



Ng'eno v Board of Management Foothills School Kipipiri Miharati (Cause E031 of 2024) [2025] KEELRC 1214 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1214 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E031 OF 2024**

J RIKA, J

APRIL 30, 2025

BETWEEN

BENARD NG'ENO CLAIMANT

AND

**BOARD OF MANAGEMENT FOOTHILLS SCHOOL KIPIPIRI
MIHARATI RESPONDENT**

JUDGMENT

1. The Claimant filed his Statement of Claim, dated 24th April 2024.
2. He avers that he was employed by the Respondent, as its School Principal, on 1st January 2014.
3. He earned a gross monthly salary of Kshs. 117,750.
4. He avers that he served in continuity, until 30th January 2024, when the Respondent's Director, Hon. Amos Kimunya, unfairly and unlawfully terminated his contract.
5. Hon. Kimunya called him around 28th January 2024, and intimated to him, that he wanted to make some changes concerning the management of the School. It was during the meeting, that Hon. Kimunya informed the Claimant, that his contract would be terminated.
6. Hon. Kimunya did not give the Claimant a valid reason, to justify termination
7. Throughout the Claimant's tenure as the Principal, the School achieved exemplary results. In 2023, the school attained a mean grade B- in KCSE exams.
8. He worked in excess hours daily, from 5 a.m. to 10 p.m. without overtime pay. He worked all public holidays and weekends, without overtime pay.
9. He was never allowed to enjoy his statutory annual leave entitlement of a minimum of 21 days, throughout his service.



10. He was denied his certificate of service on termination.
11. He prays for: -
 - a. Compensation under Section 49 [c] of the Employment Act at Kshs. 1,413,000.
 - b. Notice at Kshs. 117,750.
 - c. Public holiday pay at Kshs. 259,050.
 - d. Normal overtime pay, at Kshs. 1,369,523.
 - e. Off-days /rest days at Kshs. 1,130,400.
Total... Kshs. 4,289.723.
 - f. Costs and interest.
12. The Respondent filed its Statement of Response, dated 1st July 2024.
13. It is conceded that the Claimant was employed by the Respondent, as its School Principal. It is denied that his contract was terminated by the Respondent unfairly and unlawfully.
14. A meeting was held with him, the Director and the Deputy Principal on 25th January 2024, to deliberate on the dwindling School performance. During the meeting, the Claimant himself offered to resign, to help the School in improving its performance.
15. He specifically indicated that he intended to leave, effective 31st January 2024.
16. It was agreed that the Respondent, would waive its right to notice of termination of 30 days. Further, the Respondent would pay the Claimant an extra month's salary, and a token payment of Kshs. 100,000. This would assist the Claimant to pay outstanding debts, and settle down after resignation.
17. The Claimant undertook to communicate his resignation decision, to Teachers and Parents at the School.
18. The Respondent received the Claimant's letter of resignation dated 31st January 2024. He however demanded to be paid Kshs. 800,000 as a token of appreciation or gratuity, contrary to the earlier agreement for payment of Kshs. 100,000 token.
19. He voluntarily resigned. The School performance had plummeted. Parents and fellow Teachers had lost confidence in the Claimant's stewardship. He cannot turn around and claim that his contract was unfairly terminated.
20. He did not work excess 7 hours daily as claimed. He frequently patronized local pubs, to the detriment of the School. His conduct encouraged indiscipline among his Students.
21. He utilized his annual leave entitlement during the School vacation in April, August and December of each year.
22. The Claim has no merit. The Respondent prays the Court to dismiss the Claim with costs.
23. The Claimant, Director Hon. Amos Kimunya, and current School Principal Sarah Muthoni, all gave evidence on 31st January 2025, closing the hearing. The Claim was last mentioned on 11th March 2025, when the Parties confirmed filing and exchange of their closing submissions.



