



**Njuguna v Technical University of Kenya (Cause E328 of 2024)  
[2026] KEELRC 1142 (KLR) (24 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1142 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E328 OF 2024**

**AK NZEI, J  
APRIL 24, 2026**

**BETWEEN**

**FESTUS GITAU NJUGUNA ..... CLAIMANT**

**AND**

**TECHNICAL UNIVERSITY OF KENYA ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 2<sup>nd</sup> May, 2024 and sought the following reliefs:-
  - a. A declaration that the Claimant's dismissal/termination was unfair, unlawful, unprocedural and wrongful.
  - b. Reinstatement of the Claimant back to employment forthwith and without loss of benefits and continuity of service.
  - c. The Respondent do pay the Claimant his full salary and benefits during the period of dismissal/termination.
  - d. In the alternative to [b] and without prejudice to the above, the Claimant be paid termination benefits and compensatory damages as expounded at paragraph 26 above at Kshs.1,464,639.00.
  - e. Interest on (c) above at Court rates.
  - f. Certificate of service.
  - g. Costs of the suit.
  - h. Any other relief that the Court may deem fit to grant.



2. The Claimant pleaded:-

- a. that the Claimant was employed by the Respondent as a Senior Technician on 23<sup>rd</sup> July, 2015; and was earning a gross salary of Kshs.88,766/= at the time of termination.
- b. that on or about 11<sup>th</sup> April, 2022, the Claimant received a show cause letter from the Respondent's Office of the Vice-Chancellor, calling upon him to explain his absence on 15<sup>th</sup> December, 2021; and to also answer to a charge of failure to obey lawful duty.
- c. that the Claimant responded to the said letter vide his letter dated 21<sup>st</sup> April, 2022 (erroneously captured as 2021); and that on 1<sup>st</sup> March, 2023, almost a year later, he was invited to attend a disciplinary hearing.
- d. that the Claimant attended the disciplinary hearing and explained:-
  - i. that on the morning of 15<sup>th</sup> December, 2021, he received an sms from Collins Oteko requesting him to invigilate examinations on the morning of that day (15<sup>th</sup> December, 2021). That the message had been sent on 14<sup>th</sup> December, 2021 at 9.45 pm by which time the Claimant had slept, and that he did not see the sms until the morning of 15<sup>th</sup> December, 2021.
  - ii. that due to a heavy downpour in Nairobi in the morning of 15<sup>th</sup> December, 2021 and resultant travel challenges, the Claimant arrived at his place of work a few minutes past 8.00, whereupon Collins Oteko directed him to see the Director, which the Claimant obliged.
  - iii. that the issue appeared to have been resolved, but 5 months' later, the Claimant received a show cause letter on 11<sup>th</sup> April, 2022, to explain the same thing which he had explained to the Director and appeared to have been settled.
- e. that on 10<sup>th</sup> May, 2023, the Claimant received a termination letter from the Respondent which stated that "based on the disciplinary hearing, the Claimant's services were no longer required by the Institution".
- f. that the Claimant wrote an appeal on 24<sup>th</sup> May, 2023, appealing the Respondent's decision to terminate him, which appeal the Respondent never dealt with, despite the Claimant's reminders dated 21<sup>st</sup> November, 2023, 4<sup>th</sup> January, 2024, 13<sup>th</sup> February, 2024 and 14<sup>th</sup> March, 2024.
- g. that vide a letter dated 2<sup>nd</sup> April, 2024, the Claimant's Advocates requested for the Minutes/ Proceedings of the disciplinary hearing leading to the Claimant's termination; but the Respondent refused to supply the same.
- h. that the Claimant was not found guilty of the charge of failure to invigilate examination, and that the Respondent's decision was harsh as the remedy thereof is available under Clause 12.3 of the Claimant's terms of service.
- i. that the Respondent's decision to terminate the Claimant on account of failure to invigilate examination was contrary to the Respondent's own Regulations that a non-teaching staff was not allowed to invigilate examinations – a communication made in the Respondent's Deputy Vice-Chancellor's Memo dated 1<sup>st</sup> December, 2016.



