



**Odundo v Kenya Institute of Management (Cause E320 of 2023)
[2025] KEELRC 1430 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1430 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E320 OF 2023**

**S RADIDO, J
MAY 15, 2025**

BETWEEN

GODFREY OMONDI ODUNDO CLAIMANT

AND

KENYA INSTITUTE OF MANAGEMENT RESPONDENT

JUDGMENT

1. Godfrey Omondi Odundo (the Claimant) sued Kenya Institute of Management (the Respondent) on 18 April 2023, alleging unfair termination of employment and breach of contract.
2. The Respondent filed a Response and Counterclaim on 1 August 2023, and the Claimant filed a Reply to the Response and Response to the Counterclaim on 24 October 2023.
3. The Cause was heard on 7 May 2024 and 24 March 2025.
4. The Claimant and Head of Shared Services with the Respondent testified.
5. The Claimant filed his submissions on 29 April 2025 (should have been filed and served before 11 April 2025), and the Respondent's submissions were not on record by this morning.
6. The Court has considered the pleadings, evidence and submissions.

Breach of contract

Unpaid salaries: August – December 2020; February and June 2021

7. The Claimant contended that the Respondent failed to pay the balance of his salaries from August to December 2020 and for February and June 2021, totalling Kshs 336,000/-.
8. The Respondent made a general denial of the breach, and its witness testified that all outstanding salaries were paid with final dues. No schedule of paid final dues was produced in Court.



9. The Claimant was entitled as of right to earned salaries, and the Court will allow this head of the claim.

Unpaid salaries: March, July – September 2021 and January – September 2022

10. The Respondent again made a general denial of this head of the claim. The Respondent did not put before the Court any pay records as contemplated by sections 18 and 20 of the Employment Act, and the Court will allow this head of the claim.

Accrued leave allowance

11. The Claimant claimed accrued leave allowance of Kshs 144,000/- from September 2019 to September 2022.

12. Clause 7.4 of the Respondent's Human Resource Manual provided that the Respondent would pay 50% of an employee's basic salary as leave allowance.

13. As the custodian of employee records, the Respondent did not produce any records to show that it paid the Claimant the allowance. It also did not interrogate the computations by the Claimant, and the Court will allow the head of the claim.

HELB loan recovery

14. The Claimant contended that the Respondent failed to remit deductions from his salary towards the payment of the loan from the Higher Education Loans Board.

15. The Claimant did not place before the Court a statement from the Higher Education Loans Board or copies of his pay slip to demonstrate that deductions were made.

16. The Court declines to allow this head of the claim.

National Social Security Fund and National Hospital Insurance Fund contributions

17. The Claimant did not produce statements from the National Social Security Fund and National Hospital Insurance Fund before the Court to support the assertion that the Respondent did not remit the requisite contributions to the Funds.

18. The Court also notes that the Funds have mechanisms under their constitutive Statutes to address unremitted contributions.

19. The Court declines to grant the reliefs prayed for.

Salary maintenance during suspension

20. The Claimant pleaded an entitlement to Kshs 144,000/- as maintenance allowance for the period he was on suspension.

21. Clause 11.6 of the Respondent's Human Resource Manual states that an employee on suspension may be granted 50% of basic salary as maintenance allowance for not more than two months.

22. The Claimant has successfully claimed full salary for the period he was under suspension, and it would amount to unjust enrichment to award him maintenance allowance.



