



**Sossion v Teachers Service Commission (Civil Appeal 476 of 2019)
[2026] KECA 406 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KECA 406 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 476 OF 2019
W KARANJA, F TUIYOT'T & P NYAMWEYA, JJA
FEBRUARY 27, 2026**

BETWEEN

HON WILSON SOSSION APPELLANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. This appeal arises from a judgment delivered by the Employment and Labour Relations Court (ELRC) at Nairobi (N. Abuodha J.) in ELRC Petition No. 12 of 2018, which dismissed a petition filed by Hon. Wilson Sossion, the appellant herein, for lack of merit. The appellant had sued the Teachers Service Commission (hereinafter “the respondent”) seeking a declaration that the termination of his employment by the respondent in a letter dated 17th January 2018 did not accord with the law and was null and void, and a permanent injunction against the respondent to restrain the termination of his employment.
2. The key facts giving rise to the petition in the ELRC and this appeal are in the main not contested by the parties, as gleaned from their pleadings on record. The appellant was appointed as a diploma teacher on permanent and pensionable terms by the respondent on 1st September 1993, and on 29th July 1996, the appellant forwarded his request to join Kenya National Union of Teachers (KNUT) as a member, and his membership accepted in October 1996. On 4th May 2001, KNUT requested the respondent to release and grant the appellant leave of absence with effect from 1st June 2001 after his election as the Executive Secretary of KNUT’s Bomet Branch which was duly done, and by a letter dated 1st April 2006, the union informed the respondent that the appellant had been re-elected as the Branch Executive Secretary and his leave of absence/ release was extended. The appellant was later elected to the office of the Chair and Secretary-General of KNUT and his release from teaching service was deemed extended under the same conditions.



3. Following the national general elections held on 8th August 2017, the appellant was nominated as a member of the National Assembly by the Orange Democratic Movement (ODM) political party under Article 90 and 97(1) of *the Constitution* to represent workers, by way of Gazette Notice No. 8379 issued on 25th August 2017. Subsequently, by a letter dated 14th December 2017, the respondent's Secretary and Chief Executive Officer asked the appellant to show cause why the respondent should not terminate his teaching services in accordance with the provisions of the Code of Regulations for Teachers (CORT), and he was asked to respond within 7 days of that date. It is at this point that the accounts given by the appellant and respondent as regards what transpired thereafter begin to differ.
4. The appellant claimed that by that time the letter dated 14th December 2017 was sent he had already closed office and was unable to respond to the notice to show cause within timelines given, and that on 17th January 2018, in a decision made and contained in a letter of even date, the respondent's Secretary/ Chief Executive Officer terminated the services of the appellant effective that date for allegedly contravening the provisions of regulation 187 (1) and (2) of the CORT, read together with section 16(2) of the Public Officers Ethics Act. The appellant contended that other than the show cause letter in which he was given seven days to make representation prior to a decision being made, he had never been summoned to appear before the respondent's Secretary/ Chief Executive officer or its disciplinary committee to defend himself.
5. He pleaded that the respondent's actions were in gross abuse of office and powers and intended to undermine the operations and perceived independence of the KNUT as a union representing the interest of the employees, intermeddle and usurp the powers of the members of the union, and to promote vested interests through the union. Further, that the decision of 17th January 2018 to terminate the appellant on account of alleged breach of regulations without subjecting him to procedurally and legally required processes was prompted by malice, ill will and bad faith.
6. The respondent on its part averred that pursuant to Regulation 158 of CORT, it served the appellant with the Notice of Termination letter dated 14th December 2017 which required him to show cause why he should not be terminated from the teaching service, which notice was served upon the appellant on the same date, and that the appellant submitted his response on 9th January 2018 outside the required seven (7) days. Nevertheless and the delay notwithstanding, the respondent considered the appellant's response in which he admitted to taking an oath as a member of the National Assembly; his release from the union was within the CORT, his nominations to the National Assembly was by virtue of his position in the union; and stated that he moved to court with other Union officials who had either been elected or nominated to the National Assembly to challenge their degazettement as union officials by the Cabinet Secretary, responsible for labour matters, and the court issued a temporary injunction in Nairobi ELRC JR. No. 37 of 2017 against the said degazettement.
7. Further, that after considering the response, the respondent found that the appellant's leave of absence or release from teaching service was given exclusively to the union and not any other organizations or institution; the appellant's assumption of office as Member of Parliament grossly breached the provisions of the CORT, Public Officers Ethics Act, the *Elections Act*, Code of Conduct for teachers and in effect violated the terms and conditions of his contract of service; the provisions of CORT clearly required any teacher intending to participate in political activities resign or retire in compliance with the *Elections Act*; it was not a party to Nairobi ELRC JR No. 37 of 2017 and hence had no knowledge of any orders issued thereunder; the notice of termination was in respect of the appellant's contract of service and distinguishable from the cause of action in Nairobi ELRC JR No. 37 of 2017; and the appellant was holding two public offices and earning double benefits in terms of pension and gratuities contrary to the law. The respondent therefore resolved to terminate the appellant's services with effect



