



REPUBLIC OF KENYA



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**Mitheu v Board of Trustees, Starehe Girls Centre (Cause 1692 of 2017)
[2025] KEELRC 156 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 156 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1692 OF 2017
J RIKA, J
JANUARY 31, 2025**

BETWEEN

REGINA MITHEU CLAIMANT

AND

BOARD OF TRUSTEES, STAREHE GIRLS CENTRE RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim on 29th August 2017.
2. She states that, she was employed by the Respondent as a Secretary, on 21st March 2005.
3. She was promoted to the position of Sponsorship Officer, on 16th December 2011. Her role entailed: overseeing the sponsorship office; communicating with sponsors; receiving sponsors and briefing them on sponsorship programmes; allocating new students to sponsors; following up on financial commitments made by the sponsors; and ensuring sponsors receive termly reports.
4. She was placed on annual contracts which were always renewed.
5. She was able to mobilize sponsors and raised Kshs. 15.2 million in 2012, and Kshs. 20.3 million in 2013. She was rewarded with best performance certificate, in 2012 and 2013 respectively.
6. Audit queries were raised about misuse of sponsorship funds, in 2013 and 2014. The donors were concerned about misuse of their donations. They demanded accountability, especially from the Director Margaret Wanjohi and the Bursar Matthew Nyangweso.
7. The Director placed the Claimant on rest of 5 days, in December 2014. Thereafter, a CID Officer, Magati, arrested her from her house. She was told that the Director and the Bursar had lodged a complaint against her with respect to the sponsorship funds. She was alleged to have used her personal m-pesa account, to collect and retain funds, alleging to have been authorized by the School to do so;



- and that she tore off pages from the cash register, to avoid accounting for cash she had collected on behalf of the School.
8. She was granted bail. She visited the Director at her residence. The Director insisted that the Claimant had stolen from the School, and that she should resign. She declined, and was instructed to proceed on her unutilized annual leave. She was not paid her salary for January 2015.
 9. She made an attempt to resume duty on 20th February 2015. She was denied access to the School. She was handed a letter of termination dated 17th February 2015, by the School Secretary, Wanjiru.
 10. 5 reasons were given in justifying termination: charging form 1 students an illegal fee of Kshs. 5.00 for labelling their uniforms using the School's marker pen in 2014; withholding Kshs. 58,100 meant for University students' upkeep and fees balance in 2013; using a personal number to do m-pesa collections during a charity walk, and retaining the money for own use, in 2014; retaining Kshs. 13,000 from the sale of raffle tickets for a golf tournament in 2014; and, plucking pages from a serialized cash register used to record and account for collections done from a walk she organized.
 11. She was not required to show cause why she should not be disciplined. She was not given a hearing in the presence of a colleague of her choice, or a trade union representative, in terms of Section 41 of the *Employment Act*.
 12. She sought the assistance a trade union KUDHEIHA, who wrote to the Respondent on 26th February 2015, seeking consultations. The Respondent ignored the letter.
 13. The matter was escalated to the Ministry of Labour. Parties were invited for conciliation, which the Respondent declined.
 14. The Respondent caused the Claimant to be charged with the offence of stealing by servant, after termination, on 16th March 2016. As a result, she lost an alternative job as a personal assistant, which she had secured at Jimmons Cleaning Services.
 15. The Magistrate in the Criminal Court urged Parties to pursue settlement out of court. A consent was duly drafted, but Parties were not able to agree on the terms of settlement in full.
 16. Her last monthly salary was Kshs. 37,444.
 17. She prays for Judgment against the Respondent for:-
 - a. 12 months' salary in compensation for unfair termination at Kshs. 449,328.
 - b. Gratuity for 9.9 years at Kshs. 370,696.
 - c. 1-month salary in lieu of notice at Kshs. 37,444.
 - d. Salary for January 2015 at Kshs. 37,444.
 - e. Salary for February 2015 at Kshs. 22,733.
 - f. Leave allowance for years worked at Kshs. 197,580.Total ... Kshs. 1,115,225.
 - g. General damages for pain and suffering.
 - h. Certificate of Service to issue.
 - i. Costs.