- j. that termination of the Claimant's employment was unfair for lack of a valid reason for termination, failure to follow the laid down procedure, failure to give notice, and failure to hear the Claimant's appeal.
  - k. that the Respondent declined to pay the Claimant's terminal dues and compensatory damages as follows:-
    - i. Compensation for unfair termination of employment (Kshs.88,766 x 12 = Kshs.1,065,192/=).
    - ii. One month salary in lieu of termination notice ..... Kshs.88,766/=.
    - iii. Service pay ..... Kshs.310,681/=.
3. Documents filed alongside the Memorandum of Claim included the Claimant's witness statement dated 2<sup>nd</sup> May, 2024 and an evenly dated list of documents, listing 18 documents. The listed documents included the Claimant's letter of appointment, the show cause letter dated 21<sup>st</sup> April, 2022, the Claimant's reply dated 21<sup>st</sup> April, 2022, termination letter dated 10<sup>th</sup> May, 2023, and Appeal dated 24<sup>th</sup> May, 2024, among others.
4. The Respondent defended the suit vide a Memorandum of Response dated 7<sup>th</sup> August, 2024 and denied the Claimant's claim. The Respondent further pleaded:-
- a. that the Respondent was persistent in disobeying lawful duty, absconding duty and absenting himself without permission.
  - b. that the Claimant was served with several Notices to Show Cause and reprimanded, but did not heed or at least improve his delivery of services.
  - c. that on 15<sup>th</sup> December, 2021, without lawful cause, justification or permission, the Claimant absented himself from his designated place of work and was served with a Notice to Show Cause stating the charges he was supposed to respond to. That the Claimant failed to respond satisfactorily, leading to disciplinary proceedings.
  - d. that official communication relating to the Respondent is done through written official communication, and never through SMS messages sent to personal mobile phone.
  - e. that the exams that the Claimant was supposed to invigilate were to start at 8.00 a.m, and that the Respondent denies there was a downpour.
  - f. that the Claimant failed to perform a lawful duty, and absconded duties, hence commencement of a disciplinary proceedings on 1<sup>st</sup> March, 2023 and subsequent termination.
  - g. that the Staff Appeal Council comprises of members from different departments and it is challenging to assemble and to harmonise the members thereof. That the Respondent has already set up the Staff Appeal Council.
  - h. that it is a standard term of contract of all the Respondent's technical staff to assist in the preparation and conduct of examinations; and that failure to invigilate exams and absenteeism without permission or lawful justification are serious misconducts.
5. Documents filed alongside the Memorandum of Response included a witness affidavit of Ruth Kirwa dated 22<sup>nd</sup> October, 2024 and an evenly dated list of documents, listing 6 documents. The listed documents included the Respondent's letters to the Claimant dated 20<sup>th</sup> May, 2021 and 7<sup>th</sup> June,



2021 respectively, a show cause letters dated 15<sup>th</sup> December, 2021 and 11<sup>th</sup> April, 2022 respectively, a complaint letter allegedly from the Claimant's colleagues dated 29<sup>th</sup> November, 2022, and the termination letter dated 10<sup>th</sup> May, 2023.