from 17th January 2018 for breach of contract and the appellant was issued with a letter of termination which provided reasons for termination.

8. The respondent contended that the appellant was therefore subjected to fair administrative process and was accorded full benefit of the rules of natural justice in that; he was issued with a show cause letter setting out the grounds for breach of contract and accorded adequate opportunity to respond; the appellant prepared a detailed response admitting that he was a member of Parliament; though and outside the stipulated time was considered and answered, and the respondent set out comprehensively the reasons for the appellant's termination and the termination and process leading to it conforms to regulation 158 of CORT.
9. Abuodha J. (hereinafter "the trial Judge"), after hearing the parties, was satisfied that there existed valid reasons for the termination of the appellant's contract as a teacher and held that the release of the appellant from active teaching was to enable him to focus on KNUT activities which exclusively concerned teachers' affairs, and it was doubtful if such release could be extended to include nomination to parliament by a partisan political party. In addition, that the appellant was not in active teaching service and having accepted nomination as a member of parliament and had been sworn in as such, interdicting him would have been of no effect, and the "show cause" letter issued to him and his response thereto was sufficient hearing under the circumstances. Being dissatisfied with this decision, the appellant filed a Memorandum of Appeal dated 27th September 2019 in this Court, in which he has raised 15 grounds of appeal challenging the findings as regards the reasons for the termination of his contract as a teacher, and that the "show cause" letter and his responses thereto was sufficient hearing under the circumstances.
10. We heard the appeal on this Court's virtual platform on 3rd March 2025, and learned counsel, Ms. Medrine Mueni appeared for the appellant while learned counsel, Mr. Calvin Anyuor appeared for the respondent and highlighted their respective written submissions dated 11th June 2024 and 10th January 2025. In commencing the determination of this appeal, we are mindful of the duty of this Court as a first appellate court, which was reiterated and set out in the decision of *Selle and Another vs Associated Motor Boat Co. Ltd & Others* (1968) EA 123. We will therefore reconsider the evidence adduced at the trial court, evaluate it, and draw our conclusions. In addition, we will only depart from the findings by the trial court if they were not based on evidence on record; where the said court is shown to have acted on the wrong principles of law as was held in *Jabane vs Olenja* [1986] KLR 661, or where its discretion was exercised injudiciously as was held in *Mbogo & Another vs Shah* [1968] EA 93.
11. The issues that arise therefore, are whether there was justifiable reason for the termination of the appellant's employment, and if so, whether the process of termination was legal. Ms. Mueni's position on behalf of the appellant was that the respondent disregarded the procedural and substantive safeguards enshrined in *the Constitution*, the *Employment Act*, and the Code of Regulations for Teachers, and denied the appellant the right to fair administrative action and fair labour practices. Specifically, that the trial Judge failed to analyse the reasons for the appellant's termination and erroneously held that the appellant's nomination to Parliament amounted to engagement in partisan political activities, notwithstanding that his nomination was to objectively represent workers' interests as Secretary General of KNUT, and he was on leave of absence and not receiving a salary. Lastly, counsel submitted that the trial Judge did not fully engage with the constitutional guarantees of fair administrative action and the statutory dictates outlining unfair termination, and its oversight of sections 45(1), (2) (c), (4) and (5) of the *Employment Act*, among others, including the fact that the appellant was not given an oral hearing, unduly prejudiced him.
12. Mr. Anyuor on his part submitted that at the time the appellant accepted the nomination to be a Member of Parliament by a partisan political party, he was a public officer serving as a teacher under