- j. Interest.
18. The Claimant amended her Statement of Claim without opposition from the Respondent, on 10th May 2023. She introduced the averment that she was acquitted by the Senior Principal Magistrate's Court in the criminal case, on 9th January 2023. She avers that the Respondent violated her human rights to dignity and freedom under Articles 28 and 29 of the Constitution, by subjecting her to public arrest and prosecution. The Respondent tortured her, by withholding her terminal dues. She amends the prayer for general damages for pain and suffering, to one for violation of her rights to dignity and freedom, and security of the person, under Articles 28 and 29 of the Constitution.
 19. The Respondent filed its Statement of Response and Counterclaim, on 13th October 2017. It is conceded that the Claimant was employed by the Respondent, as pleaded in her Claim. She was engaged in various acts of gross misconduct.
 20. In 2012, she retained Kshs. 58,000, which was sponsorship money for 5 Students. She later refunded the money under pressure from Management. The Students lost the chance to undertake higher studies. Secondly, the Claimant withdrew Kshs. 58,100 from the Respondent's bank, money that was meant for post-secondary support. The anomaly was discovered by the School's external auditors Ernst & Young. The Claimant later surrendered the money.
 21. The certificates of good performance, issued to the Claimant way before these acts of gross misconduct.
 22. She was engaged in other acts of gross misconduct including: fraudulently inserting her mobile phone number in fundraising cards, receiving and utilizing the collected funds to her own benefit; fraudulently obtaining monies from sponsors, parents and guardians, culminating in her criminal prosecution; and, plucking off pages from the cash register, to conceal misappropriation of money collected during fundraising walks in 2014.
 23. On 24th October 2014, 3 Students sold raffle tickets worth Kshs. 24,600 during a golf tournament at Windsor Golf Club, Nairobi. They handed over the money to the Claimant. She remitted only Kshs. 11,300, and retained Kshs. 13, 300.
 24. Her contract was extended on 7th December 2012. It terminated on 31st December 2014, and was not renewed. The Director could not ask the Claimant to take 5 days' rest, while her contract had already terminated.
 25. The letter dated 17th February 2015, merely reminded the Claimant, that her contract ended on 31st December 2014. The reasons highlighted in the letter dated 17th February 2015 were not new. They had been addressed earlier, in a warning letter issued to the Claimant, dated 8th July 2013.
 26. The Respondent did not have to issue a letter to show cause to the Claimant, her contract having expired on 31st December 2014.
 27. The Claimant did not have any outstanding annual leave days. She was paid all her dues by the time her contract expired.
 28. The Respondent Counterclaims Kshs. 144,230 received fraudulently by the Claimant from parents, guardians and sponsors. It also claims from the Claimant, Kshs. 13,300 being the balance of money collected by Students in sale of golf raffle tickets.
 29. In summary the Respondent prays that the Claim is declined, the Counterclaim is allowed, with costs and interest, to the Respondent.



30. The Claimant filed her Reply to the Statement of Response, and Response to the Counterclaim, on 23rd April 2018. She reiterates the contents of her Statement of Claim. She did not retain Kshs. 58,100 meant for student support unreasonably. One of the Students Virginia, wished to change her course from law, to nursing. She requested for postponement of the sponsorship. The second Student Peninah, did not leave her phone contact. The Claimant retained the sum of Kshs. 58,100 in a labelled envelope, in a safe, at her office. She had the concurrence of the Bursar. On insertion of her phone number in fundraising cards, the Claimants states this was done, with the concurrence of the Director, as the School did not have an m-pesa account. She forwarded all the money received by her to the Bursar, and had no reason to destroy the cash register. The raffle tickets at Windsor Golf Club fetched Kshs. 13,300. The Respondent has not provided copies of the raffle tickets, showing that the sum collected was Kshs. 24,600.
31. The Claimant denies the Counterclaim, and urges the Court to allow the Claim, and decline the Respondent's prayers.
32. The Claimant testified on 15th July 2022 and 14th December 2022, when she rested her case. Retired School Director, Margaret Wanjohi, testified on 11th July 2024, closing the hearing. The Claim was last mentioned on 8th November 2024, when the Parties confirmed filing and exchange of their closing submissions.
33. The Claimant relied on her witness statement and documents on record, in her evidence-in-chief. She restated her employment history with the Respondent, and the terms and conditions of service. She repeated that she was told she had engaged in financial impropriety and that the School was investigating. She was not given a chance to be heard. She was compelled by the Respondent to go on leave in December 2014. While on leave she was arrested and charged. She returned to the School on 20th February 2015, and was handed a letter of termination, dated 17th February 2015. The accusations arose from incidents which took place in 2013. No Student complained that the Claimant had retained money meant for their higher education support. She was authorised to make fundraiser card with her name on top, by the Director. The School did not have m-pesa account. She used the card between 2012-2014. Funds were collected and recorded in the cash register. The Director signed the register. Receipts always issued against payment. The Claimant was issued a letter of appreciation by the Respondent for good performance.
34. Cross-examined, she told the Court that the prevailing contract permitted Parties to terminate the contract through notice. She accepted the terms of her contract. It stipulated that on expiry of the contract, she would not bring a claim for unfair dismissal or redundancy. She was placed on periodic contracts. The last was to end on 31st December 2014. There was no letter extending the contract after 31st December 2014.
35. The letter of termination refers to the 2-year contract, beginning 1st January 2013, ending 31st December 2014. 2 allegations had been brought to the Claimant's attention, before the letter dated 17th February 2015 issued. The Claimant signed leave application forms. The last one indicated there was no pending leave.
36. She went back to work after being bailed. She worked until 2nd January 2015. She was paid salary for December 2014, but not for January and February 2015. She expected to resume duty from 19th February 2015. The letter from the Director [page 33 of the Claimant's documents] states that the Claimant's contract came to an end, on 31st December 2014. She was asked to clear. She cleared. Gratuity was computed. She did not exhibit her clearance form. Pressed further, the Claimant conceded that she had not cleared.



