



**Imbisi v Kenyatta University (Cause E429 of 2021)
[2025] KEELRC 1516 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1516 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E429 OF 2021**

**JW KELI, J
MAY 23, 2025**

BETWEEN

DR JOEL MUKILIMA IMBISI CLAIMANT

AND

KENYATTA UNIVERSITY RESPONDENT

JUDGMENT

1. The Claimant, upon termination of his employment as a lecturer with the Respondent, instituted a suit by way of a Statement of Claim dated 24th May 2021 against the Respondent, received in court on the 29th May 2021, seeking the following Orders:
 - a) Reinstatement to his previous position/job without any loss of benefit
 - b) Salary arrears for the entire period the Claimant has been out of employment.
 - c) In the alternative an order for payment of the Claimant's lawful terminal dues as set out above at par.
 - d) 9 Payment for loss of future earnings for 23 years to retirement age and 3 months (279 months) (Kshs. 246,692x279 months) of Kshs. 68,827,068
 - e) Maximum compensation of twelve months' salary
 - f) Damages for discrimination
 - g) Exemplary damages for loss of opportunity
 - h) Damages for defamation
 - i) Cost of this suit with interest.



2. The claimant in support of his claim, on even date, filed his verifying affidavit, list of witnesses, his witness statement his list of documents and the bundle of documents. The claimant further filed witness statement of Peter Lemoosa Letotin dated 30th May 2023.
3. The claim was opposed. The respondent entered appearance through the law firm of Njoroge Regeru & Company Advocates and filed statement of response dated 14th March 2022 and received in court on the 15th March 2022 together list of documents dated 14th March 2022 and the bundle of documents. A witness statement of Nderitu Gikaria dated 22nd July 2022 was filed on the 25th July 2022. The respondent relied on the witness statement of Veronica Gitau dated 21st January 2025.

Hearing and evidence

4. The claimant's case was first heard before My Brother Justice Ocharo Kebira on the 5th February 2024 where the claimant testified on oath, adopted his witness statement, the claim and produced his filed documents under list dated 25th May 2021 and was cross-examined by Mr. Thuo advocate for the respondent and re-examined by his advocate, Ms. Guserwa. The case was adjourned. On the 29th January 2025 the parties appeared before me where the claimant called its witness Peter Lemoosa Letotin as CW2, who testified on oath and stated he knew the claimant having been the chairman of UASU KU Chapter where the claimant was employed. He adopted his witness statement dated 30th May 2023 as his evidence in chief and was cross-examined by Advocate for the respondent Mr. Thuo and re-examined by Ms. Guserwa.
5. The Respondent's case was heard before me on the 29th January 2025, when Veronica Gitau, its human resources officer, was called as the witness. She testified on oath and adopted her witness statement dated 21st January 2025 as her evidence and chief, produced the respondent's documents under list dated 14th March 2022 as exhibits 1-15 and the supplementary list of documents dated 30th May 2023 as R-exhibit 16. The witness was cross-examined by Ms. Guserwa and re-examined by their counsel Mr. Thuo and the respondent's case was marked as closed.
6. The parties filed written submissions as directed.

Claimant's case in summary

7. The Claimant gave evidence and informed the Honourable Court during his evidence in chief that he was employed by the Respondent Institution on the 7th of November, 1996 as a Tutorial Fellow in the Department of History, Archaeology and Political studies and rose through the ranks of Senior Lecturer in the Department from 29th of September, 2015 up until the time of his contract termination on 25th of September, 2020. He adopted his witness statement dated 24th May 2021 as his evidence in chief. The Claimant stated that he executed the duties that were assigned to him diligently and satisfactorily until 30th of May, 2019 when he was suspended from his duties on allegations of sexual harassment of a student which suspension he served for more than one year contrary to the terms and conditions set out in the Collective Bargaining Agreement between the Respondent and Universities, Academic Staff Union, Kenyatta University Chapter. The Claimant informed the Court that on the 4th of April, 2019, at about 8 pm he received a telephone call from a mobile number 0735461983 summoning him to the Respondent's Security office to which he responded to by attending to the office with a friend Mr. Steve Okuta on the same day at 9.00 p.m.
8. The Claimant further informed the Court that the Respondent's Security office Mr. Lameck who had summoned him was very hostile, and he informed him that he had sexually harassed a female student whose names and particulars were not disclosed. He further informed the Court that he was issued



with a letter dated 30th May, 2019, from the Respondent and was informed by the Respondent that it was investigating the allegations of misconduct whose actions amounted to sexual harassment, as a result of which he was suspended without pay and his medical cover was cancelled. The Claimant stated before the Court that suspension, he was issued with a letter that was vague on the particulars of the allegations of the alleged sexual harassment, hence it was not possible to know the complaint to enable him prepare his defence on the said allegations.

