

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT KERICHO

ELRC CAUSE NO. E003 OF 2025
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS
(KUDHEIHA).....
CLAIMANT**

VERSUS

**BOM KYOGONG GIRLS'
SECONDARY SCHOOL
.....RESPONDENT**

JUDGMENT

Introduction

1. The Claimant filed a Memorandum of Claim dated 2nd December 2024 seeking the following orders:

1. Unpaid half salary for the suspension period from January 2023 to December 2024 (24 months) in accordance with the CBA Clause 8(b): $Kshs.6,015 \times 24 = Ksh.144,360/=$

2. Three months' salary in lieu of notice as per CBA Clause 31: $Kshs.12,031 \times 3 = Kshs.36,093$

3. Service gratuity in accordance with CBA

Clause 6:

$$(1/12 \times 13 \times 12,031) = \text{Kshs.156,403}$$

4. 12 months' salary compensation for loss of employment as guided by section 49 of the Employment Act, 2007

$$\text{Kshs.12,031} \times 12 = \text{Kshs.144,372/=}$$

5. Unpaid House Allowance for 24 months as per the minimum wage guideline of 15% of gross salary

$$\text{Kshs.15/100} \times 12,031 = \text{Kshs.43,311/=}$$

6. Underpayment during the employment period as per the General Wage Order, Legal Notice No. 123 of 1st July 2022

Was to be paid Kshs.16,033 and was being paid Kshs. 12,031, the difference being Kshs.4,002

Total amount for underpayment is.....

$$\text{Kshs.4002} \times 36 \text{ months} = \text{Kshs.144,072/=}$$

7. The grievant be paid a total sum of Kshs.626,470 by the Respondent, being her final terminal benefits, within the next 30 days.

8. The Respondent to issue Ms Daisy Cheismet with a certificate of service pursuant with section 51 of the Employment Act, 2007.

9. The costs of this suit be awarded to the Claimant.

10. Any other relief the court deems fit.

Claimant's case

2. The Claimant is a duly registered trade union which represents employees/non-teaching staff in both public and private educational institutions managed by the Board of Management, among other sectors.
3. The Claimant avers that it filed this suit on behalf of the grievant, Ms. Daisy Chesimet, a school cateress who was first employed on 1st November 2009 with a starting salary of Kshs.9,426/=, confirmed through an appointment letter dated 26th October 2009.
4. On 1st February 2011, the Claimant avers that it authorized the deduction and remittance of union dues, which the school complied with under section 48 of the Labour Relations Act, 2007.

5. Later, through a letter dated 1st October 2019, the Claimant avers that the grievant's services were transferred to Kyogong Girls' Secondary School. Subsequently, on 3rd January 2020, she received a formal letter of offer confirming her employment at Kyogong Girls with effect from 10th January 2020, at a revised starting salary of Kshs.12,031/= . This sequence establishes her long-standing service, union recognition, and contractual employment terms.
6. The Claimant avers that the dispute between the grievant and the Respondent arose when the grievant took leave on 5th December 2022 to attend to her sick child, only to receive an SMS on 7th December 2022 from the school principal directing her to go on indefinite leave due to financial challenges. Following the Claimant's interventions and letters in January, February, and March 2023, the leave was converted into suspension without valid grounds, and despite conciliation efforts initiated by the Ministry of Labour in March 2024, the school management failed to cooperate, resulting in a certificate of unresolved dispute.

7. The Claimant avers that the indefinite suspension violates the Employment Act, 2007, the Constitution of Kenya, and the CBA provisions limiting suspension to six months, amounting to constructive dismissal.

Respondent's Statement of Defence

8. In opposition to the Memorandum of Claim, the Respondent filed a Statement of Defence dated 15th May 2024.
9. The Respondent contests the Claimant's standing, arguing there is no recognition or collective agreement between them and denying that the grievant was employed in 2009 since the school was only inaugurated in 2019.
10. The Respondent deny deducting union dues, refutes the alleged SMS leave directive of December 2022, and maintains that the school was closed for holidays at the time.
11. The Respondent asserts that Ms. Daisy Chesimet was guilty of repeated gross misconduct, including absenteeism and neglect of duty, for which she received warning letters on 22nd July 2022 and 15th

November 2022, and even admitted fault in an apology dated 16th November 2022.

