

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT MOMBASA

ELRCA. NO.24 OF 2025

VALENTINE EDUCATION LIMITED

T/A DONA OLINDA ACADEMY ..... APPELLANT

VERUS

RICHARD YONGO SHUNGU .....RESPONDENT

*(Being a Partial Appeal from judgment and Decree of Hon. J.B. Kalo (CM) in Chief Magistrate's Court at Mombasa in C MELRC NO.823 of 2019 delivered virtually on 7<sup>th</sup> February 2025)*

**JUDGMENT.**

**Background**

1. Through the Statement of Claim dated 18th September 2019, filed in the above-mentioned matter, the Respondent sought against the Appellant the following reliefs;
  - i. The Appellant be ordered to pay the Respondent his terminal and contractual dues amounting to Kshs 813,079/=
  - ii. Costs of this claim and interest thereon at court rates.

- iii. A declaration that dismissal of the Respondent from work was unfair and unjust;
  - iv. The Respondent be issued with a Certificate of service.
  - v. Any other or further relief as this Honourable Court may deem just.
2. The Appellant challenged the Respondent's Claim through the Amended Reply to the Memorandum of Claim. It contended that the Appellant's employment terminated due to the expiry of the contract. As such, he was not dismissed at the initiative of the Appellant. The reliefs sought were unmeritorious, therefore.
  3. Judgment was entered for the Respondent by the trial Court. The judgment is the subject matter of this appeal.
  4. This Court directed that the appeal be canvassed by way of written submissions. The parties have complied with the directions. Their submissions are on record.

**Respondent's case before the trial Court.**

5. The Respondent, Richard Yongo Shungu, stated that he was employed by the Appellant as a primary school teacher from 1994, with annual contract renewals. At the time of termination, he earned Kshs. 16,500 per month.

6. On 30th November 2017, he was verbally terminated by the Appellant's proprietor, Mrs Olinda Fernadis, without being given any reason or prior notice, and without being afforded a hearing.
7. He also claimed that a security bond deducted from his salary under clause 8(a) of his employment contract had not been refunded.
8. The Respondent alleged that the Appellant breached the employment contract and prayed that the court grant the reliefs sought in his Memorandum of Claim.

### **Appellant's case**

9. The Appellant, Valentine Education Limited t/a Dona Olinda Academy, through its General Manager, Evans Omariba, stated that the Respondent, Richard Yongo Shungu, was employed on a two-year renewable teaching contract from January 2014, with the last contract ending in November 2017. The Appellant argued that the Respondent was not terminated, but his contract simply expired, and he did not seek renewal.
10. The Appellant stated that the Respondent had received a Kshs. 196,000 loan, which was recoverable from his salary in equal monthly instalments. The salary served as security for the loan repayment.

11. Upon the expiry of his fixed-term employment contract, the Respondent sought alternative employment and secured one with Young Mothers Academy, a neighbouring school. He never applied for renewal of his contract with the Appellant.
12. It was further stated that the Respondent, a senior teacher at the Appellant's, unlawfully interfered with the Appellant's properties, such as by selling a property in Kilifi County to third parties. The matter was reported to the police, and a civil suit, CMELC No. 18 of 2019, was filed against the Respondent and three others.
13. as a security bond, and that all contractual terms, including repayment and bond arrangements, were clearly outlined. They also alleged that the Respondent had interfered with the school's property and obtained alternative employment elsewhere.
14. The Respondent's employment was never terminated by the Appellant as alleged. It terminated by effluxion of time. The claim for unfair termination was unfounded in the circumstances.
15. The Respondent, like all other employees of the Respondent, was employed on a contract of two years, renewable. All their contracts included a provision for a security bond of one month's salary, which was refunded

at the end of each contract. If an employee were desirous of renewing an expired contract of employment, he had to pay a fresh security bond for the new contract. The same was non-transferable and was always refunded at the end of the two years.