9. He further testified before court that he was summoned to a Disciplinary hearing by the Respondent through a letter dated 29th May, 2019 which was served upon him on 25th of July, 2019 without being supplied with any particulars nor evidence of the allegation he was being accused of committing. The Claimant stated that he wrote a letter dated 29th of July, 2019 to the Respondent indicating that he was doubtful as to whether he would get a fair hearing because the Respondent was concealing information from him. The Claimant stated that he was summoned to appear for a disciplinary hearing which had been scheduled on 15th August, 2019 without being provided with particulars and evidence of the allegations and further the Respondent's Registrar Administration one Dr. Muindi called him in his office and without giving the Claimant any reason asked him not to appear in the said disciplinary hearing. The Claimant informed the Court that he was put under suspension for more than one year without any justifiable reason and/or cause and was subsequently issued with two notices to show cause despite the fact that he was still on suspension.
10. The Claimant further stated that he appeared before the Respondent's Senior Disciplinary Board on the 18th of September, 2020, without being served with the particulars and evidence touching on the allegations he had been accused of committing. The Claimant received a letter on 30th of September, 2020, dated 25th September, 2020, from the Respondent, which letter indicated that he had been terminated from his employment services. The Claimant stated that he appealed against the decision to terminate him through a letter dated 8th October, 2020 to which the Respondent never Responded to. The Claimant informed the Court that there was no valid reason for termination of his employment as the same was based on malice, bad faith and unfounded allegations.

Respondent' case in summary

11. In its Statement of Response dated 14th March 2022, the Respondent denied each and every allegation contained in the Claimant's Statement of Claim and further stated under the circumstances, it was justified in taking the action it took against the Claimant. The respondent's witness Veronica Gitau adopted her witness statement dated 21st January 2025 as respondent's evidence in chief. The Respondent avers that the decision to summarily dismiss the Claimant on grounds of sexual harassment was arrived at after internal investigations and disciplinary hearings by the Respondent's senior Board of Discipline whereof both the Claimant and the Complainant were heard and presented their evidence. The Respondent therefore, sought dismissal of the Claimant's Claim with costs.

DETERMINATION

Issues for determination

12. The claimant addressed the following issues in submissions :-
 - (a) Whether the Claimant was lawfully, fairly and procedurally dismissed by the Respondent.
 - (b) Whether the allegations made against the Claimant leading to his termination were valid and proven as required by Section 43 of the *Employment Act*.
 - (c) What remedies are available to the Claimant.



13. The respondent addressed the following issues in submissions :-
- a) Whether the Claimant's termination from employment was lawful and fair.
 - b) Whether the Claimant has proved or established the Claims for Discrimination and Defamation.
 - c) Whether the Claimant is entitled to reliefs sought.
14. The court having perused the submissions, considered the pleadings, relief sought and evidence found the issues to be :-
- a. Whether the termination of the claimant's employment contract was fair
 - b. Whether the Claimant has proved or established the Claims for Discrimination and Defamation.
 - c. Whether the Claimant is entitled to reliefs sought.

Whether the termination of the claimant's employment contract was fair

15. The threshold for determination of fairness of termination of employment is according to the provisions of section 45 (2) of the *Employment Act* to wit:- '45(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
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.” To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the *Employment Act* (Walter Ogal Anuro v Teachers Service Commission[2013]eKLR.
16. The burden of proof in employment cases is as stated in section 47(5) of the *Employment Act* as follows:-'47 (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.”