the employment of the respondent but on leave of absence, and though released to the union for a period of time, was still subject to the regulations governing the teaching service. Therefore, that by taking an oath as a Member of Parliament, the appellant violated various pieces of legislation which prohibit public officers from actively engaging in partisan political activities and specifically, sections 16 of the Public Office and Ethics Act of 2003, 43 of the *Elections Act*, 12 of the *Political Parties Act*, 23 of the *Leadership and Integrity Act* No 19 of 2012 and 16 of the Teachers Code of Conduct and Ethics (2015). Reliance was also placed on the decisions by this Court in Public Service Commission & 4 others vs Cheruiyot & 20 others, Nakuru Civil Appeal 119 & 139 of 2017 and Principal Secretary, National Treasury & another vs Kimutai, Eldoret Civil Appeal No. 95 of 2019. According to counsel, the termination of the appellant's services was based on valid grounds, and the appellant ought to have resigned upon accepting nomination as a member of parliament by a partisan political party as required by Regulation 187 of CORT.

13. Furthermore, that the appellant was accorded a fair hearing and the opportunity to be heard in consonance with the *Employment Act* and tenets of natural justice. In particular, that he was given notice in accordance with section 41 of the *Employment Act*; the contention by the appellant that he was not interdicted or orally heard prior to termination had no basis, since the CORT defines an interdiction as "the temporary prohibition of a teacher from exercising the powers and functions of the teacher's office pending determination of the teachers disciplinary case" and the appellant was not in active classroom teaching; and since he answered the queries and given an opportunity to make representations before he was terminated as held by this Court in Judicial Service Commission vs Gladys Boss Shollei & Another (2014) eKLR, Bett Francis Berngetuny & Another vs Teachers Service Commission and Another, [2015] eKLR and Kenya Ports Authority v Fadhil Juma Kisuwa [2017] eKLR.
14. We have carefully considered the arguments by the appellant and respondent. It is not in this respect contested that the appellant was, while still in the respondent's employment and on leave of absence, nominated by a political party as a member of parliament to represent special interests under Article 97(1) (c) of *the Constitution*. Further, it is not contested that he accepted the nomination, and took oath of office as a member of Parliament. It is also not disputed that the appellant's employment was subsequently terminated by the respondent by way of a letter dated 17th January 2018.
15. The functions of the respondent, which is established under Article 237 of *the Constitution*, include registering teachers, recruiting and employing registered teachers, exercising disciplinary control over teachers; and terminating the employment of teachers. The ways a teacher may be removed from the respondent's register are set out in section 30 of the *Teachers Service Commission Act*, which provides as follows:

- (1) The Commission may, after inquiry, cause to be removed from the register the name of any person—
 - a. who has died;
 - b. who the Commission is satisfied has obtained registration through fraudulent means;
 - c. who has been convicted of a sexual offence or an offence against a pupil or student;
 - d. who has been convicted of a criminal offence which, in the opinion of the Commission, renders the person unfit to be a teacher;



- e. who the Commission has directed should be removed as a result of disciplinary proceedings instituted under this Act; or
 - f. suffers from such physical or mental illness or infirmity which renders the person incapable of performing the duties of a teacher.
2. The Commission shall cause the name and particulars of a teacher whose name is removed from the register under subsection (1) to be published in the Gazette within one month from the date of such removal.
 3. Subject to the provisions of this Act, the removal of a teacher's name from the register shall be notified by the Commission to the person by registered mail addressed to his or her last known address.
 4. Where the name of any teacher is removed from the register under this Act, such name shall not be reinstated except by direction of the Commission.
 5. A teacher whose name has been removed from the register shall cease to be a teacher for purposes of this Act with effect from the date of such removal.
16. With respect to removal arising from disciplinary action, section 34 of the Act provides that registered teachers shall be subject to the law and regulations from time to time in force in respect of the service, and the disciplinary offences include the offences prescribed in the Third Schedule or any other relevant law. Under the Third Schedule, there are a number of offences listed under the rubrics of immoral behaviour, professional misconduct, and infamous conduct, as well as the offences of forgery; mismanagement and embezzlement of public funds and any other act or conduct that is incompatible with the teaching profession. These offences are also reproduced in CORT.
- It is notable that one of the offences under the rubric of infamous conduct is conduct or behaviour which in the opinion of the respondent contradicts the spirit and tenor of chapter six of *the Constitution* on leadership and integrity.
17. A number of provisions in the said chapter, therefore, applied to the appellant during his employment and upon his nomination as a Member of Parliament, the first being Article 77 (1) which provides that a full-time State officer shall not participate in any other gainful employment. Under Article 260, a "State officer" means a person holding a State office, which include Members of Parliament, and the appellant accordingly could not continue being employed in gainful employment as a teacher after his nomination as a Member of Parliament. The second provision in chapter six which applied was Article 80, which empowers Parliament to enact legislation establishing procedures and mechanisms for the effective administration of the chapter; providing for the application of the chapter to public officers; and promotion of the principles of leadership and integrity. Parliament accordingly enacted the *Leadership and Integrity Act* and the Public Officers Ethics Act, which were applicable at the time of the termination of the appellant's employment. The Public Officers Ethics Act has however since been repealed and replaced with the Conflict of Interest Act No. 11 of 2025.
18. Section 16 of the *Public Officer Ethics Act* in this respect provided that a public officer shall not in the performance of his duties act as an agent for, or so as to further the interest of a political party; or indicate support for or opposition to any political party or candidate in an election; or engage in political activity that may compromise or be seen to compromise the political neutrality of his office. Similar provisions were found in section 23 of the *Leadership and Integrity Act* which was also repealed by the Conflict of Interest Act of 2025. These provisions are reiterated in Regulation 16 of the Teachers