24. The Claimant adopted his witness statement and documents [1-7] in his evidence -in- chief. The witness statement replicates the Statement of Claim, whose contents have been highlighted at the outset of this Judgment.
25. In addition, he underscored that the meeting he held with Director Hon. Kimunya, on 5th January 2024, was to discuss the School progress. Performance was within acceptable range. The School was at the top, out of 32 County Schools. A second meeting was held on 25th January 2024. The Claimant was not notified about this meeting. He did not even know, that the Director was at the School.
26. It was at the second meeting that termination of the Claimant’s contract was discussed. Hon. Kimunya stated he wanted changes at the School, and asked the Claimant to resign. The Claimant had financial obligations, and the Respondent was in the process of registering a retirement benefits scheme. Because the scheme was not operational, it was agreed that the Claimant is paid gratuity.
27. The Claimant and Hon. Kimunya negotiated send-off package, amounting to Kshs. 1,177, 500, later adjusted to Kshs. 800,000. The Claimant accepted the sum of Kshs. 800,000, but Hon. Kimunya reneged.
28. The Claimant told the Court that he resided at the School and was on call, 24 hours each day. Kids woke up at 4.30 a.m. and the Claimant woke up at the same time to supervise them. He emphasized that he never went on annual leave, and worked on public holidays and weekends. He was not compensated for excess hours worked on any day.
29. Cross-examined, he told the Court that there were 12 Teachers. They worked according to the duty roster. They were supervised by the Claimant. He also taught Students. He was there every single day. During vacation, there was non-teaching staff, to be supervised by the Claimant. He did not have a Deputy Principal for about 9 years.
30. The Claimant was previously employed by Sunshine Schools. Hon. Kimunya was to issue a written contract to him, but never did so. The Claimant supervised construction of the Respondent’s School in 2014, before it opened its doors in 2015.
31. He was coerced to resign. The exit terms had give-and-take. He was paid Kshs. 100,000 in advance, to facilitate his relocation. It was to be deducted from the final figure of Kshs. 800,000. The Claimant’s son was on scholarship of 4 years at the School. The Respondent deducted and paid N.S.S.F contributions on Claimant’s account.
32. Redirected, he told the Court that he was not issued a written contract. He understood gratuity to be a token payment, discussed between him and Hon. Amos Kimunya. He was hired in 2014 before the School officially opened. He was using Hon. Kimunya’s office at Nairobi.
33. Hon. Amos Kimunya similarly adopted his witness statement and documents [1-12] filed by the Respondent, in his evidence-in-chief. His evidence reflects the contents of the Statement of Response, as summarized by the Court above.
34. He underscored that he had a meeting with the Claimant in Nairobi, on 5th January 2024. They discussed dwindling academic performance and Student numbers. Parents complained, and did not have confidence in the Claimant’s stewardship.
35. Hon. Kimunya waited for the Claimant to give him a way forward. Nothing came. He convened another meeting, during which the Claimant proposed to resign. He told Kimunya that he was looking for another job, and had approached his former Employer, Sunshine Schools for a reunion.



36. The Respondent's School had 80 Students against a capacity of 400. Students would walk out of the School unhindered, using a gate next to the Claimant's residence. They would frolic at the shopping centre.
37. The Claimant would join his charges, and eat mandazi at the shopping centre.
38. Hon. Kimunya suggested at the meeting that the Claimant is issued a notice of termination, but the Claimant offered to resign. He raised issues about his financial obligations. Kimunya offered him a token payment of Kshs. 100,000, and advance salaries for January and February 2024. He was happy and agreeable. The Claimant and Kimunya called in the Deputy Principal Sarah Muthoni, and communicated their agreement.
39. The Claimant reneged afterwards. He maliciously deleted all data from his computer, hampering a proper handover. He took possession of the School's WhatsApp group. The Respondent could not even follow up on fees payment without proper records.
40. Hon. Kimunya visited the School many times. He found the Claimant away in local bars. He was a poor example of a School Principal.
41. Parties agreed on a token payment of Kshs. 100,000, not Kshs. 800,000.
42. The Claimant used to go for vacation, at his home in Kuresoi.
43. Cross-examined, Kimunya told the Court that he issued the Claimant a written contract in 2014, which the Claimant retained. He kept all the records, as the School Principal. The School fees payable was high, at the beginning but was brought down significantly later.
44. The issues were discussed by the School's Board of Management. Kimunya did not exhibit minutes, of the meeting where the Claimant offered to resign. He gave the Claimant 2 options, to resign or accept termination on notice. He selected resignation. His letter of resignation is titled 'end of tenure,' instead of 'resignation.' This is a matter of semantics, and not significant. Kimunya did not have a record of the Parent's complaints. The Claimant was drinking at the shopping centre. Kimunya could provide evidence of the drinking spree, if the Court wished to have it.
45. Redirected, he told the Court that the Claimant was the custodian of all the records at the School. He was not coerced to resign. He resigned voluntarily, having agreed that there was need for leadership changes.
46. Sarah Muthoni told the Court that she took over as the School Principal. She adopted her witness statement on record. She confirmed that during School vacations, Teachers utilize their annual leave entitlement. It was not humanly possible for any staff to be on duty for 24 hours a day, each year. The Claimant did not work throughout, when Sarah deputized him. The Claimant confided in her about his meeting with Director and Patron, Kimunya, on 25th January 2024, where the exit package was negotiated and agreed. The Claimant volunteered to resign. He did not give Sarah a handover report. He just gave her a very unhelpful sticky note. He voluntarily resigned, called a staff meeting and communicated to the staff that he had resigned.
47. Cross-examined, Sarah told the Court that she is an Employee of the Board of Management, and the Board, is the custodian of the records. She was employed in 2023, and did not know what happened in the 9 years the Claimant worked, before she joined. The Claimant was responsible for day-to-day management of the School. He also taught chemistry. If Students did poorly in other subjects, he as the Principal, and the concerned Teacher, would take responsibility. Non-teaching staff such as Security Guards, were also his supervisees. She joined the meeting held on 25th January 2024, at the end, and did



