. The Claimant is wrong, in his submission that these offices were in a conspiracy against him. Their address of the complaint, cannot have been a scheme, against the Claimant.
150. His explanation on his movement on the material day, 14th April 2021, raised more questions than answers, and generated more heat than light. He was at School overseeing examinations. After the examinations concluded, he drove the examinations' team to a common collection point, Saptet junction, where they were picked by the examination vehicle.
151. He had intended to travel back to his home in Kitale. So, he went to a petrol station to fuel. M.C. found him there by chance. She greeted him, and told him she had a bag of fertilizer, which she requested the Claimant to ferry for her. She requested to be dropped at the same Saptet junction.
152. The Claimant did not drop her at Saptet junction first, but found it wise to drive her to his house, where he explained he had gone to retrieve his luggage to enable him travel to Kitale.
153. Was the meeting at the petrol station between the Claimant and M.C. sheer coincidence? Was it a prearranged date ? Did he Claimant have M.C.'s phone details, enabling him to call her at will, for trysts? Evidence marshalled by the Respondent would suggest that the Claimant did not meet, and pick M.C. at Kiptagich Shopping Centre, on 14th April 2021, by chance. His moves were practiced and deliberate. Why did the Claimant, a School Principal, find it wise or necessary, to drive a female form 4 Student to his house, instead of dropping her at Saptet junction first, if he was persuaded to help her carry the fertilizer?
154. The Learner herself confessed that she was in a sexual relationship with the Claimant. She was not merely in his car; she was driven by the Claimant to his house, and ushered to his bedroom, at Kiptagich, where he gave her soda and bread, and ravished her, before his intended journey back to Kitale.
155. There were other witnesses, including the Learner's Aunt and fellow Student, and her Father, besides the Chief and the Assistant Chief, who corroborated the Learner's evidence. Her father waited at home, and expressed his concern to Damaris, that M.C. had not arrived home as expected.
156. The P3 forms originated from Kiptagich Police Station, both dated 14th April 2021, were inconclusive. One indicated that there was no laceration or bruising in the Learner's genitalia. The second P3 form indicated that there were lacerations and bruising in the Learner's genitalia.
157. Both P3 forms indicate that M.C. was 21 years. The Claimant appeared to suggest in cross-examination of Mathias Okumu, that because M.C. was 21 years, and not under 18 years, that the Claimant was free to engage in a consensual sexual relationship with her.
158. The TSC Act, the Regulations and the Code of Ethics for Teachers, prohibit sexual relationships between Teachers and their Learners. It does not matter if the Learner is an adult, or whether sex is consensual. It would not matter if M.C. was the same age as her Principal, the Claimant herein, or if there was consent to have sex. The applicable law prevents certain conduct, between Teachers and Learners. The term "Learner" has no age bracket.



159. TSC Circular No. 3 of 2010 on Protection of Students / Pupils from sexual abuse, states that for purposes of the Circular, a Student / Pupil is any male or female, aged below, or over 18 years, who is enrolled in any education institution.
160. Away from the conflicting medical evidence obtained at Kiptagich, the DCI Kuresoi submitted samples from the Claimant and M.C. to Kisumu Government Chemist Laboratory for DNA testing.
161. A report dated 11th May 2021 was made, suggesting DNA profile taken from stains on M.C.'s inner pant, was a mixed DNA profile of M.C. and a male person. It was not established that this male person, was indeed the Claimant
162. While the Court would agree that medical evidence was not sufficient to sustain a charge of rape in a criminal case, this evidence was not necessary to establish the employment offence of immoral behaviour, under the TSC Act, 3rd Schedule and the Code of Conduct and Ethics.
163. In this Court's Cause Number 2532 of 2016, Tom Ochako v. Teachers Service Commission, the Court held that the TSC Code of Regulations, does not require that medical proof is given, to establish the employment offence of immoral behaviour.
164. Other acts, such as flirtation with a Learner, or sending a Learner to private residence, justifies the charge of immoral behaviour against the involved Teacher. The Claimant misapprehended the offence of immoral behaviour, in his submission that medical evidence did not establish that he penetrated M.C.
165. In the Report of the National Assembly Public Petition No. 34 of 2023, regarding the dismissal and deregistration of Joseph Kimeli Chebii by the TSC, there were similar issues to the issues raised in the Claim herein.
166. The Petition was presented by Hon. Timothy Kipchumba Toroitich, M.P. Marakwet West Constituency, on behalf of his constituent, Teacher Chebii.
167. Chebii had been accused of defiling his Student, impregnating her. He was charged at Iten Magistrate's Court, heard and acquitted. The Criminal Court concluded that DNA test, showed that Chebii was not the biological father of the defiled Learner's child.
168. The TSC had taken him through a disciplinary process, dismissed him, and dismissed his subsequent application for review, and deregistered him.
169. He sought before the National Assembly, in what appears to have been a meticulous form of Alternative Justice System, the following orders: -
 - a. Declaration that dismissal and deregistration was unfair and unlawful.
 - b. Re-instatement and re-registration.
 - c. Review of TSC policies on disciplinary procedures, to ensure allegations of sexual misconduct involving Teachers and Learners are dealt with fairly and justly.
 - d. Parliament considers enacting legislation, or amending existing laws on disciplinary procedures, to provide better safeguards to Teachers, and uphold the rights of Teachers.
170. In dismissing the Petition, the National Assembly cited various decisions below, from the Courts, which the Court invokes, in making this decision.