37. She appealed against the letter dated 17th February 2015. She was denied audience. She did not agree that the reasons for non-renewal of her contract, were acts of gross misconduct. Honesty, transparency and integrity, were aspects of her job description. Her leave application form dated 31st December 2014, indicated there was no outstanding leave days. The Director gave the Claimant authority to use her m-pesa line, to collect money for the School. Her letter of leave was signed on 2nd January 2015, even though her contract lapsed on 31st December 2014.
38. Redirected, the Claimant testified that she had authority from the Respondent to transact using her m-pesa line. She signed leave form on 2nd January 2015. The Director and the Accountant countersigned. She had reason to expect that her contract would be renewed, after 31st December 2014. Termination letter was issued on 17th February 2015. She cleared and was not given further advice. Computation of gratuity, was done by the Accounts Office. Matters arising in 2013, were the subject of a warning letter issued to the Claimant at the time. They could not be regurgitated in 2015. She pleads salaries for January and February 2015.
39. Margaret Wanjohi adopted her witness statement and documents [1-34] in her evidence-in –chief.
40. Cross-examined, she testified that she did not require the Claimant to go on leave, before termination. The Respondent did not terminate the Claimant’s contract; it expired on 31st December 2014. She signed leave form on 2nd January 2015. It was for 35 days, from 2nd January 2015, to 19th February 2015. Wanjohi signed the form, as did the Bursar. The Respondent issued the Claimant a letter of termination, dated 17th February 2015. It was at this point, that the Respondent informed the Claimant, that her contract had been terminated.
41. Wanjohi had issues with the Claimant’s performance. She had issued her warning. The Claimant was arrested, charged, prosecuted and acquitted of the allegations made against her by the Respondent. There were valid reasons to justify termination. The cash register had a column with receipt numbers. It was retained by the Bursar. It was signed against the amounts received. The cash register was the Claimant’s cash register. She used it, and took the money to the Bursar. She was issued a warning letter on 8th July 2013 for charging an illegal fee to fresh Students, for labelling their uniforms; and for withholding Kshs. 58,100 that was meant for upkeep of poor University Students. Wanjohi told the Court that the Claimant was not sacked in 2013, but in 2015.
42. The issues are whether, the Claimant’s contract was terminated unfairly and unlawfully, or at all, by the Respondent; whether the Respondent violated her statutory and constitutional rights; whether she merits the prayers pleaded; and whether the Respondent has established its Counterclaim.

The Court Finds: -

43. The Claimant was employed by the Respondent School as its Secretary, on 21st March 2005. She became a Sponsorship Officer on 16th December 2011. She had routinely been placed on periodic contracts since she first joined the Respondent. The contracts were invariably renewed. The last contract was to run from 1st January 2013 to 31st December 2014.
44. The Court agrees with her, that going by precedence, she reasonably and legitimately expected that her contract would be renewed, after 31st December 2014.
45. First, the Respondent had invariably renewed the Claimant’s contract for 9 years. Section 45 [5] [d] of the *Employment Act*, requires the Court, in considering whether termination was just and equitable, to take into account the previous practice of the Employer, in dealing with the type of circumstances, which led to termination.



