



**Odhiambo v Teachers Service Commission (Cause E030 of 2023)
[2025] KEELRC 1126 (KLR) (9 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1126 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E030 OF 2023
NZIOKI WA MAKAU, J
APRIL 9, 2025**

BETWEEN

TOM FRED ODHIAMBO CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Claimant filed a Memorandum of Claim dated 16th May 2023 on 22nd May 2023, contesting the unlawful termination of his employment. In his claim, he sought several remedies, to wit:
 - a. a declaration that his termination was illegal and unfair,
 - b. compensation amounting to Kshs. 1,400,400/- for the unlawful dismissal,
 - c. issuance of a certificate of service,
 - d. costs and interest of the suit, and
 - e. any other relief the court might deem just and appropriate to grant.
2. The Claimant averred that he was an employee of the Respondent posted as the headteacher of Oruba Secondary School on 16th December 2013, earning a monthly salary of Kshs. 116,700/-. He averred that on 12th July 2017, he was summoned by the Respondent's Migori County Director and handed an interdiction letter dated the same day, which took immediate effect. The Claimant averred that following the interdiction, he submitted a written response within the required 21 days. He averred that he was however subsequently issued with a second interdiction letter dated 5th September 2017, omitting some of the allegations that had been included in the initial interdiction.
3. The Claimant averred that later, he received an invitation to a disciplinary hearing scheduled for 15th February 2018, which hearing was however deferred. He averred that a few months later, on



12th October 2018, he was served with a third interdiction letter, dated 9th October 2018 that significantly raised the amount he was accused of misappropriating—from Kshs. 726,736/- to Kshs. 10,783,391.95/-. He averred that when the disciplinary hearing eventually took place on 20th February 2019, his case was only partially heard. He averred that attempts to continue the hearings on 7th June 2019 and 8th January 2020 were unsuccessful and ultimately, a virtual hearing was conducted on 14th September 2020 after which his employment was terminated on 2nd October 2020. The Claimant averred that the Respondent carried out improper investigations and terminated his employment on baseless and unjustified grounds.

4. In response to the suit, the Respondent filed a Memorandum of Defence in which it averred that the dismissal was both procedural and lawful. It averred that the Claimant had committed acts of professional misconduct and had breached the Code of Regulations for Teachers. Among the key accusations was his failure to pay staff salaries between January and May 2017, despite receiving Free Day Secondary Education funds from the Ministry of Education—an omission that resulted in a strike. The Respondent further averred that investigations had revealed mismanagement of resources and general maladministration. The Respondent averred that specific concerns raised included pilferage from school stores, inflation of student enrolment data, unauthorized expenditures, and the issuance of bouncing cheques, among other issues. The Respondent averred that these findings justified the disciplinary actions taken. The Respondent averred that the issuance of multiple interdiction letters was prompted by the emergence of new allegations and that the Claimant was given the opportunity to defend himself during the disciplinary hearing held on 14th September 2020, after which the decision to dismiss him was made. The Respondent averred that following the dismissal, the Claimant filed an appeal against the decision, which was also dismissed on grounds of being unsatisfactory.
5. The matter proceeded to hearing with the Claimant testifying and 4 witnesses testifying on behalf of the Respondent reiterating the averments above. Subsequently both parties filed written submissions.

Claimant's Submissions

6. The Claimant submits that the following issues are what falls for determination by the Court:
 - i. Whether the issuance of subsequent interdiction letters following the amended interdiction letter was procedural and lawful.
 - ii. Whether the Claimant was lawfully terminated
 - iii. Whether the Claimant is entitled to the reliefs sought.
7. On the first issue, the Claimant submits that the Respondent was not entitled to amend the interdiction letter more than once. He contends that the third amendment was therefore unlawful and demonstrated a disregard for his right to a fair hearing. In support of this assertion, he relies on Regulation 147(5) of the Code of Regulations for Teachers, which permits only one amendment to the interdiction constituting the charge. Regarding the lawfulness of his termination, the Claimant reiterates that the interdiction process was irregular and submits that all subsequent disciplinary proceedings were unfair. He submits that the reasons given for his dismissal were unsubstantiated, characterizing the entire process as a witch-hunt. He submitted that the Respondent failed to conduct proper investigations and did not comply with the legal requirements governing disciplinary procedures. As evidence of this, he highlights the protracted nature of the disciplinary process, which was marked by numerous adjournments and repeated amendments to the charge sheets. He further underscores RW3's testimony, which confirmed that no money was lost during his tenure. The Claimant also relies on section 43 of the *Employment Act*, which places the burden of proving the