Substantive fairness

The claimant's submissions

17. It was not in dispute that the Claimant was an employee of the Respondent for a period of over 25 years with a prior clean record that earned him promotions. It was not in dispute that the Claimant was working in the position of Senior Lecturer in the Department of History, Archaeology and Political Studies at the time of his termination on 25th of September, 2020. The Claimant's services were terminated on the alleged ground of sexual harassment which was very serious and damaging to his career. The Claimant gave evidence to the effect that contrary to the Respondent's allegation of sexual harassment of a student, the Claimant's employment was affected without carrying out any



investigations whatsoever hence the allegation was purely without basis and/or proof as required under Section 44 of the *Employment Act* Kenya 2007. That the Respondent humiliated the Claimant by making serious sexual harassment allegation against him without giving him full details nor evidence in support of and proof of the allegations and without giving him the opportunity and/or space to cross-examine the alleged victim. That from the foregoing the Claimant's termination was unfair since the reason for his termination is unfounded, baseless and not valid nor proven as required by law. The claimant relied on the decision in Hawkins Ouma *v Faulu Microfinance Bank Ltd Cause No. E015 of 2022* where the Honourable court held that the Respondent being the Employer failed to provide the Claimant with the full particulars of the allegations against him and relied on investigation report prepared to interrogate the Claimant who was unaware of its contents and therefore arrived at an unfair decision to terminate his services. Further, the Court held that the Respondent had a duty to call the victim of the sexual harassment to testify and be cross-examined by the Claimant which they failed to do. To buttress his submissions the claimant relied on the decision in Jeremy Wanyama *v Phoenix Aviation Ltd ELRC Cause No. 034 of 2023* where the Honourable Court held that the process of terminating the Claimant's employment was unfair and therefore unlawful as Courts are guided by the facts and the law alone not by mere allegations of sexual harassment Advocacy and other theories. The Court further observed that it was mandated to protect rights of persons accused of perpetrating sexual harassment but also uphold fair disciplinary process and termination based on proven and valid grounds. In Fredrick Muriuki mwangi *v Goodman Agencies Ltd Cause No. E318 of 2020* The Honourable Court held that the allegation of sexual harassment of a female member of staff was exclusively based on a video not availed to the Court which was crucial evidence. The victim was never called to give evidence on the alleged actions by the Claimant. It was held that the Respondent had failed to prove on a balance of probability that it had a valid and fair reason to terminate the Claimant's employment.

Respondent's submissions

18. The respondent contended that at the core of the Claimant's dismissal was a case of sexual harassment of a student identified as "WW" ("hereinafter referred to as "subject student") by the Claimant. On 19th March 2019, the subject student made a report to the Directorate of Security Services which was recorded and booked as OB 08/19/03/2019 to the effect that the Claimant herein had sexually harassed her. The subject student recorded her statement and narrated that the allegation against the Claimant was based on the fact that sometime during the second semester of the 2018/2019 academic year when the subject student was undertaking her CAT of AHT 319, the Claimant asked her why she had not written her "English Name" in the answer booklet. Subsequently after the examination, the Claimant followed the student and asked for her mobile number which she gave it to him. (See Page 10 and 11 of the Respondent's List and Bundle of Documents dated 14th March 2022 being the Subject Student's Statement). The following week, the Claimant called the student and demanded them to meet at his vehicle after class, which she did. During the meeting, the Claimant told the subject student that he would want her to be his "baby." When the subject student refused, the Claimant told her that "her marks were in his hands." When the subject student demanded to leave, the Claimant gave her Kshs 200 for "lunch." On 14th March 2019, upon the Claimant's insistence, the Claimant and the subject student met at Kamakis. The Claimant asked her to spend the night with him, to which, she refused. Again, the Claimant reminded her that "her marks were in his hands." In support of the subject student's case, a fellow student, Grace Mumo Muthiani, recorded her statement and confirmed, among others, that the Claimant and the subject student met on 14th March 2019 at Kamakis. (See Page 12 of the Respondent's Bundle of Documents dated 14th March 2022). These allegations against the Claimant were highly unprofessional, unethical and amounted to a serious breach of the Claimant's obligations. It was therefore on this basis that the Claimant was subsequently, on recommendation



of the Director, Security Services, suspended on 30th May 2019 pending his appearance before the Staff Disciplinary Committee and pending further investigations. (See Pages 8 to 9 and 16 and 17 being of the Respondent's List and Bundle of Documents being the Report on Allegation of Sexual Harassment by Dr. Imbisi dated 9th May 2019 and Letter of Suspension respectively).