6. Trial opened before me on 22<sup>nd</sup> January, 2025. The Claimant adopted his filed witness statement as his testimony in the case and produced in evidence the documents referred to in paragraph 3 of this Judgment. Cross-examined by Counsel for the Respondent, the Claimant testified:-
  - a. that in the notice to show cause dated 11<sup>th</sup> April, 2022, two charges were raised against him; being absent from work without permission and failing to obey lawful and proper command.
  - b. that he (the Claimant) did not invigilate exams on 15<sup>th</sup> December, 2022. That he was not aware that he was supposed to invigilate exams. That he was a technical staff (senior technician), and it was not his mandate to invigilate examinations; except where examinations are technical.
  - c. that the Claimant saw a text message early in the morning when he woke up, and called the sender, though he did not have the call log.
  - d. that the Claimant attended before the disciplinary committee on 1<sup>st</sup> March, 2023, and received a termination letter dated 10<sup>th</sup> May, 2023.
  - e. that the Claimant was a member of NSSF and of a Pension Fund, which position is reflected on the payslips produced in evidence.
7. Re-examined, the Claimant testified:-
  - a. that there was an Internal Memo by the Respondent's Vice-Chancellor dated 1<sup>st</sup> December, 2016 (Claimant's Exhibit No. 15) which prohibited technical staff from invigilating examinations, as this was a responsibility of the teaching staff. That the said Internal Memo had not been revoked.
  - b. that apart from the disciplinary proceedings which led to his termination, the Claimant had not been subjected to any other disciplinary proceedings.
  - c. that the appeal lodged by the Claimant was supposed to take 3 months, according to the terms; and that the Claimant wrote reminders upon the lapse of the 3 months.
  - d. that some of the letters referred to by Counsel for the Respondent in cross-examining the Claimant had names different from those of the Claimant.
8. The Respondent's witness, Ruth Kirwa, (RW-1) adopted her filed witness statement and produced in evidence the Respondent's documents referred to in paragraph 5 of this Judgment. RW-1 further testified that the Claimant was terminated fairly, and that his terms and service were never altered.
9. Cross-examined, RW-1 testified:-
  - a. that the Claimant was employed in 2015 as a technical staff, but not as teaching staff.
  - b. that there was no term in the Claimant's contract giving him invigilation duties.
  - c. that the Deputy Vice-Chancellor's Memo dated 1<sup>st</sup> December, 2016 stated that non-teaching staff were not supposed to invigilate exams, and that there was no other memo revoking the Internal Memo dated 1<sup>st</sup> December, 2016.
  - d. that the duty that the Claimant is accused of having absconded on 15<sup>th</sup> December, 2022 is the one of invigilating exams; that this was one of the charges.



- e. that the show cause letter was dated 11<sup>th</sup> April, 2023, over 4 months after 15<sup>th</sup> December, 2021; and that the disciplinary hearing was conducted on 1<sup>st</sup> March, 2023, with termination of the Claimant's employment happening on 10<sup>th</sup> May, 2023.
  - f. that the appeal filed by the Claimant on 26<sup>th</sup> May, 2023 was supposed to be heard within 3 months, but had not been heard at the time of filing the suit herein, which was one year later.
  - g. that the Claimant was a technical staff and was supposed to assist lecturers. That each technical staff is under a faculty.
10. Re-examined, RW-1 testified:-
- a. that the Claimant had a contract of service with terms and conditions, and that Clause 4.2.6 of his terms of service states that his duties included "assisting in the preparation and conduct of University examinations".
  - b. that the memo dated 1<sup>st</sup> December, 2016 did not amend the Claimant's terms of service. That terms of service can only be amended by either a signed contract or a CBA.
  - c. that the Claimant had disciplinary issues before 15<sup>th</sup> December, 2021 as demonstrated by the Respondent's letters dated 20<sup>th</sup> May, 2021 (on absconding duty), 7<sup>th</sup> June, 2021 (absconding duty), 2<sup>nd</sup> June 2021 and 4<sup>th</sup> June, 2021 respectively.
  - d. that the reason why the Claimant's disciplinary hearing was delayed for about a year was because it was Post-Covid-19, and disciplinary hearings require in-person hearings; and that protocols on such had not been restored after the Covid era. That the Claimant was not prejudiced as he was being paid.
  - e. that the reason why hearing of the appeal took long is because there was change of regime; and that the terms of most of the Council members had expired. That the Claimant was not prejudiced.
11. Having considered the pleadings filed herein and the evidence presented thereon by both parties, issues that fall for determination, in my view, are:-
- a. Whether termination of the Claimant's employment by the Respondent was unfair.
  - b. Whether the reliefs sought are merited.
12. On the first issue, for a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination, while procedural fairness addresses the procedure adopted by the employer in effecting the termination. (Walter Ogal Anuro – vs – Teachers Service Commission [2013] eKLR).
13. On substantive justification, Section 43(1) of the [Employment Act](#) provides as follows:-
- “(1) In any claim arising out of a 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.”