12. Despite warnings, the Respondent avers that her misconduct persisted, leading to a disciplinary hearing on 14th November 2022, which she left before receiving the verdict.
13. The Respondent claims her summary dismissal was justified under **section 44(3) of the Employment Act**, following due process, and denies allegations of constructive or unfair dismissal.
14. The Respondent argue the Claimant has failed to provide evidence of a CBA or entitlement to gratuity, notice pay, house allowance, or underpayment, and therefore prays that the suit be dismissed with costs as the dismissal was lawful and procedurally fair.

Claimant's evidence in court

15. CW1, Betty Daisy Chesimet, the grievant, adopted her undated witness statement and list of documents marked as exhibits 1 to 21, respectively, as her evidence in chief.

16. In cross-examination, CW1 confirmed she is a union member but admitted she had no evidence of union dues or a recognition agreement between the Claimant and Kyogong Girls. She acknowledged being employed at Kyogong Girls on 3rd January 2020, having transferred from Kyogong Boys, noting inconsistencies between her application dated 5th January 2020 and the appointment letter issued earlier. She stated that the Principal, not the Board, had signed the letter, and that she had not been interviewed. CW1 admitted she had been warned for absenteeism, attended a disciplinary hearing, apologized for misconduct, and claimed she did not abscond from duty thereafter. She also mentioned receiving messages from the Principal, though the phone records lacked the Principal's name or number.

17. In re-examination, CW1 clarified that the Principal signed her appointment letter on behalf of the Board and that the transfer was agreed upon between the two schools' boards.

Respondent's evidence in court

18. RW1, Jane Chepkoros, the Respondent's Principal, adopted her witness statement dated 3rd July 2025,

together with the list of documents dated 15th May 2025 marked as exhibits 1 to 8 respectively, as her evidence in chief.

19. In cross-examination, RW1 testified that she assumed the role of Principal on 10th May 2025 and clarified that the Claimant was not an employee of the school's Board of Management, nor was she transferred from the Girls' School, which did not assume her liabilities. She acknowledged submitting a letter of appointment dated 3rd January 2020, which indicated the Grievant's role as a cateress. However, she admitted uncertainty about her actual duties and the duration of her service.
20. RW1 stated that the grievant was in charge of the dormitory despite the school being a day school, and she was unsure of her membership with the Claimant, noting that no union dues had ever been remitted. RW1 confirmed that the Grievant was not informed of the disciplinary hearing, was absent during it, and was accused of absconding from duty during the KCSE examination period. She admitted there was no formal invitation letter, no agreement with KUDHEIHA, and no awareness of any union agreement with the Ministry

of Education. She asserted that the grievant was placed on indefinite suspension, effectively self-suspending by failing to attend the board hearing, and was paid only for the period she worked, thereby denying the claims of constructive dismissal or termination by Kyogong Girls' High School.

21. In re-examination, RW1 reiterated that she had no evidence of the Claimant's union membership or direct payment of dues, emphasizing that the board was responsible for appointing employees.

22. Parties were directed to file their respective written submissions.

Claimant's written submissions

23. The Claimant submitted that the grievant's indefinite suspension by the Respondent was unlawful under **sections 41 and 45 of the Employment Act**, which require notice of allegations, an opportunity to be heard, and a fair disciplinary process. The Claimant relied on the case of ***Egesa v African Economic Research Consortium [2025] KEELRC 3253 (KLR)***, where the court held that indefinite suspension without pay violates Article 41 of the Constitution, and

Njuguna v Sybrin Kenya [2024] KEELRC 287 (KLR), which found that indefinite suspension amounts to constructive dismissal under ***section 49(1)(c) of the Employment Act.***

24. The Claimant further submitted that the suspension violated constitutional rights to fair labour practices under Article 41, dignity, and fair administrative action under Article 47, while also infringing union rights under section 46 of the Employment Act by denying union representation and collective bargaining protections.

25. As for the remedies, the Claimant submitted that the grievant is entitled to the relief sought, and the Claimant concluded that the Respondent acted arbitrarily, unprocedurally, and unlawfully, condemning the Claimant unheard and depriving her of livelihood, and therefore urged the court to grant the prayers sought.

Respondent's written submissions

26. The Respondent submitted that the Claimant *lacks locus standi* to represent the grievant, citing ***Alfred Njau & Others v City Council of Nairobi [1982]***

KAR 229, which defined locus standi as the right to appear in court, and **Kenya Shoe & Workers Union v Modern Soap Factory Ltd**

[2017] KEELRC 252 (KLR), where the Court of Appeal held that a union without a recognition agreement or proof of membership is a stranger to the employment relationship. Similarly, in **Kenya Hotels & Allied Workers Union v Aegis K. Limited t/a Leopard Beach Hotel (Resort & Spa)**

[2023] KEELRC 1432 (KLR), the court emphasized that the absence of a recognition agreement deprives a union of legal capacity to represent employees.