19. On 18th September 2020, the Claimant attended a disciplinary hearing before the Senior Board of Discipline whereof it was the Board's decision that the Claimant's services be terminated. (See Pages 29 to 44 of the Respondent's List and Bundle of Documents dated 14th March 2022 being the Minutes from the Senior Board of Discipline held on 18th September 2020). In arriving at its decision, the Board observed at Paragraph 7.6 that the Claimant admitted to having a cordial relationship with the student and that his inappropriate language and action after Kamakis meeting indicated sexual harassment. To buttress its submissions the respondent relied on the decision in the case of *Okun - vs- Kenyatta University (Cause 363 of 2019)* [2023] KEELRC 2340 (KLR) where Justice M. Mbaru stated as follows: "...Section 6(2) of the *Employment Act*, 2007 (the Act) directs every employer who employs 20 or more employees to have a policy statement on sexual harassment...This policy is more so necessary in an institution such as the respondent which hosts the very best in society, its academic staff including non-academic staff and a student body of very vibrant minds and cadres under an institution of higher learning. This fountain of knowledge must be harnessed in an environment where the best train and mentor into various professions under an environment that is free from sexual harassment of the students.....The power relations between the claimant and his student were in the nature that as the lecturer, he held authority over the student, and any conduct on his part which showed physical behaviour of a sexual nature which directly or indirectly led to the student believing that she could earn favours in her examinations, in that regard, resulted in sexual harassment. This is because, a student in the respondent university is entitled to attend her academic units, classes, and course free of sexual harassment; to attend and undertake examinations and any supplementary examinations free from and without being subjected to sexual harassment; and that where such matter should arise, the employer such as the respondent or the institution where the student is, should take such disciplinary measures as the employer deems appropriate against any person under the employer's direction, who subjects any student or employee to sexual harassment in terms of sexual favours for marks or for such other matters..." That the Respondent herein terminated the contract of the Claimant for not only engaging a highly unprofessional and unethical conduct but also engaging in conduct which greatly violated the Claimant's duties and obligations as a member of staff of the Respondent. Such actions amounted to acts of gross misconduct within the meaning of Section 44(4) g of the *Employment Act*, which therefore entitled the Respondent to dismiss the Claimant from employment. In *Thomas Sila Nzivo - vs- Bamburi Cement Limited (2014) eKLR* it was stated as follows: "...The Respondent had reasonable and sufficient grounds to suspect the Claimant of having acted to the substantial detriment of the Respondent and its property, and was justified in summarily dismissing the Claimant under Section 44 [4] [g] of the *Employment Act* 2007. The Employer was not required to have conclusive proof of the Claimant's involvement; it was only expected to have reasonable and sufficient grounds..." The Court of Appeal in the case of *Kenya Revenue Authority vs Reuwel Waithaka Gathi & 2 Others (2019) eKLR* stated as follows: "...Under section 44 of the Act, one of the grounds that would justify the finding of gross misconduct against an employee is the commission or suspicion of commission by an employee of a crime against the property or person of the employer. In relation to this ground and as has been rightly pointed out by counsel for the Respondent, it does not require the employer to have watertight evidence of the alleged criminal transgression for the ground to arise. All that is required is for the employer to have justifiable and compelling grounds to suspect that the affected employee has engaged in acts that are criminal in nature and which affect the property or person of the employer..."



Decision.