14. Section 45(1) and (2)(a) of the *Employment Act* provides as follows:-

- “(1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove –
- a. that the reason for the termination is valid.”

15. In the present case, the charges (accusations) levelled against the Claimant by the Respondent vide the Notice of Show Cause dated 11<sup>th</sup> April, 2022 were as follows:-

“charge 1:

Being absent from duty without permission contrary to the provisions of the *Employment Act* 2007, in particular Section 44(4) of the said Act, the Kenya Polytechnic University College (now Technical University of Kenya) Terms of Service for Grade V – X and related labour laws.

Particulars Of The Charge:

On 15<sup>th</sup> December, 2021 while employed by the Technical University of Kenya as a Technician without lawful cause, justification or permission you absented yourself from your appointed place of work.

Charge 2

Failure to obey lawful and proper command issued by the employer or a person placed in authority over you contrary to the provisions of the *Employment Act* 2007, in particular Section 44(4)(e) of the said Act, the Kenya Polytechnic University College (now Technical University of Kenya) Terms of Service for Grade V – X and related labour laws.

Particulars Of Charge

On the said 15<sup>th</sup> December, 2021 while employed by the Technical University of Kenya as a Technician, you were instructed vide our letter dated 14<sup>th</sup> December, 2021 to invigilate an examinations starting at 8.00 a.m, which was within your duty to obey and to wit, you knowingly, without any justification failed to report and perform your duties . . .”

16. The Claimant was, vide the said notice to show cause, required to respond to the charges within 7 days of the said notice to show cause.

17. The Claimant responded to the notice to show cause, and to the charges levelled against him, vide his letter to the Respondent dated 21<sup>st</sup> April, 2021 as follows:-

- a. On Charge 1, the Claimant stated that he was on duty on 15<sup>th</sup> December, 2021 and attended a meeting with Director, School of Electrical and Electronics Engineering on the issue of his (the Claimant's) lateness on that date.
- b. On Charge 2, the Claimant stated that he always duly obeyed the instructions given to him by his supervisor. That he reported on duty ready to invigilate but the School Administrator instructed him to go and see the Director, School of Electrical and Electronics Engineering, and that the matter was resolved amicably.



18. Did the Claimant report on duty on 15<sup>th</sup> December, 2021? According to the Claimant's response to the notice to show cause, the pleadings herein and evidence presented in Court, he (the Claimant) reported on duty on 15<sup>th</sup> December, 2021 some minutes after 8.00 a.m and was directed by his supervisor, Collins Oteko, to go and see the Director; which he did, and the matter was discussed and the Claimant thought it had been resolved.
19. The Respondent, being the employer, did not present any evidence in Court to demonstrate that the Claimant did not report on duty on 15<sup>th</sup> December, 2021.
20. The Claimant's Supervisor and/or his Director were not called by the Respondent to give evidence in support of the Respondent's assertion that the Claimant did not report on duty on the aforesaid date. Further, the Respondent did not produce in Court any work/duty attendance register or clock-in records to show that the Claimant did not report on duty on 15<sup>th</sup> December, 2021. It behoved the Respondent to prove the charge levelled against the Claimant by it.
21. Section 107(1) of the *Evidence Act* provides as follows:-
  - “(1) Whoever desires any court to give Judgment as to any legal right or liability depended on the existence of facts which he asserts must prove that those facts exist”.
22. I find and hold that the Respondent failed to prove, on a balance of probabilities, that the Claimant absented himself from duty on 15<sup>th</sup> December, 2021 without permission contrary to Section 44(4)(a) of the *Employment Act*.
23. On the charge of failing to obey lawful and proper command issued by the employer or a person placed in authority over the Claimant, the charge stated that the lawful instructions were given vide a letter dated 14<sup>th</sup> December, 2021. The alleged letter of instructions was, however, not produced in evidence by the Respondent.
24. On his part, the Claimant pleaded and testified that on waking up early in the morning of 15<sup>th</sup> December, 2021, he saw an SMS text message (on his phone) which had been sent to him by Collins Oteko on 14<sup>th</sup> December, 2021 at 9.45 pm while he slept, informing him that he was required to invigilate exams on 15<sup>th</sup> December, 2021. That due to a heavy downpour in Nairobi in the morning of 15<sup>th</sup> December, 2021, the Claimant got to work some minutes after 8.00 a.m; and was directed by Collins Oteko to see the Director, which he did and the issue (of lateness) was discussed.
25. It is evident from the foregoing that the Respondent did not demonstrate that the lawful and proper instructions/command referred to in the show cause letter dated 11<sup>th</sup> April, 2022 were communicated to the Claimant. Further, the Respondent did not controvert or rebut the Claimant's pleadings and testimony that the instructions to invigilate examinations on 15<sup>th</sup> December, 2021 at 8.00 a.m were texted to his phone at 9.45 pm on 14<sup>th</sup> December, 2021, and that he only saw the same in the morning of 15<sup>th</sup> December, 2021; and that due to a heavy downpour in Nairobi that morning, he arrived at his place of work minutes past 8.00 a.m.
26. In the absence of communication and/or verifiable communication of lawful instructions to an employee by an employer or a person placed in authority over an employee, and within a reasonable time as would enable the employee to execute/obey the instructions, an employee cannot be validly accused of having failed to obey the instructions.