27. The Respondent further submitted that the alleged employment contract was irregular and void ab initio, as the Principal lacked authority under the Basic Education Act to bind the Board of Management. The Respondent relied on the cases of **Kihu v Optisafe (K) Ltd [2024] KEELRC 527 (KLR)**, **Kenya Airways Limited v Flora [2013] KECA 545 (KLR)**, and **Wambui v Mwangi & 3 others [2021] KECA 144 (KLR)**, all affirming that courts cannot enforce illegal contracts.

28. On termination, the Respondent contended that the grievant was cautioned for absenteeism and misconduct. Although absent from the disciplinary hearing, the process complied with **section 41 of the Employment Act**, rendering the dismissal fair and procedurally sound.
29. The Respondent concluded that the Claimant failed to prove union membership, damages, or a valid employment relationship, and therefore, the suit should be dismissed in its entirety.
30. The Respondent contended that the Claimant is a stranger to the proceedings and should be denied audience, as the cause of action is personal in nature and the grievant has not proved union membership to confer locus standi. The Respondent further argued that the alleged employment contract was illegal and irregular, rendering the entire proceedings void ab initio.
31. Consequently, any action arising from such a contract is a nullity, and the Respondent prays that the claim be dismissed in its entirety with costs.

Analysis and determination

32. The court has considered the pleadings herein and the submissions by both parties. The issues for determination are as follows:

a. Whether the Claimant has locus standi to represent the grievant;

b. Did the Respondent follow due process in terminating the grievant.

c. Whether the grievant is entitled to the reliefs sought

d. Who should bear the costs of the suit

33. In **Kenya Hotels & Allied Workers Union v Aegis K. Limited t/a Leopard Beach Hotel (Resort & Spa) [2023] KEELRC 1432 (KLR)**, the court defined locus standi as follows:

define what locus standi is. Black's Law Dictionary, 9th Edition, defines locus standi as follows:-

"The right to bring an action or to be heard in a given forum."

34. In **Alfred Njau & Others v City Council of Nairobi (supra)** the Court of Appeal held as follows:

"The term locus standi means a right to appear in Court and conversely, as is

stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceeding.”

35. **Section 2 of the Labour Relations Act** defines recognition as follows:

“An agreement in writing made between a trade union and an employer, group of employers’ organization regulating the recognition of the trade union as the representative of the interests of unionizable employees employed by the employer or by members of an employer’s organization.”

36. In Kenya Hotels & Allied Workers Union v Aegis K. Limited t/a Leopard Beach Hotel (Resort & Spa), the court cited the case of **Charitable Organisations [kyevaco] v Board of Governors Maina Wanjigi Secondary School [2015] eKLR**, which stated as follows:

“.....without Recognition of the trade union as the representative of the interests of unionizable employees employed by the employer or by members of an employers’ organization, such a trade union

without Recognition cannot file a trade dispute within the meaning of the Labour Relations Act. The starting point would be to apply the provisions of Section 54(3) & (6) for such a union to have locus standi in dealing with trade disputes...”

37. In this instant case, the Claimant avers that the grievant was one of its members, and when the grievant lost her job, the Claimant represented her and engaged with the Respondent until the matter was referred to the conciliator by the Ministry of Education, but the conciliation was unsuccessful. The court is of the view that the Claimant has *locus standi* to represent the grievant. The Respondent ought to have raised the issue when the matter was referred to conciliation and even during the negotiations before the matter was filed in court. To refute if the Claimant has *locus standi* at this point is clearly an afterthought.

38. ***Sections 41 and 43 of the Employment Act*** outline both the procedural requirements and the substantive grounds for lawful termination of employment. Under ***section 45(2) of the***

Employment Act, a dismissal is regarded as unfair if the employer fails to prove that the reason for termination is valid and fair. Specifically, the employer must demonstrate that the reason relates to the employee's conduct, capacity, or compatibility, or is required by the business's operational needs. Without such proof, the termination is unlawful.