Service Commission (Code of Conduct and Ethics for Teachers) Regulations (Legal Notice 162 of 2015) as follows:

1. A teacher shall maintain political neutrality at all times and shall not act in a manner that may compromise or be perceived to compromise his or her neutrality.
 2. A teacher shall serve impartially with loyalty, honesty and objectivity regardless of the teacher's political views.
 3. A teacher shall not—
 - a. act as an agent for, or further the interests of a political party or candidate in an election;
 - b. manifest support for or opposition to any political party or candidate in an election;
 - c. engage in any political activity or campaigns that may compromise or be seen to compromise the dignity of his or her office; or
 - d. use public or institutional resources for the furtherance of any project for the purpose of supporting a candidate or political party.
 4. A teacher who intends to contest an election shall retire or resign from service at least six months before the date of election.
19. It is notable that these provisions have been saved by section 25 of the Conflict of Interest Act of 2025, which now also specifically regulates other gainful employment by a public officer under section 23 as follows:
1. A public officer shall, while serving in a reporting entity, not engage in any other gainful employment which—
 - a. is inherently incompatible with the official duties of the public officer;
 - b. results in the impairment of judgment of the public officer in the execution of official duties;
 - c. results in conflict of interest; or
 - d. the public officer is mandated to regulate or exercise oversight.
 2. Where a public officer engages in gainful employment which is not prohibited under this Act, the officer shall, within thirty days of taking up the employment, make a declaration of the employment in the prescribed form and register the declaration with the reporting authority and the Commission.
 3. A public officer shall not engage in any other gainful employment without permission from the reporting authority.
 4. A person who contravenes any provision of this section commits an offence.
20. Chapter six of *the Constitution* expressly require public officers to maintain political neutrality at all times, and seeks to create a public service that is apolitical, professional and efficient by insulating it from political patronage. The appellant's argument in this regard as we understand it, is that his nomination as a member of Parliament did not entail his participation in any partisan political activity, and that he was merely representing teachers in Parliament. Therefore, in effect, that the above referenced provisions of *the Constitution* and cited laws and regulations did not apply in his case. In



the letter dated 9th January 2018 to the respondent's CEO in response to the notice to show cause, the appellant stated as follows:

“...My otherwise release by the Commission to the Union as well as my

Acceptance of the nomination is within the provisions of the Code of Regulations for Teachers (CORT) as well as all other relevant laws. My nomination to the National Assembly was by virtue of the elective position I hold as the Secretary General of KNUT. You will also note that the provisions of Regulation 187 of the CORT which you quoted applies to those who ‘intent (sic) to contest for political office’...”