16. The Appellant was a member of the NSSF. His monthly contributions were dutifully made throughout his tenure of employment. He is not entitled to service pay benefit.

### **Judgment by the Lower Court.**

17. After hearing the parties on their respective cases, the learned trial Magistrate entered Judgment for the Respondent for a sum of KShs. 379,020, as a refund for the security bond for the entire period he worked for the Appellant. The trial Court directed that the amount be refunded within 45 days of the judgment.

### **The Appeal**

18. Dissatisfied with the Judgment of the lower Court, the Appellant filed the instant appeal, setting forth the following grounds;
  - 1) The learned Magistrate erred in fact and law that the security bond in the sum of Kshs. 379,000/-claimed by the Respondent was due and owing to the

Respondent herein without any justification whatsoever.

- 2) The Learned Magistrate erred in fact and law in disregarding the counterclaim made by the Appellant despite glaring evidence of the amount owed by the Respondent to the Appellant.
- 3) The Learned Magistrate erred in fact and law in disregarding the provisions of Section 90 of the Employment Act, 2007.
- 4) The Learned Magistrate erred in fact and law in failing to consider the Appellant's evidence on record fully.

### **Appellant's submissions**

19. The Appellant contended that the larger sum claimed by the Respondent was not particularised or proved.
20. Citing **Moses Njane Ngendo v Josiah Anyangu Omutoko & another [2022] KEHC 1321 and Capital Fish Kenya Limited v Kenya Power & Lighting Company Limited (2016) eKLR**, the Appellant emphasised that special damages must be specifically pleaded and strictly proved.

21. The Appellant also submitted that the trial court disregarded a valid counterclaim of Kshs. 196,000, representing an outstanding loan owed by the Respondent, which the Respondent had admitted in his own Memorandum of Claim and for which no defence was filed.
22. Relying on **Ogando v Watu Credit Limited & another [2024] KEHC 3074**, the Appellant emphasised that parties are bound by their pleadings and the court should not have ignored the undisputed counterclaim.
23. Further, the Appellant argued that the trial court failed to consider relevant provisions of Section 90 of the Employment Act 2007 and did not fully evaluate the Appellant's evidence. The Appellant therefore sought to have the judgment set aside, the Respondent's claim dismissed, and the counterclaim for Kshs. 196,000 allowed in full, and costs awarded in their favour.

### **Respondent's submissions**

24. The Respondent submitted that he had been employed by the Appellant as a primary school teacher since 1994 and that his employment was verbally terminated on 30th November 2017 by the Appellant's director, Miss Dona Olinda, allegedly over an unpaid loan of Kshs. 196,000.

25. During the employment, the Appellant deducted a security bond of one month's salary for each year of service, which was never refunded upon termination. The trial court subsequently awarded the Respondent Kshs. 379,500 as the security bond, along with costs and interest.
26. Citing **Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR** and **Kenya Ports Authority v Kuston (Kenya) Limited (2009) 2 EA 212**. The Respondent submitted that the trial magistrate did not err in awarding the security bond since the Appellant failed to provide evidence that the deducted amounts had been refunded, and the contracts clearly stipulated the deductions.
27. The Respondent relied on **University of Nairobi v Leonard Lianza Miuaka (2020) eKLR** to support the principle that, in the absence of evidence to refute a claim, the claimant's entitlement should prevail.
28. Regarding the counterclaim raised by the Appellant, the Respondent submitted that the Appellant had not produced evidence of the disbursement of the alleged loan of Kshs. 196,000 or any supporting documentation.
29. It was argued that under Sections 108 and 109 of the Evidence Act, Cap. 80, Laws of Kenya, the burden of proof

rests on the party making the claim. The Respondent further contended that the counterclaim should not have been entertained in the employment court, as any dispute over repayment of the loan is properly a civil matter, citing **Stephen Bhukebi Simiyu v Nzoia Sugar Company Limited, ELRC No. E 005 of 2021.**