not participate in the deliberations. She was called in, and appraised of the deliberations. The Claimant told her that he had decided to resign. He briefed the staff. Sarah did not have the minutes of the staff briefing. The handover comprised a sticky note, with the computer password, passed on to Sarrah by the Claimant.

48. The issues are whether the Claimant's contract was terminated by the Respondent unfairly or at all; whether he resigned; and whether he is entitled to the prayers sought.

The Court Finds:

49. The Parties seem to have forged an employer-employee relationship, loosely founded on an acquittance, between the Claimant and the Respondent's Director and Patron, even before the School became operational in 2015.
50. The Court formed this view from the Claimant's uncontested evidence, that he was recruited in 2014, to supervise the construction of the Respondent's School. He effectively became a School Principal, before there was a School to run.
51. He operated from the Hon. Amos Kimunya's office at Nairobi, before the School opened, underlining the presence of an early acquittance, which later developed into a loose employer-employee relationship.
52. There is no evidence that he was issued a written contract. He was content to work for 9 years, without a written contract, clearly defining his terms and conditions of service. He trusted the Hon. Amos Kimunya's word of mouth for 9 years.
53. Although the School has a Board of Management, which Sarah confirmed is the Employer, the Claimant dealt with the Patron and Director Kimunya, right from the outset, on an unwritten contract, based on acquittance, perhaps even friendship.
54. Ultimately, when the Claimant exited, there is common ground, that he did so, after meetings held between him and Hon. Amos Kimunya.
55. Again, the meetings were informal, and did not include the legally recognized Employer, the Board of Management.
56. It was just the Claimant and Hon. Amos Kimunya.
57. The first meeting was held at Nairobi, on 5th January 2024. No record of the meeting was availed to the Court by either the Claimant or his friend Hon. Amos Kimunya.
58. The second meeting took place at the School on 25th January 2025. Again, it was just the Claimant and Hon. Kimunya, with the Deputy Principal Sarah, called at the tail end for appraisal.
59. Nothing was put to pen and paper. There is no document to show that the discussants agreed, that the Claimant would exit on payment of Kshs. 100,000, Kshs. 800,000 or Kshs.1,177,500.
60. While the terms of exit were contested in the evidence of the Parties, it is clear that the Claimant tendered his resignation, through his letter dated 31st January 2024.
61. It is irrelevant that he referenced his letter as 'end of tenure,' instead of a plain 'resignation.' He does not deny that he authored the letter. He had the discretion on choice of words used, in referencing the letter.
62. He wrote verbatim: -



“I am writing this letter in regards to our discussion, to do with the paving way of a new administration of our School, after serving for a decade long; indeed, it has been a journey through nurturing the School from beginning, after joining the construction team, in 2014 and finally opening its doors in 2015. I want to thank you, the Board of Management and all the stakeholders for having given me the opportunity to serve as pioneer Headmaster/ Principal for the said period.

“The journey has been smooth and has elevated my experience in leadership; through interactions with all those I worked under, and those [who] worked under me; we have done our best as a united team, and I wish those who will continue, ahead; best of luck! I will continue supporting the School; if called upon in the future.

I shall be facilitating for a smooth transition by handing over a smooth transition by handing over to my Deputy within the next 5 days; as you process my pending dues, as per our discussions.”