reasons for termination on the employer, as well as section 45(4) of the same Act, which obliges the employer to act justly and equitably. In light of the foregoing, the Claimant urges the Court to grant the reliefs sought, emphasizing that the Respondent's blatant disregard for the law has caused him considerable hardship.

Respondent's Submissions

8. The Respondent submits that the termination of the Claimant's employment was justified on the grounds of gross misconduct. In support of this position, it relies on the decision in *Victor Mwangi v Eden Reforestation Projects* (Cause E088 of 2022) [2024] KEELRC 340 (KLR), where the court affirmed that gross misconduct constitutes a valid reason for dismissal in employment matters. The Respondent further cited the case of *Ben Oucho v Trees for the Future INC (Cause E007 of 2023)* [2024] KEELRC 1354 (KLR), in which, following the Claimant's dismissal, the court ordered the refund of misappropriated funds. Additionally, the Respondent refers to section 43(1) of the *Employment Act*, which places the burden on the employer to prove the reasons for termination, specifically those which the employer genuinely believed to exist. In this regard, the Respondent relies on the undisputed audit report, which details several acts of gross misconduct attributed to the Claimant. Including: failure to remit statutory dues and staff salaries; falsification of school enrolment data from 558 to 687 students—resulting in the wrongful receipt of Kshs. 748,200/-; issuance of bouncing cheques totalling Kshs. 379,000/- between January and April 2017; and the failure to disclose and remit Kshs. 830,115/- allocated for 129 fictitious students.
9. The Respondent submits that these actions were clear evidence of unilateral financial management, conducted without adherence to basic bookkeeping standards, resulting in mismanagement of CDF funds, a lack of accountability, and ultimately, financial penalties for the school. Regarding the disciplinary process, the Respondent maintains that it was procedurally fair and conducted in accordance with the applicable regulatory framework. The Respondent submits that an interdiction notice was issued pursuant to Regulation 147(1) of the Code of Regulations for Teachers. The Respondent submits that the amendments to the charges were made in line with Regulation 147(5), which permits such amendments irrespective of frequency. The Respondent submits that the Claimant responded to the charges, was invited to a disciplinary hearing, given sufficient time to prepare his defence, and afforded a fair hearing in accordance with the Code—culminating in his dismissal. In support of the procedural propriety of the disciplinary process, the Respondent cites the decision in *Constantine Simati v Teachers Service Commission & another* [2019] eKLR, which references the guiding principles for administrative tribunals sitting in a quasi-judicial capacity as held in the case of *Hypolito Cassiana De Souza v Chairman Members of Tanga Town Council* [1961] EA 77 as follows:
 - a. “If a statute or statutory rules and regulations binding on the domestic tribunal prescribe the procedure to be followed, that procedure must be observed;
 - b. If no procedure is laid down, there may be an obvious implication that some form of inquiry must be made such as will enable the tribunal to fairly determine the question at issue;
 - c. In such a case, the tribunal which should be properly constituted must do its best to act justly and reach just ends by just means. It must act in good faith and fairly listen to both sides. It is not bound, however, to treat the question as a trial. It need not examine witnesses; and it can obtain information in any way it thinks best...;
 - d. The person accused must know the nature of the accusation made;



- e. A fair opportunity must be given to those who are parties to the controversy to correct or contradict any statement they may decide to bring forward;
 - f. The tribunal should see to it that the matter which has come into existence for the purpose of the quasi-lis is made available to both sides and once the quasi-lis has started, if the tribunal receives a communication from one party or from a third party, it should give the other party an opportunity of commenting on it.”
10. On the issue of damages for unlawful termination, the Respondent submits that the Claimant is not entitled to any compensation, as the dismissal was lawful and justified. With respect to costs, the Respondent relies on the case of *Herbert Wafula Waswa v Kenya Wildlife Services* [2020] eKLR, where the court held that a party is not automatically entitled to costs, even where they have partially succeeded. In conclusion, the Respondent urges the court to dismiss the Claim in its entirety, citing the Claimant’s gross misconduct, breach of contractual obligations, and failure to uphold his duty of care as Principal of Oruba Mixed Secondary School.