46. In this case, Claimant's contract had expired in the past, at the end of a limited period, and the previous practice, for 9 years, was to grant the Claimant renewal. Consideration of previous practice, was emphasized by this Court in Cause Number 2244 of 2015, *Mark Mbau Mathee v. Rai Radio Televisione Italiana* [2023] KEELRC 1825 [KLR] [28th July 2023] [Judgment].
47. Second, the conduct of the Respondent, on 31st December 2014, led the Claimant to legitimately and reasonably expect renewal.
48. Although already embroiled in controversy concerning financial impropriety, the Respondent did not unequivocally advise the Claimant that her contract would not be renewed, or ask her to clear, and receive her terminal benefits, on 31st December 2014.
49. Instead, the Respondent advised her to apply for annual leave of 35 days, beginning 2nd January 2015 to 19th February 2015. She was not told to leave for good, because her limited period had ended; she was told to leave for 35 days. What would happen at the end of 35 days? Any reasonable person would legitimately expect resumption of duty would happen for the Claimant, at the end of 35 days. She was not told by the Respondent that there was no return.
50. The application form was signed by the Director, the Bursar and the Claimant.
51. Leave was not indicated to be terminal leave, but part of the Claimant's annual leave cycle, with the expectation of continuity at the end of the 35 days.
52. Third, it was only on 17th February 2015, after the Claimant was at the end of her annual leave period, that the Respondent wrote to her a letter of termination of contract of service.
53. The letter did not inform the Claimant merely that her contract expired on 31st December 2014. It explained in detail, that she was involved in acts of gross misconduct, amounting to breach of contract. She was advised to clear with the Respondent, and would be paid her terminal dues. This was on 17th February 2015. The effective date of termination is the date the Employee receives communication from the Employer, that the contract has been terminated. The effective date would be in this case, 20th February 2015, when the Respondent handed the letter of termination dated 17th February 2015, to the Claimant.
54. The Court is satisfied that the Claimant's contract was terminated by the Respondent, effective 20th February 2015.
55. The second issue is whether termination was procedurally and substantively fair, in accordance with Sections 41, 43 and 45 of the *Employment Act*.
56. The Respondent referred to 2 incidents, in the letter dated 17th February 2015, which took place in 2013, over which the Respondent issued the Claimant a warning letter dated 8th July 2013. The allegations were that the Claimant illegally charged fresh Students fees for labelling their uniforms, and that she withheld Kshs 58,100 meant for poor University Students' upkeep.
57. The Claimant gave her explanation concerning these incidents, and was warned in 2013. These should not have been rehashed in 2015, and formed part of the reasons informing the Respondent's decision to terminate, or not renew, her contract.
58. To punish the Claimant in 2015, for allegations that were dealt with through a letter of warning in 2013, would amount to double punishment.
59. There were 3 other accusations made in the letter dated 17th February 2015. One was that the Claimant used her personal m-pesa number, to receive money for the Respondent, from donors who had



- participated in a charity walk. Two, it was alleged that the Claimant failed to remit the full amount of Kshs. 24,600 raised after sale of raffle tickets, at a golf tournament at Windsor Golf Club. Lastly, she was alleged to have plucked out some pages from the cash register.
60. It is common evidence that there was no letter to show cause why disciplinary action should not be taken against the Claimant, with regard to these 3 allegations.
 61. The Claimant was never taken before a disciplinary forum. The allegations related to a period when her contract was still in force. Why did the Respondent not hear the Claimant, but wait months later, to make allegations of a serious nature, while at the same time advising the Claimant that she was no longer an Employee?
 62. The Respondent failed the procedural test of fairness, under Sections 41 and 45 of the *Employment Act*.
 63. The reasons given in justifying termination were not tested through a disciplinary hearing, and were not established. The use of personal m-pesa number by the Claimant, for fundraising, was authorized by the Director as shown in the Claimant's documents dated 20th April 2018. The charity events, had been going on from as far back as the year 2012. The Claimant sought the Director's approval on the walk posters, including use of her m-pesa line, for the walk which took place on 16th November 2012. Approval was given. Why would this be an issue in the walk of 2014?
 64. The Director in the letter dated 17th February 2015, alleged that the Claimant had threatened parents and donors, that if they did not remit money using her personal m-pesa account, their Children would be denied sponsorship. There were no names or statements of such parents and donors, made available to the Court.
 65. On the raffle tickets sold at Windsor Golf Course, it was not established that a total of Kshs. 24,600 was collected, and Kshs. 13,300 retained by the Claimant. The Students engaged in the exercise did not record any statements, establishing the sales amount and incriminating the Claimant. They were not witnesses before the Court. Copies of the raffle tickets were not placed before the Court.
 66. The last accusation on plucking of cash register pages, was similarly not substantiated by the Respondent. The Director told the Court on cross-examination that the cash register had a column with receipt numbers. The receipts were issued by the Bursar. The Director was not clear about the custody of the cash register. She referred to it, as the Claimant's cash register, which she used before transmitting the accounts to the Bursar. The Bursar, who would have shed light on the pages that were allegedly plucked out by the Claimant, was not called as a witness.
 67. Although the Judgment of the Criminal Court does not bind this Court, it is noteworthy that the Criminal Court found that the custody of the cash register was not the sole responsibility of the Claimant. The entire cash register was not produced at the criminal hearing, as in the proceedings before this Court. It is noteworthy that the Claimant was acquitted by the Criminal Court.
 68. The standard of proof in a criminal trial, is onerous, and not the same standard required in establishing valid termination reason, under Section 43 of the *Employment Act*. The Respondent has not satisfied the less onerous standard of proof, showing valid reason or reasons, justifying termination of the Claimant's contract, effective 20th February 2015.
 69. Termination was therefore unfair, both on procedure and justification, under Sections 41, 43 and 45 of the *Employment Act*.
 70. It is declared that termination was unfair.