27. The Claimant's contract/letter of employment did not set out the Claimant's job description pursuant to the mandatory provisions of Section 10(1)(c) of the *Employment Act*. On the issue of the Claimant's contractual duties, the Respondent placed reliance on Clause 4.2.6 of the Respondent's Terms of Service for Teaching, Senior Technical, Senior Library and Senior Administrative Staff (15<sup>th</sup> January, 2013) which lists the duties of the aforementioned staff as including:-
- “ Assist in the preparation and conduct of examinations of the University College”.
28. It is to be noted that the Claimant was accused of having failed to invigilate examinations, but not to “assist in preparation and conduct of examinations”. Indeed, the Claimant testified that technical staff (like himself) only assisted in preparation and conduct of examinations where the examinations were technical. The nature of the examination in issue in the suit herein was not disclosed by the Respondent.
29. Further, it is to be noted that the aforementioned terms of service do not/did not list invigilation of examinations as part of the duties to be performed by the Respondent's technical staff. Indeed, it was a common ground that vide an Internal Memo dated 1<sup>st</sup> December, 2016, the Respondent's Deputy Vice-Chancellor stated that invigilation of University examinations was an academic activity, hence the responsibility of academic staff members. It was testified in Court by both parties that the said Internal Memo had never been revoked.
30. The said Internal Memo stated in part:-
- “ . . . Please be advised that invigilation of University examinations is an academic activity of the University and hence the responsibility of academic staff members. The purpose of this Memo therefore is to direct that invigilation of University examinations be conducted by teaching staff of the various departments”.
31. According to the pleadings filed herein and the evidence on record, the Claimant held the position of a Senior Technician in the Respondent University; and was therefore not a teaching staff. Invigilation of university examinations was thus not part of his duties.
32. It follows that any instructions to the Claimant to invigilate university examinations, if any, on 15<sup>th</sup> December, 2021 could not have been lawful and proper instructions/command.
33. I find and hold that termination of the Claimant's employment on the basis of the aforesaid two charges/reasons, the validity of which the Respondent failed to prove, was substantively unfair.
34. On procedural fairness, the Claimant is not shown by the Respondent to have been informed of his right to be accompanied to the disciplinary hearing by a fellow employee of his choice or by a shop floor trade union representative pursuant to the mandatory provisions of Section 41 of the *Employment Act*. This amounted to procedural unfairness in the termination/separation process.
35. Termination of the Claimant's employment was, therefore, substantively and procedurally unfair, and I so declare.
36. On the 2<sup>nd</sup> issue, the Claimant sought several reliefs, the principal of which was reinstatement back to employment without loss of benefits and continuity of service, and payment of salary and benefits during the period of dismissal/termination.
37. It is worthy noting that reinstatement is a statutory remedy anchored on Section 49(3)(a) of the *Employment Act* and Section 12(3)(vii) of the *Employment and Labour Relations Court Act*, which



empower the Court to restore an employee to their former position without loss of benefits. Reinstatement is, however, not a remedy that issues as of right, but is discretionary. Section 49(4) of the *Employment Act* enjoins the Court to take into account several factors in determining whether or not to grant reinstatement. These include the wishes and expectations of an employee, practicability of reinstatement, the common law principle against specific performance in contracts of service except in exceptional circumstances, any compensation already paid and the employee's prospects of securing alternative employment.