21. We do not ascribe to this argument for two reasons. Firstly, nomination as a member of Parliament is by a political party, and section 34(8) of the *Elections Act* expressly requires that the person being nominated is a member of the political party at the date of the submission of the party list, which presumes that the person actively prescribes to the party's political position and participates in the party's activities. Consequently, not only does that person lose political neutrality once nominated, but their professionalism in the discharge of duties as a public officer is also compromised since he or she is expected to prioritize their political parties' objectives and agenda. Secondly, election and nomination through political parties are both processes for appointment to political office, albeit with different requirements. While elected members gain office through a voting process by the electorate and are therefore representative of the majority, nominated members represent interests and constituencies which would otherwise be unrepresented on behalf of their political party. Indeed, Article 90 of *the Constitution* expressly refers to the process of nomination as an election and states that “elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of county assemblies under 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists”.
22. It is for these reasons the legal frameworks we have made reference to mandate that such a member who is so elected resigns from their public office to preserve the political neutrality of the public service. The appellant did not resign as required by both Article 77(1) of *the Constitution* and regulation 187 of CORT, and to this extent, there were valid reasons for terminating his employment as a registered teacher with the respondent. We cannot, therefore, fault the trial Judge for so holding.
23. As regards the procedure of termination of the appellant's employment, under section 30 of the Teachers Service Act the respondent is required to make an inquiry, and under section 34 after interdicting a teacher, may take disciplinary actions against a registered teacher including termination of services. In addition, the CORT provides a detailed procedure for disciplinary proceedings in regulations 144 to 156 thereof, which entails the reporting of a complaint against a teacher, investigation of the complaint, a process of interdiction, and the disciplinary process which includes a disciplinary hearing. However, from the facts of this appeal, it is apparent that this procedure was not employed by the respondent, who essentially instead employed a summary procedure in terminating the appellant's services.
24. Summary dismissal of an employee is provided for under section 44 of the *Employment Act* and occurs when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provisions or contractual terms. The allowable grounds when an employer may so dismiss an employee summarily are when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service, or when the circumstances enumerated in section 44(4) of gross misconduct arise. One of such circumstances under section 44(4)(a) is where an employee absents himself from the place appointed for the performance of his work without leave or other lawful cause. It is also notable that under section



43 of the *Employment Act*, the burden of proof is on an employer to demonstrate the reasons for termination as follows:

1. In any claim arising out of termination of a contract, the employer shall be required 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.
 2. The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
25. In this regard, we have found that the reason for terminating the appellant's employment to be plausible. Furthermore, this reason was communicated by the respondent to the appellant in the notice of termination and to show cause dated 14th December 2017 as follows:

“It has come to the attention of the Commission that following your nomination as a Member of Parliament, you have since taken oath of office to that effect.

As you are aware, regulation 187(2) of the Code of Regulations for Teachers 2015 (CORT) requires that teachers on release to trade unions resign or retire from service once they opt to participate in political activities.

We note that despite your nomination and acceptance to serve as a

Member of Parliament you failed, neglected and/ or ignored to abide by the provisions of the CORT. –

This is to ask you to show cause why the Commission should not terminate your teaching service in accordance with the provisions of the CORT. Your response should reach the Commission within seven

(7) days from the date of this letter.”

Procedural fairness requires an employee be given notice of the charges that may lead to termination of employment, and a reasonable opportunity to consider and give a response. In the present appeal it is manifest that the reasons for termination were given to the appellant, he was given adequate time to respond, and when he did respond out of time on 9th January 2018, his response was considered in the letter of termination which was dated 17th January 2018.

26. These findings notwithstanding, it is our view that the provisions on summary dismissal under section 44 of the *Employment Act* cannot be used to exclude compliance with an express procedure for termination which is either provided under statute or by contract. In the present appeal there was such a specific procedure in regulations regulations 144 to 156 of CORT which could not be substituted or done away with by the respondent. We, in this regard, associate ourselves with the holdings by this Court in *CMC Aviation Limited vs Mohammed Noor* [2015] KECA 775 (KLR) and *Ratemo & 2 others vs Dufourg* [2025] KECA 1359 (KLR) that whatever the reasons that arise to cause an employer to terminate the services of an employee, that employee must be taken through the mandatory procedure provided by the law.
27. Our conclusion therefore is that while the respondent demonstrated good and valid reasons for the appellant's termination of employment, gave notice of the said reasons to the appellant, granted him adequate opportunity to respond before the termination of his employment, and the termination was to this extent not unlawful; the procedural infractions. rendered the termination unfair. We however note that the appellant never sought any damages or compensation in his petition in the ELRC, and



no basis was laid for any such relief. This appeal accordingly only partially succeeds to the extent that we grant a declaration that the process of termination of the appellant's employment was not in accordance with regulations 144 to 156 of CORT. All other grounds of the appeal and reliefs sought by the appellant however fail. Each party shall bear their own costs of the appeal in the circumstances.

28. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2026.

W. KARANJA

JUDGE OF APPEAL

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F. TUIYOTT

JUDGE OF APPEAL

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P. NYAMWEYA

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