171. In *Teachers Service Commission v. Joseph Wambugu Nderitu* [2016], e-KLR, the Court of appeal established that professional disciplinary proceedings are distinct from the criminal proceedings, even if they emanate from the same set of circumstances.
172. Other decisions cited by the National Assembly include *Geoffrey Kiragu Njogu v Public Service Commission* [2015] e-KLR and this Court's *James Mugeru Igati v. Public Service Commission of Kenya* [2014] e-KLR, where it was underscored that, " There is nothing in the Public Service Commission Regulations [read TSC] which suggest that, disciplinary process, is tied to a criminal process that may arise from the same set of facts. There is no provision in the Public Service Commission Regulations, which makes it necessary for Employers to follow police investigations, or findings, or indeed Criminal Court decisions, in resolving employment disputes. The Public Service Commission Regulations, do not merge disciplinary processes with the criminal trials."
173. Concerning reregistration, the Legislators recommended that the Petitioner could apply for reinstatement to the register, under Section 31 of the TSC Act, and Regulation 36 of the Teachers Service Commission Code of Regulation for Teachers.
174. The Court notes that the Legislators declined the Petitioner's proposal for amendments to the laws regulating disciplining of Teachers, concluding that: *the Constitution*; the *Teachers Service Commission Act*; the *Employment Act*; the Teachers Service Commission [Code of Conduct and Ethics for Teachers] Regulations; and the Teachers Service Commission Code of Regulations for Teachers, provide enough safeguards for Teachers, and ensures fair process and procedure.
175. The Legislators gave their stamp of approval, on the existing laws and regulations that govern discipline in the teaching profession. They did not discern any conflict, between the individual rights of accused Teachers, and due process, under the current legal regime. Teachers have always had exemplar responsibilities. Learners are impressionable, and Teachers are tasked with the responsibility of moulding the character of their Learners. Preying on Learners' susceptibilities, is antithetical to this responsibility, and is heavily discouraged, under the TSC Act and its Regulations. Good moral behaviour has long been expected of Teachers. The employment offence of immoral behaviour is consequently, given a broad definition, and is not restricted to sexual intercourse between a Teacher and a Learner.
176. The Court is satisfied that the Claimant herein, Leonard Barasa Wambulwa, was dismissed and deregistered by the Respondent as a Teacher, on valid ground, and in accordance with the law. The prayer for reinstatement or compensation, has no merit. Return to the register of Teachers, can be pursued by the Claimant, under Section 31 of the TSC Act and Regulation 36. It is in the discretion of the Respondent to re-register the Claimant, upon hearing him, independent from the proceedings herein.
177. The Respondent had an obligation under the TSC Act and *the Constitution*, to take action against the Claimant. This obligation has been widened by the Court of Appeal, to involve vicarious liability. In *Teachers Service Commission v W.J. & 5 Others* [2020] KECA 741 [KLR], the Court of Appeal held that the Respondent, can be held vicariously liable for the sexual offences of its Teachers against their Learners. There is therefore every incentive, for the Respondent to act with promptitude, where complaints of immoral behaviour against Teachers, are reported.
178. The Court finds no merit in the Claim.

It is ordered: -

- a. The Claim is declined.



b. No order on the costs.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY, AT NAKURU, UNDER RULE 68[5]
OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 27TH DAY OF FEBRUARY 2026.**

JAMES RIKA

JUDGE