Unfair termination of employment

Procedural fairness

23. On 6 July 2022, the Respondent suspended the Claimant from work for 14 days to facilitate investigations into allegations of irregularities in the examinations department, which was headed by the Claimant. The suspension was extended on 14 July 2022 for a further 14 days. Another extension was made on 4 August 2022.
24. Upon completion of investigations, the Respondent issued a show cause to the Claimant and requested him to respond before the end of 14 September 2022. The Claimant responded on 13 September 2022.
25. On 22 September 2022, the Claimant attended a disciplinary hearing, and this was followed by summary dismissal on 26 September 2022.
26. The Claimant appealed, and an appeal hearing was conducted. The Appeal Committee upheld the dismissal.
27. The Claimant challenged the procedural fairness of the dismissal on the grounds that the Respondent did not give him particulars of the charges including the investigations report; allow him sufficient time to prepare a response; constituted a biased Disciplinary Committee and Appeal Disciplinary Committee, and that the Respondent failed to provide him with minutes of the disciplinary hearings.
28. The Respondent maintained that it followed all due procedures before dismissing the Claimant.
29. The show cause set out the allegations the Claimant was expected to respond to, and these were soliciting money from a student contrary to the fee-paying guidelines and absconding from duty from 18 August 2022 to 29 August 2022.
30. The Respondent did not disclose to the Claimant (or in Court) the identity of the student the Claimant purportedly solicited a bribe from, and the Court finds that this impeded his right to adequately understand the nature of the charge and defend himself. The Court, however, notes that this allegation did not lead to the dismissal.
31. The Claimant also contended that the Disciplinary Committee and the Appeal Disciplinary Committee were biased because the persons who suspended him also sat in the Disciplinary Committee.
32. The Respondent did not produce minutes of the hearings before the Court.
33. The Claimant's testimony that the same persons who suspended him sat in the Disciplinary Committee, and one also sat in the Appeals Disciplinary Committee, was not interrogated or responded to.
34. A judge who has sat over a case should not sit on an appeal from a verdict made by the same judge. The same principle is also sound in disciplinary hearings.
35. At least 2 of the Respondent's Managers who suspended the Claimant were part of the initial Disciplinary Committee and also sat in the Appeals Disciplinary Committee.
36. The Court finds that the apprehensions of bias by the Claimant were well-founded and that the hearing process was therefore tainted.



Substantive fairness

37. The reason for the dismissal of the Claimant was absence from work without permission from 18 August 2022 to 20 (29?) September 2022.
38. By dint of sections 43 and 45 of the [Employment Act](#), 2007, this is the reason the Respondent was expected to prove as valid and fair.
39. On 4 August 2022, the Respondent extended the Claimant's suspension for another 14 days. The Claimant was instructed to report to work on 18 August 2022.
40. The Claimant conceded that he did not report to work on 18 August 2022 because the Respondent had withheld his salary and maintenance, and that he had communicated with the Respondent in this regard on 19 April 2022, 7 June 2022, 22 June 2022, 30 June 2022 and 4 July 2022.
41. The Respondent did not pay the Claimant maintenance allowance during the suspension period. By that time, the payment of salary had not been consistent.
42. The Respondent failed to fulfil its contractual obligations to the Claimant during suspension, and it would be inequitable for it to claim breach of contract on the part of the Claimant for failing to report to work.
43. The Court finds that the reason for the dismissal of the Claimant did not meet the test of sections 43 and 45(4) of the [Employment Act](#), 2007.

Reinstatement/Compensation and salary in lieu of notice

44. The Claimant prayed for an order of reinstatement and also compensation. The Claimant did not lay a basis for an order of reinstatement.
45. The Claimant served the Respondent for about 3 years, and in consideration of the length of service, the Court is of the view that the equivalent of 3 months' gross salary as compensation would be appropriate (gross monthly salary was Kshs 96,000/-).
46. The Court will also allow the equivalent of 1 month's salary in lieu of notice.

Counterclaim

47. The Respondent counterclaimed against the Claimant for breach of contract and damage to reputation.
48. The Respondent did not lay an evidential or legal foundation to the Counterclaim, and it is dismissed with no order on costs.

Conclusion and Orders

49. The Court finds and declares that the summary dismissal of the Claimant was unfair, and that the Respondent was in breach of contract.
50. The Claimant is awarded:
 - i. Unpaid half-salaries Kshs 336,000/-
 - ii. Unpaid full salary Kshs 1,248,000/-
 - iii. Leave allowance Kshs 144,000/-



- iv. Compensation Kshs 288,000/-
- v. Pay in lieu of notice Kshs 96,000/-
- Total Kshs 2,112,000/-

- 51. The award to attract interest at court rates from the date of the judgement
- 52. The Claimant is denied costs for failing to file submissions within the agreed timelines and not offering any explanation.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 15TH DAY OF MAY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Andego, Gachagua & Associates Advocates

For Respondent Gwandaruru & Associates Advocates

Court Assistant Wangu