Disposition

11. The Court has considered the pleadings, the evidence adduced, the testimony of witnesses, the submissions of parties, the authorities cited and the letter of the law in coming to this determination. The Claimant was dismissed for alleged misappropriation of funds at Oruba Secondary School. It was asserted that the County Director of the Respondent Migori County issued the Claimant with an interdiction letter which required him to submit a written response within 21 days. The Claimant did in fact respond and was subsequently issued with a second interdiction letter dated 5th September 2017. This second interdiction letter omitted some of the allegations that had been included in the initial interdiction letter. The Respondent subsequently issued another interdiction letter dated 9th October 2018. The Claimant’s position was that this was contrary to Regulation 147(5) of the Code of Regulations for Teachers.
12. The employment of the Claimant by the Respondent was guided by the contract of employment, the Code of Regulation for Teachers (CORT) and the law. The CORT provides under Regulation 147(5) as follows:
5. The Commission shall reserve the right to amend the letter of interdiction constituting the charge. [Emphasis supplied]
13. The Court discerns that the Respondent has authority to amend the letter of interdiction constituting the charge. A careful reading of the Code of Regulation for Teachers does not reveal any limitation to the amendment proposed in Regulation 147(5). The Respondent submitted that the amendments to the charges the Claimant faced were made in line with Regulation 147(5) which permits such amendments irrespective of frequency. The Court finds and returns that the third interdiction letter was lawful and did not abridge the law or the Code for Regulation of Teachers. The Claimant is the one who read into the section a limitation to only one amendment.
14. Upon being served with the interdiction letter, the Claimant was given adequate time to respond – 21 days as provided for in the Code of Regulation for Teachers. He subsequently had a few of the charges dropped and in the third interdiction letter, the sum he was accused of mismanaging had increased to over 10 million shillings. Only the quantum changed and not the charges. The Claimant responded to the charges and the Respondent invited him to a disciplinary hearing. He was given sufficient time to prepare his defence and afforded a fair hearing in accordance with the Code. The result of the process was his dismissal. The Court noted the Claimant was even accorded a virtual hearing. The



disciplinary process undertaken by the Respondent was in line with Regulation 153 and section 41 of the *Employment Act*. The Claimant was heard. In the Claimant's pleadings and in the testimony he adduced, he did not allege or even prove that he was denied an opportunity to defend himself. His only grouse was the amendment of the interdiction letter. It was not shown that the Respondent refused to permit the Claimant to avail evidence or call any witness he desired to. From all accounts before the Court, the Respondent undertook a fair process.

15. The *Employment Act* makes provision under section 47(5) of the Act as follows:

(5) For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer. [emphasis supplied]

16. The law is clear from a reading of the above section that in a claim of unfair termination or wrongful dismissal, the burden of proving the ingredients of unfairness and wrongfulness lies with the employee. The burden imposed on the employer is that of justifying the grounds for the termination. The Claimant herein has not shown evidence of unfairness or wrongfulness in the process as he was given a hearing, he was granted all the ingredients of a fair trial in terms of Article 50 of *the Constitution* and section 41 of the *Employment Act*. The Respondent has shown there was financial impropriety in the management of the School where the Claimant was a Principal, the charges were laid and the Claimant allowed to respond thereto thus justifying grounds for dismissal. As such there was due process and the claim thus is unsupported on the law and evidence. As it is the Court's determination that the claim is unproved, the same is only fit for dismissal.

17. As regards the consequential orders to grant regarding the matter of costs, the Claimant is from all accounts no longer serving as a teacher and therefore has lost his means of livelihood. The Court will not impose any order on costs for this reason and in light of the circumstances of the case wherein the disciplinary process took a longer than usual time to determine – over 3 years. The final order is that the suit stands dismissed albeit with no order as to costs.

Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF APRIL 2025

NZIOKI WA MAKAU, MCI Arb.

JUDGE