20. The claimant was issued with letter dated 25th September 2020 being decision of the senior board of discipline (page 45 of claimant's documents). The letter referred to the hearing of 18th September 2020 on charge related to a student WW that relates to sexual harassment, the Board informed him he was guilty of gross misconduct under section 44(4)(g) of the *Employment Act* and in breach of section 9.4 I and iii of his terms of service for scandalous and disgraceful behaviour. He was terminated from service and given right to appeal (Page 45 of the claimant's bundle of documents).
21. The claimant appealed under letter dated 8th October 2020 (page 47-51 of the claimant's bundle of documents) of which he stated was not responded to. In the appeal, he listed the grounds of the appeal. In ground 4 of the appeal the claimant stated that he was aware that during the disciplinary board his accuser appeared before the board and when she was interrogated by union officials the interrogation was terminated prematurely because of the fear of the Chair of the Board and others that she was going to incriminate herself. That one of the issues put to the accuser was that she had pestered the claimant on where they would meet and this means she may have been used by some people to trap him (page 49 of the claimant's bundle of documents).
22. During the hearing at cross-examination the claimant told that court the student gave him her mobile number on own volition. That the student wanted academic assistance. He confirmed that the text messages exchanged between them had nothing academic. From the extracted messages the claimant requested for meeting with the student. On further cross-examination, the claimant did not agree that the only place he could meet the student was in the office. He told the court that it was the student who requested they meet at By pass. The claimant admitted they met with the student at Kamakis, Nyamachoma place. The meeting was an open ended meeting. They had both academic and general talks. The claimant stated that discussion of academics with students anywhere was a practice worldwide.
23. The claimant admitted that the union in letter dated 12th October 2020 (pages 8-10 of the claimant's bundle of documents) but stated that the letter should not be read out of context. The letter in part read as regard Dr. Imbisi, the claimant :- 'in his presentation, he was honest and confirmed that they had a cordial relationship with his accuser, WW and met three times in open and public places during the day, twice within KU and once at a restaurant in Kamakis along Eastern Bypass where they had lunch. He observed that their relationship had nothing to do with academics. In concluding in his submissions before the board, Dr. Imbisi said that he was apologetic if, in the opinion of the board, the relationship he had with the student was inappropriate.' The letter further stated that the claimant pleaded for leniency on account of service of 24 years to the respondent in different capacities, lack of previous disciplinary case, he was sponsoring 2 students and had a chronically sick child.
24. In further cross-examination the claimant stated that the meeting with the said student 'Ms. WW' was at the carpark before a continuous assessment test and a further one at a restaurant at Kamakis after the test and before release of the results. The claimant told the court that he attended the disciplinary hearing accompanied by 2 union officials. That the complainant attended the hearing after he had left and he had no opportunity to cross-examine her and but was cross-examined by the union officials. At re-examination the claimant stated it was unfair for him not to have cross-examined the complainant.
25. CW2 was the chairman of the union. He reiterated that the claimant was not afforded opportunity to cross-examine the complainant. He admitted that complainant came for the disciplinary hearing, confirmed that the university supplied the union with documents before the disciplinary hearing, stated they got additional documents at the hearing but that was not in his statement. CW2 told the



court they got the documents 6 days before the hearing contrary to 14 days under CBA, he denied the union having sat with claimant before the hearing. CW2 admitted that the claimant admitted he had a cordial relations with the student as per letter of Union and the same was a report on what happened at the disciplinary hearing.

26. In defence, on cross-examination, RW1 stated that meeting of students after class was suspicious. The student was 18 years and she attended the disciplinary hearing. It was recorded in 7.3(iv) that the lecturer told the student to be his “baby” and gave her Kshs. 200. RW1 relied on record.
27. The court found unequivocal admission by the claimant of having a non-academic relationship with a student and possible influence in a continuous assessment test. The lecturer admitted to meeting the student at the carpark of the university before a continuous assessment test and a further one at a restaurant at Kamakis after the test and before release of the results. He admitted the text messages exchanged with the student had nothing academic. Does the fact that the student was 18 years make the conduct acceptable? The relationship between the claimant and the student was that of trust akin to student –parent relationship. In the Canadian case of B. (A.) v. D. (C.), [2011] B.C.J. No. 1087,2011 BCSC 775, the court held as follows:-

“Board EF owes a duty of care to its students to protect them from unreasonable risk of harm at the hands of other members of the school community....The standard of care to be exercised by school authorities in providing for the supervision and protection of students for whom they are responsible is that of the careful and prudent parent. This was set out by the Supreme Court of Canada in Myers v. Peel County Board of Education, [1981] 2 S.C.R. 21.”(cited in W.J & another v Astarikoh Henry Amkoah & 9 others [2015] eKLR) In the said decision Justice Mumbi Ngugi stated :-“ I believe that public policy considerations dictate that those in charge of educational and other institutions be held strictly liable for abuses committed by those whom they have placed in charge of vulnerable groups such as minors in educational institutions. It is not enough to prosecute those found to have breached the duty of care, and to have intentionally committed criminal acts against minors. The institutions are under a duty to ensure that there is no room for abuse by those they have placed in charge of these vulnerable groups.” (emphasis given on the applicable test). The Court holds that the so called cordial relationship outside the academic zone with the female student was in violation of the principle of trust entrusted by parents to academic institutions and to be upheld by lecturers. The standard of care to be exercised by school authorities in providing for the supervision and protection of students for whom they are responsible is that of the careful and prudent parent (Supreme Court of Canada in Myers v. Peel County Board of Education, [1981] 2 S.C.R. 21, supra). The claimant admitted to be in violation of the standard by his conduct and that the theory that he was trapped was warped imagination.