39. In ***Kenya Union of Commercial, Food & Allied Workers v Kisii Bottlers Limited*** [2021] KECA 402 (KLR), the Court of Appeal stated as follows:

“Section 45 of the Employment Act sets out instances in which terms of employment would be unfair. Unfair termination is where the employer fails to prove that the reasons for termination are valid, or a fair reason related to the employee’s conduct, or that he was terminated in accordance with the following of due procedure. Unfair termination is also, per Section 46 of the Employment Act, where it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee.”

40. In ***Walter Ogal Anuro v Teachers Service Commission [2013] KEELRC 386 (KLR)***, the court held that for termination to be fair, there must be both substantive justification and procedural fairness.
41. The issue is to whether the Claimant has *locus standi* to represent the grievant the court sees no documentation of union dues as such. The grievant testified she used to pay the union dues. There is a letter from the Claimant dated 1st February 2011 authorizing Kyogong Secondary school to be deducting union dues from several presumably staff members including Daisy Chesimet the grievant.
- The union was involved in defending the grievant all the while and communicating with the Respondent and the Ministry of Labour. The issue of *locus standi* was never raised as of concern. ***Section 55(1) of Labour Relations Act*** provides a trade union representative elected under Subsection 1 may represent members in grievance and disciplinary hearing at workplace. The constitution of the union also provides legal right for the union to represent its members ***KUDHEIHA CONSTITUTION RULE 3.***

The court has no misgiving to establish the Claimant has a right to represent its members and by all implications the grievant was its member.

42. The court as far as termination of employment is concerned, noted the Grievant was employed by Kyogong Secondary School in 2009 as a school cateress earning Kshs.9,426/= and was later transferred to Kyogong Girls Secondary school on 3rd January 2020 in the same position, earning Kshs.12,031/=. The Grievant had issues of absencing herself from work and was given several warnings on 22nd July 2022 and was invited to a Disciplinary hearing on 11th November 2022. She received another warning on 11th November 2022. She was placed on an indefinite suspension 24th March 2023. She tendered an apology in an undated letter.

43. The issue that is not clear from the evidence deduced from the pleadings and evidence in court is whether the Respondent took the grievant through disciplinary hearing as well provided in Section 41 of the Employment Act. Section 41 of the Employment Act states: -

“Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”

44. The Respondent had a valid reason to consider summary dismissal of the Claimant from employment due to her persistence in absconding work. Regretably, they failed to follow procedural process provided in mandatory terms under Section 41 of the

Employment Act. The provision of Section 41 of the Employment Act is not tentative but is mandatory.

45. In the case of **WALTER ONURO OGAL -VS- TEACHERS SERVICE COMMISSION** cause 955 of 2011 the court stated

“For termination to pass the fairness test, it ought to be shown that there was not only substantive justification for the termination but also procedural fairness.”

46. The trite law is that even if an employer has valid reasons to summarily dismiss their employee they must however comply with the provision for disciplinary hearing. The Respondents unfortunately failed to do so.

47. The court must therefore hold the Grievant was unprocedurally terminated from employment even if the employer had a valid ground to terminate her. The Claimant must be given an opportunity to defend herself in the presence of her witness. The court therefore enters judgment in her favour.

48. Since the court has found that the Claimant was unfairly terminated, the Claimant is entitled to the reliefs sought as follows:

a. Unpaid half salary for the suspension period from January 2023 to December 2024

Kshs.6,015 × 24 = Ksh.144,360/=

b. One month in lieu of notice in accordance with section 36 of the Employment Act and the Grievant's Contract of Employment dated 1st October 2019 amounting to Kshs.12,031/=

c. Two months' salary for unfair termination in accordance with Section 49(1)(c) of the Employment Act which the court will reluctantly grant as the Grievant contributed to her separation from employment

Kshs.12,031 X 2= 24,062/=.

d. The court will decline to award Service gratuity as the same is not proved and is not provided in any documentation.

e. Unpaid House Allowance for 24 months as per the minimum wage guideline of 15% of gross salary is awarded at Kshs.15/100 X 12,031 = Kshs.43,311/=.

f. The court will decline the underpayment as it is time-barred and secondly, is not proved with any factual evidence.

g. The Respondent to grant a certificate of service in accordance with Section 51 of the Employment Act. Total awarded is Kshs.223,764/=

49. The Court in exercising its discretion orders each party to meet their respective costs of the suit. Interest will accrue at 14% per annum from date of judgment till full payment.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 18th Day of
March, 2026.**

**ANNA NGIBUINI MWAURE
JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE

ORIGINAL