71. The Claimant worked for slightly under 10 years. She had been issued a warning letter, and similarly been recognized for good performance. There is nothing to suggest that she contributed to, or caused the circumstances, leading to termination of her contract. She was paid nothing after termination. She stated that she secured another job as a personal assistant at Jimmons Cleaning Services, which she lost after she was rearrested by the CID Officers upon the instigation of the Respondent. She is allowed the prayer for compensation for unfair termination, equivalent of 9 months' gross salary, at Kshs. 336,996.
72. Gratuity was computed, but not paid by the Respondent to the Claimant, based on 9.9 years of service. As commonly practiced by Employers, the Respondent explained its refusal to pay, on lack of clearance by the Claimant, without specifying what clearance entailed. Gratuity shall be paid as computed by the Respondent, at Kshs. 370,696.
73. The prayer for 1-month salary in lieu of notice is allowed, at Kshs. 37,444.
74. She was on paid leave for the month of January 2015, and entitled to the full salary for the month, at Kshs. 37,444.
75. She received communication that her contract had been terminated, on 20th February 2015. She is entitled to salary for 20 days, for the month of February 2015, which the Court grants at Kshs. 28,803.
76. She did not point to any clause in her periodic contracts, throughout her close to 10 years of service, or to any provision in the law, justifying the prayer for leave allowance for years worked, claimed at Kshs. 197,580. The prayer is declined.
77. The dispute revolves around breach of a contract of employment and statute. There are adequate remedies within the statute, available to the Claimant. The nature of violations by the Respondent were not such as to invoke the Constitution of Kenya.
78. The Respondent's Counterclaim, at paragraph 26 of the Statement of Response, is that "the Claimant had committed several offences of stealing by servant of Kshs. 144,230..."
79. The Court has examined evidence on this allegation, and concluded like the Criminal Court, that it was not substantiated. The Claimant used her m-pesa line to collect funds for the Respondent, with the authority of the Director. The Respondent pleads that the Claimant acted fraudulently, culminating in the criminal proceedings against her. Although the Court as pointed out earlier is not bound by the outcome of the criminal proceedings, the Counterclaim relied on the fact that the Claimant was charged in the criminal proceedings, and her acquittal, can therefore justify her position that she did not steal from the Respondent. The Counterclaim for the sum of Kshs. 144, 230 was disproved.
80. The last plank to the Counterclaim is for a sum of Kshs. 13,300, allegedly retained by the Claimant, after sale of raffle tickets.
81. The Court again has already examined this allegation, and concluded it was unsubstantiated. The girls who sold the tickets were not called as witnesses. The copies of the tickets were not exhibited. There is nothing to show that the Claimant was handed the sum of Kshs. 24,600, and stole a sum of Kshs. 13,300 from the sum handed to her.
82. The Counterclaim is declined.
83. The Court has taken into account that the Respondent School appears to be involved in some form of charitable activities, affording necessitous children schooling, and it would not be in the interest of justice, to impose an order of costs and interest against a charitable institution.
84. No order on the costs and interest.



In sum, it is ordered: -

- a. It is declared that termination of the Claimant's contract by the Respondent was unfair.
- b. The Respondent shall pay to the Claimant equivalent of 9 months' gross salary in compensation for unfair termination at Kshs. 336,996; gratuity over a period of 9.9 years as computed by the Respondent, at Kshs. 370,696; notice at Kshs. 37,444; January 2015 salary at Kshs. 37,444; and 20 days' salary for the month of February 2015, at Kshs. 28,803 – total Kshs. 811,383.
- c. The Counterclaim is declined.
- d. No order on the costs and interest.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025.

JAMES RIKA

JUDGE