38. In the present case, the Claimant did not tell the Court whether or not he had secured an alternative employment upon being terminated by the Respondent. He also did not tell the Court, if not yet employed elsewhere, what his prospects of securing an alternative employment were.
39. I have noted from the evidence presented in Court that the employment relationship between the Claimant and the Respondent may have been a troubled one. Documents produced in evidence by the Respondent included:-
- a. the Respondent's letter to the Claimant dated 20<sup>th</sup> May, 2021 accusing the Claimant of absconding duty; and
  - b. the Respondent's letter to the Claimant dated 7<sup>th</sup> June, 2021 accusing the Claimant of absconding duty.
40. The foregoing scenario throws into serious doubt the practicability of reinstating the Claimant to his position. The Court of Appeal stated as follows in the case of *Kenya Airways Limited – vs – Aviation & Allied Workers Union Kenya & 3 Others* [2014] KECA 403 (KLR):-
- “70. One of the factors to be considered in determining whether or not to order reinstatement is practicability. In *New Zealand Educational Institute – vs – Board of Trustees of Auckland Normal Intermediate School 16*, the New Zealand Court of Appeal defined what practicability means:
- “Practicability is capability of being carried out in action, feasibility or the potential for the reimposition of the employment relationship to be done or carried out successfully. Practicability cannot be narrowly construed to in the sense of being simply possible irrespective of consequences.”
- ... Whether ... it would not be practicable to reinstate [the employee] involves a balancing of the interests of the parties and justices of their cases with regard not only to the past but more to the future ...”
41. The Court of Appeal also stated as follows in the case of *Kenya Power & Lighting Company Limited – vs – Wasike* [2017] KECA 446 (KLR):-
- “20. This Court has authoritatively spoken on this subject in several Judgments and we do no more than restate the same. In *Kenya Airways Ltd (Supra)*, Githinji, J.A. expressed himself as follows:-
- “27. The remedy of reinstatement is discretionary. However, the Industrial Court is required to be guided by factors stipulated in Section 49(4) of the EA which include the practicability of reinstatement or re-engagement and the common law principle that specific performance in a contract of employment should



not be offered except in exceptional circumstances. The Court should also balance the interest of the employees with the interest of the employer. . . .”

42. As already stated in this Judgment, the Claimant has not established any exceptional circumstances on his part on the basis of which the remedy of reinstatement can be granted. The Claimant’s prayer for reinstatement is declined.
43. I grant the alternative prayer for compensatory damages for unfair termination of employment; and award the Claimant the equivalent of eight months’ salary being compensation for unfair termination of employment. The Claimant pleaded that his gross salary at the time of termination was Kshs.88,766/=. The evidence on record confirms this position. The equivalent of eight months’ salary is Kshs.710,128/=:, which I award to the Claimant.
44. The prayer for issuance of a certificate of service is allowed pursuant to Section 51 of the *Employment Act*.
45. In sum, and having considered written submissions filed on behalf of both parties herein, Judgment is hereby entered for the Claimant against the Respondent for a sum of Kshs.710,128/=:, being compensation for unfair termination of employment.
46. The awarded sum shall be Subject to Pay As You Earn (PAYE) tax, which the Respondent shall remit to the relevant authority.
47. The awarded sum shall attract interest at Court rates from the date of this Judgment until payment in full.
48. The Respondent shall issue the Claimant with a Certificate of Service within thirty days of this Judgment, pursuant to Section 51 of the *Employment Act*.
49. The Claimant is awarded costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2026**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Kariuki Karanja for the Claimant

Mr. Mwangi Mugo for the Respondent

