

2. He claimed that he was employed by the Appellant as a Teacher, on 12th May 2018, earning a monthly salary of Kshs. 17,000.
3. He was dismissed on 3rd December 2018, under circumstances he felt amounted to unfair and unlawful dismissal.
4. He prayed for compensation for unfair and unlawful termination; terminal benefits; costs; and interest.
5. Having heard the Parties in full, the Trial Court allowed the Claim, granting the Respondent: declaration that termination was unfair; notice at Kshs. 17,000; and arrears of house allowance at Kshs. 112,200 -total Kshs. 231,200. The Appellant was ordered to issue the Respondent his certificate of service, and to pay costs and interest.
6. The Appellant appeals against that decision, listing 7 Grounds of Appeal. These are: -
 - a. The Trial Court disregarded the Appellant's evidence.
 - b. The Trial Court erred in finding that there was inadequate reason to justify termination.
 - c. The Trial Court erred in finding that the Appellant's Board, did not make a conclusion on the allegations against the Respondent.

- d. The Trial Court failed to appreciate the standard of proof, in disciplinary proceedings.
- e. The Trial Court erred, in finding termination unfair, for lack of explicit advisory on representation, at the disciplinary hearing.
- f. The Trial Court erred in awarding the Respondent house allowance, while his salary of Kshs. 17,000 monthly, was consolidated.
- g. The Trial Court considered irrelevant facts.

7. The Appellant proposes that: -

- a. Judgment of the Trial Court dated 28th February 2025 and all consequential orders, is set aside.
- b. The Court enters Judgment in favour of the Appellant as prayed in its Statement of Response dated 7th May 2024.
- c. Costs of the Appeal be provided for.

8. Parties agreed that the Appeal is considered and determined on the strength of the Record of Appeal and Submissions. They confirmed filing and exchange of Submissions at the last mention before the Court, on 28th January 2026.

The Court Finds: -

9. There were 3 reasons identified by the Trial Court, that informed the decision to dismiss the Respondent- refusal to receive the director's letter, failure to attend a parent's meeting, and inappropriate physical contact with a female colleague.

10. Minute 03021 of the disciplinary proceedings, shows that 3 pupils, Carl Marx, David Mwangi and Ian gave evidence. They saw the female colleague, Mercy, sitting on top of the Respondent. They were displeased and reported to their parents.

11. This evidence does not seem to have been taken into account by the Trial Court. It was strong evidence, in support of the allegation that the Respondent was engaged in inappropriate physical contact with a female colleague.

12. Instead of examining what the pupils said they saw their Teachers do, the Trial Court held that the standard of inappropriate conduct, needed to be clarified.

13. Under Section 43 of the Employment Act, Employers are required to have reason or reasons, they genuinely believe to exist, at the time of termination, which justifies termination. There is no other or higher standard than this.
14. The evidence of the pupils was adequate to lead the Appellant to conclude that, the Respondent was engaged in inappropriate physical contact with Mercy.
15. The Respondent's own witnesses explained unpersuasively, that Mercy was about to slip, and the Respondent gave her his support, to prevent her from slipping down. This was an unlikely tale, viewed against the evidence of the pupils, who saw Mercy sitting, not falling, on top of the Respondent.
16. It was not necessary under Section 43 of the Employment Act, that elaboration is made, on what constituted inappropriate physical contact. The Appellant was entitled to determine, based on the evidence at hand, what constituted inappropriate physical contact, and whether such contact, amounted to an act of gross misconduct.
17. A female Teacher sitting on top of a male Teacher, in the full sight of their pupils? This was to any reasonable person, clearly inappropriate, unethical conduct, and was offensive to the pupils, so much so, that they felt compelled to report the incident to their parents. The Appellant had obligation to its pupils, and an image as a school, to protect. There was no

misinterpretation of the situation by the pupils, as alleged by Mercy the Respondent's colleague.

18. The Court would agree with the Appellant that this aspect of the evidence against the Respondent, was not fully evaluated by the Trial Court. Its qualitative impact on validity of reason, under Section 43 of the Employment Act, was wholly unexamined, by the Trial Court.
19. Imposing an obligation on the Appellant, to clarify what constituted inappropriate physical contact, went beyond the obligation placed on an Employer under Section 43 of the Employment Act, on proof of reason, to justify termination.
20. The Trial Court erred in its finding, that the Respondent's Board did not make a conclusion on the allegations against the Respondent. The Board did, at least on the charge of inappropriate contact, conclude that the Claimant's conduct was offensive.
21. The other grounds - refusal to receive the director's letter and to attend a parent's meeting - were not well-articulated, and the Court does not think, that those grounds, have any effect on the conclusion, that the Appellant had valid reason, to justify termination. Termination would still be justifiable, without these other 2 fringe grounds.

22. The Court does not agree with the Trial Court that there was any procedural misstep. The Respondent was represented by his union at the Labour Office. He was invited for disciplinary hearing, in a letter dated 17th December 2021, which was copied to his union. He was given a full hearing and was allowed to call witnesses, among them a colleague of his choice, who had accompanied him. He was informed of the allegations against him, and given adequate facility to defend those allegations. There were no procedural gaps, as would lead to a finding that the Appellant did not uphold the minimum statutory standards of fairness, under Sections 41 and 45 of the Employment Act.

23. On house allowance, the Court does not think that the Trial Court erred, in its award, in the sum of Kshs. 112,200.

24. The Respondent told the Trial Court that he was earning Kshs. 17,000 monthly, as basic salary. Scholastica Wangui Moraa, Appellant's Manager and sole witness, agreed with the Respondent, at page 93 of the Record of Appeal, stating that, *"he was paid basic salary of Kshs. 17,000. There was no term for house allowance..."*

25. It was not established at the Trial Court, that the Respondent's salary was consolidated.

26. The computation of the amount claimed, and awarded as house allowance, was not disputed by the Appellant. No alternative computation was presented before the Trial Court. The Appellant's position was simply that

house allowance was not at all payable, the Respondent having been paid a consolidated salary.

27. The Appellant disregarded its housing obligation to the Respondent under Section 31 of the Employment Act, and the Trial Court acted in correction of this disregard.

28. The Court would therefore, decline Ground 6 of the Memorandum of Appeal [house allowance], but allow the Appeal on Grounds 1,2, 3, 4, and 5.

29. It is not necessary to make a separate finding on Ground 7. It broadly relates to lack of adequate consideration of the evidence led by the Appellant, which has been addressed under the other Grounds.

IN SUM, IT IS ORDERED: -

- a. Appeal against orders [i], [ii][a],[ii] [b], of the Trial Court's Judgment, on declaration that termination was unfair; compensation; and notice, is allowed.***
- b. Appeal against order [ii] [c] of the Trial Court's Judgment on house allowance at Kshs. 112,000, is declined.***
- c. No order on the costs of the Appeal.***

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

A handwritten signature in blue ink, appearing to read 'James Rika', enclosed within a blue oval border.