28. The court considered the decision in Hawkins Ouma *v Faulu Microfinance Bank Ltd Cause No. E015 of 2022*. The Honourable court held that the Respondent being the Employer failed to provide the Claimant with the full particulars of the allegations against him and relied on investigation report prepared to interrogate the Claimant who was unaware of its contents and therefore arrived at an unfair decision to terminate his services. Further, the Court held that the Respondent had a duty to call the victim of the sexual harassment to testify and be cross-examined by the Claimant which they failed to do. Further in Jeremy Wanyama v Phoenix Aviation Ltd ELRC Cause No. 034 of 2023 The Honourable Court held that the process of terminating the Claimant’s employment was unfair and therefore unlawful as Courts are guided by the facts and the law alone not by mere allegations of sexual harassment Advocacy and other theories. The Court further observed that it was mandated to protect



rights of persons accused of perpetrating sexual harassment but also uphold fair disciplinary process and termination based on proven and valid grounds. The finds that the two decisions were not by persons holding position of trust akin to parents. Further in the instant case the claimant admitted the facts as presented and the court found the claimant failed the standard of care required of him as a lecturer thus:- ‘The standard of care to be exercised by school authorities in providing for the supervision and protection of students for whom they are responsible is that of the careful and prudent parent.’” The court finds that the reasons outlined above for the termination met the threshold of section 43 of the Employment Act that :- ‘43. Proof of reason for termination

- (1) In any claim arising out of 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.
- (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”

Procedural fairness

29. The claimant submitted that he was not accorded a fair hearing in line with the provisions set out under Section 41(2) of the Employment Act 2007 as he was merely subjected to a disciplinary hearing and informed of the alleged sexual harassment without being provided with any supportive material/ evidence to enable him prepare his defence. During the hearing the claimant stated he ought to have been afforded opportunity to cross-examine the complainant. The claimant further stated he was not supplied with documents and further the documents were furnished to his union 6 days to the hearing contrary to a longer period under the CBA.
30. The respondent submitted that noting the gravity of the charges against the Claimant, it is clear that the identity of the subject student was made known to the Claimant not only in the letter of invitation for disciplinary hearing of 11th September 2020 but also in the suspension letter of 30th May 2019. From the onset, it is therefore improbable to deduce any aspect of compromise during the disciplinary hearing. Subsequently, on 18th September 2020, the Claimant appeared before the Senior Board of Discipline. He was accompanied by Mr. Peter Lemoosa Letotin and Mr. Clavin Kanyi, who described themselves as the Chairperson and Deputy Chairperson, respectively, of the Claimant’s worker’s Union, University Academic Staff Union (UASU). During the disciplinary proceedings, and as admitted by the Claimant in his Letter of Appeal against the termination, the subject student was present and was interrogated by the Union Officials. (See Page 49 of the Claimant’s List and Bundle of Documents dated 24th May 2024 being the Claimant’s Appeal against termination of employment). Similarly, during cross-examination of the Claimant’s second witness, Mr. Peter Lemoosa Letotin before this Honourable Court, the witness admitted to having questioned the subject student during the disciplinary hearing and also to receiving of key documents from the Respondent touching on the Claimant’s case prior to their appearance before the Board. Subsequently, after the disciplinary hearing, the Board deliberated on its findings and vide a letter dated 25th September 2020, communicated to the Claimant its decision to terminate him from employment having been found guilty of the sexual harassment charge. In the said letter, the Claimant was equally informed of his right to appeal against the decision, to which the Claimant being dissatisfied with the decision, opted to appeal vide the letter dated 8th October 2022, which appeal was duly received by the Respondent. (See Page 45 and 47 to 51 of the Claimant’s List and Bundle of Documents dated 24th May 2024 being the Decision of the Senior Board of Discipline and The Claimant’s Appeal against termination from employment). Vide the letter dated 12th April 2022, the Claimant was invited to appear before the Appeals Board. However,



vide his letter dated 16th April 2022, the Claimant declined to appear before the Appeals Board. On account of the Claimant's failure to appear before the Appeals Board, the Appeals Board upheld the decision of the Senior Board of Discipline, which decision was communicated to the Claimant vide the letter dated 22nd April 2022. (See Page 3 to 5 of the Claimant's Supplementary List and Bundle of Documents being the letters dated 12th April 2022, 16th April 2022 and 22nd April 2022)