63. There is nothing in this letter, to suggest that the Claimant’s contract was unfairly terminated by the Respondent. It was not terminated at all by the Respondent. The Claimant resigned. His letter above, has not a hint of forcible resignation.
64. The truth, in the view of the Court, informed by the evidence on record, is that the Claimant and Hon. Amos Kimunya, met, agreed that there was need for change on leadership of the School, and the Claimant agreed to resign. It does not appear that he was under compulsion to resign.
65. The gravamen to this dispute is on what was payable, after the Claimant voluntarily agreed to resign.
66. In his e-mail to Hon. Kimunya dated 26th January 2024, following the meeting of 25th January 2024, he states: -
“It is my prayer that you will find favour to top up for me 800,000 [Kshs], a benefit to cushion me from collapse, due to sudden departure...”
67. The e-mail does not disclose that there was an agreement for payment of Kshs. 800,000 to the Claimant, as a token or gratuity. This figure was a creation of his own, after the meeting of the previous day, 25th January 2024. Otherwise, his letter would not be asking for a top-up, a favour, to cushion him from sudden departure; it would be making reference to an agreement for payment of Kshs. 800,000.
68. The fact that there was no agreement that the Respondent would pay the Claimant a sum of Kshs. 800,000, is further supported by his own e-mail to Hon. Kimunya, dated 13th February 2024.
69. The Claimant refers to wide consultations he had held with undisclosed persons, where it was proposed that the Parties settle at Kshs. 800,000, without involving 3rd Parties.
70. The Claimant was bandying monetary figures of his own creation, and hoping to get the best result out of his long-term friendship with Kimunya, without relying of the facts and the law.
71. He even subtly threatened, that the figure could be higher, in the amount of Kshs. 1,177,500, a figure which he restated in his evidence before the Court.
72. According to him, the law, which he did not disclose in his e-mail, entitled him to his monthly salary of Kshs. 117,750 x 10 years worked, resulting in the sum of Kshs. 1,177,500. He writes that this amount would apply, if 3rd parties were involved. He does not say which 3rd parties. He does not say what law or contract, this type of separation package, was based on.



73. In the end, the Court is satisfied that the Claimant voluntarily resigned. He attempted to bargain for himself the best exit package, partly informed by his long service and association with Hon. Kimunya.
74. The Court would agree with him that after close to 10 years, as the School Principal, perhaps he merited more than the tokens afforded to him by Hon. Amos Kimunya.
75. Sadly, the amounts he pleads are not enforceable in law. They are not supported through a contractual document. There is nothing to support the exit terms he claims.
76. On overtime, the Claimant worked as a School Principal. His position inherently required, that he would put in extra hours. He would could wake up at 4.30 and even retire to bed at 10 p.m. But there is no contract exhibited before the Court to warrant payment of overtime.
77. Overtime is in law payable under Regulation of Wages [General Amendment Order] and other Industrial Wage Orders.
78. The Wage Orders apply mainly in regulation of terms and conditions of employment of blue-collar workers. They are meant to protect low-income earners, who do not have equal bargaining strength, with their Employers, and who may not be represented by Trade Unions.
79. A School Principal is a management staff, a white-collar staff, and his terms and condition of service, are to be read in his contract, individual or collective. The Claimant did not bring the attention of the Court to any law, or contractual clause, entitling him to overtime pay, either for excess work performed during the public holidays, or normal days. He did not establish his prayer for rest days. He merely went with the wage instruments, without establishing their applicability to his contract as a private School Principal.
80. The Wage Orders do not aid his cause. He was in management, and ought to have negotiated and concluded for himself suitable terms and conditions of service at the very beginning, including a golden parachute to secure his landing, when he eventually ceased to be the School Principal.
81. The Court agrees with the Respondent, that the Claimant would be deemed to have utilized his annual leave entitlement, during the School vacation, in April, August and December.
82. Traditionally, Teachers utilize their annual leave simultaneous with the vacations, to ensure there is no interruption in the normal learning schedule. It is not different for School Principals.
83. In any event, it was for the Claimant to negotiate for himself the extra perks he claims, as the School Principal, at the beginning of his service. His salary of Kshs. 117,750 monthly, must have been arrived at, with his job description in mind. It is not for the Court to rework what additional benefits should have been paid to him. He made a bargain for himself, on recruitment, during employment and on exit. If he did not at any turn, make a good bargain, it is not for the Court to endorse what he considers, would have been a good bargain. It is not for the Court to endorsed his proposed exit package, without the support of the law and the facts.

It is ordered:

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 30TH DAY OF APRIL 2025.

JAMES RIKA



JUDGE