30. On the question of limitation under Section 90 of the Employment Act, 2007, the Respondent submitted that the claim was filed within the statutory three-year period, relying on **Beatrice Kahai Adagala v Postal Corporation of Kenya Ltd (2015) eKLR**, and therefore the trial court did not err.
31. The Respondent also argued that the trial magistrate properly considered all evidence submitted by the Appellant, including letters of authority, appointment letters, NSSF statements, and the muster roll, but the Appellant failed to provide evidence proving that the security bond had been refunded.
32. In conclusion, the Respondent argued that the trial court correctly assessed the evidence, found the security bond claim justified, and properly dismissed the Appellant's counterclaim. The Respondent urged the appellate court to dismiss the appeal in its entirety and uphold the judgment awarding Kshs. 379,500 to the Respondent, and confirm the order for costs and interest.

## **Analysis and Determination**

33. I have carefully considered the grounds of appeal, the record, and the respective submissions by the parties, and take the view that the instant appeal revolves around two key questions;
- a) Was the Respondent entitled to the relief awarded by the trial Court in the circumstances of the suit?
  - b) Was the Appellant's counterclaim proved?
34. The Respondent argued that clause 8[a] of all his employment contracts stipulated that a month's salary be deducted and retained by the Appellant as a security bond for each one-year contractual period. Throughout his employment with the Appellant, his salary was deducted in accordance with this contractual provision and was never refunded. Hence, his claim set out in paragraph 13[ii] of his Statement of Claim, thus *"unpaid security bond for the period between January 1994 and November 2017 [23 years], KShs. 379,500."*
35. The Appellant does not deny the existence of the contractual provision, nor the deductions made pursuant to it. However, it argues that the amounts deducted were contractually refundable at the end of each contractual period and that they were indeed refunded.

36. The Clause read;

***a) You will be required to keep one month's salary at school, which shall serve as a security bond. This amount will be deducted monthly from your salary and will start from the first month of engagement.***

***b) At the end of your contract, the amount so termed as security will be refunded to you. Should you wish to be re-employed, after the expiry of your contract, you will reapply a month before the end of your contract."***

37. Fixed-term employment contracts are considered independent, even if they follow one after another, unless explicitly stated otherwise in the contract. This means that rights and obligations from a previous contract do not transfer to the new one. When pursuing legal action related to a specific contract or multiple contracts, the applicable limitation periods are determined separately for each contract, based on the relevant legal time limits. In such a situation, the doctrine of continuous injury provided for under section 89 of the Employment Act does not apply.

38. This Court observes that the trial court did not analyse or consider how the limitation of actions stipulation under

section 89[then 90] of the Employment Act relates to and impacts the omnibus claim for “unpaid security bond for 23 years.” Had it undertaken this analysis, it might have determined that the claim was primarily time-barred and consequently refused to grant it.

39. There is no dispute that the Respondent was advanced a loan of KShs. 196,000 by the Appellant. The Appellant contended that the loan was to be repaid by monthly instalments drawn from the Respondent’s salary. This Court notes that in its pleadings, the Appellant gives an explicit impression that the monthly instalments were recovered up to the time the Respondent exited its employment. I have analysed the pay slips presented in evidence before the trial Court and note that indeed for some months, the instalments were deducted.
40. The Appellant’s counterclaim is essentially a claim for special damages. The law required them to provide specific proof of their claim. Consequently, one would expect them to present evidence detailing when and how the loan was disbursed, what payments were made at different times, and how they could claim the total amount advanced, KShs. 196,000, yet all indications suggest that some payments were made towards repudiating the loan amount.

41. The long and short of it is that the counterclaim was not proved.
42. In the upshot, the Appeal herein partially succeeds. The learned trial Magistrate's award of Kshs. 379,020 is hereby set aside. As the success is partial, each party is to bear its own costs.

**Read Signed and Delivered this 12<sup>th</sup> Day of March 2026.**

**OCHARO KEBIRA**  
**JUDGE**