Decision

31. The procedural fairness is as stated under section 41 of the *Employment Act* to wit :- '41(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.'
32. The claimant, before the hearing, was issued letters dated 2nd September 2020 and another dated 11th September 2020 inviting him for a disciplinary hearing. The court noted that the letters disclosed the charge of sexual harassment of seeking favours from female student Ms. WW during the second semester of 2018/2019 academic year, when the class was doing a CAT OF AHT 319 at OMI when he had asked the student why she had not written her English name on the answer booklet, after the exam he followed the student and asked for mobile number of which the student gave him, that the next week the claimant called the student and demanded they meet at parking lot where he asked the student to be his "baby" and on refusal reminded the student her marks were in his hands. That the claimant gave the student Kshs. 200 for lunch. That on 14th March 2019 on insistence of the claimant he met with the student at Kamakis and asked to sleep with her reminding her of the marks. They further met again. (pages 12-19 of the claimant's documents) These were the same issues the claimant was suspended on vide letter dated 10th June 2019 .
33. The court perused the minutes of the proceedings and found that the claimant had full facts of the accusations and admitted to the relationship with Ms. WW. The documents were availed to the union 6 days before. This was a lesser period than is stated in the CBA. He appeared with the union. The claimant did not object to the proceedings.
34. The claimant opted out of appeal after invite albeit because the case was now in court. At the hearing the claimant admitted to attending the hearing in the company of 2 union officials. The claimant did not meet the complainant as per his testimony but the union stated they interrogated the student at the hearing. Even if the claimant had not cross-examined the student, taking into account his admission of the non-academic relationship with the student, the court finds that there was substantial compliance with the provisions of section 41 of the *Employment Act*. The claimant was informed of the allegations with sufficient details and his evidence established an informed defence and he was accompanied by the union officials who were allowed to interrogate the complainant and make representations. He was dismissed for same reasons he was suspended on, invited for hearing on and heard on. In the upshot the dismissal is held to have been lawful and fair.



Whether the Claimant has proved or established the Claims for Discrimination and Defamation.

35. The court found no evidence was led on this issue. The claimant did not submit on the same. The claim of discrimination and defamation is held to be without basis.

Whether the Claimant is entitled to reliefs sought.

36. The claimant sought for the following reliefs:-
- a) Reinstatement to his previous position/job without any loss of benefit
 - b) Salary arrears for the entire period the Claimant has been out of employment.
 - c) In the alternative an order for payment of the Claimant's lawful terminal dues as set out above at par.
 - d) Payment for loss of future earnings for 23 years to retirement age and 3 months (279 months) (Kshs. 246,692x279 months) of Kshs. 68,827,068
 - e) Maximum compensation of twelve months' salary
 - f) Damages for discrimination
 - g) Exemplary damages for loss of opportunity
 - h) Damages for defamation
 - i) Cost of this suit with interest.
37. Following the decision of the court that the was lawful and fair, the only outstanding issue is of terminal dues sought. In the statement of defence, the Respondent stated that the claims for part-time teaching submitted on 14th April 2021 were premature and were undergoing verification. The claim for accumulated CBA arrears was denied. The respondent filed the witness statement of Veronica Gitau dated 21st January 2025 and did not address the issue of terminal dues and specifically whether they had since verified the part-time claims. The court finds no basis to deny the same to the claimant and the same is awarded as prayed together with the marking payments thus paragraph 9 (iv to xiii) for the total sum of Kshs. 404,400 which is awarded with interest from date of filing of suit.

Conclusion

38. The court held the termination of the employment of the claimant was substantially and procedurally fair. The court held that the claim for terminal dues for part-time and marking was not disputed and is awarded. Judgment is entered for the claimant against the respondent for terminal dues under paragraphs 9 (iv-xiii) of the claim as follows:-
1. Unpaid part-time and marking wages amounting to Kshs. 404,400.
 2. Interest at court rates from date of filing suit,
 3. Costs of the suit.
39. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF MAY , 2025.

J.W. KELI,



JUDGE.

In the presence of:

Court Assistant: Otieno

Claimant : Absent

Respondent:-Odour h/b Thuo

Further Court Order

Stay of 30 days granted.

J.W. KELI,

JUDGE.

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