



**Khamala v Race Course Primary School (Employment and Labour Relations Cause 186 of 2018) [2025] KEELRC 1344 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1344 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 186 OF 2018**

**MA ONYANGO, J**

**MAY 9, 2025**

**BETWEEN**

**EVANS GEOFFREY KHAMALA ..... CLAIMANT**

**AND**

**RACE COURSE PRIMARY SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. Vide his Memorandum of Claim dated 9<sup>th</sup> April 2018 and filed in Court on 15<sup>th</sup> May 2018, the Claimant avers that he was employed by the Respondent as a grounds man with effect from 4<sup>th</sup> April 2012 on permanent terms and that at the time he left employment he was earning a gross salary of Kshs 8,000.
2. The Claimant states that he served the Respondent with loyalty, diligence and with full dedication until 30<sup>th</sup> November 2016 when the Respondent unlawfully terminated his services and refused to pay him his terminal dues.
3. According to the Claimant, he was unfairly terminated from employment on allegations that he was involved in an incident where the school was broken into. The Claimant denied involvement in the incident and averred that he was not subjected to fair and proper hearing before he was terminated from employment as required by law.
4. The Claimant faulted the termination of his employment on the following grounds: -
  - i. No evidence of investigation was availed to the Claimant so as to formally respond on the alleged stealing
  - ii. To date no report has been made to the police by the Respondent regarding the alleged theft as is the due process of law



- iii. To date no criminal charges have been pressed against the Claimant by the Police regarding the alleged theft
  - iv. Particulars of the alleged theft were never availed to the Claimant
  - v. The Claimant was never accorded a fair hearing nor an opportunity to call his witness in his defence
  - vi. Results of the investigation that was conducted by the Respondent were never availed to the Claimant
  - vii. The disciplinary action that the Respondent purported to mere on the Claimant was too quick, inefficient and procedurally unfair
  - viii. The Claimant was never involved in the stealing and at no point did he intend to steal from the Respondent
5. It is the Claimant's case that his dismissal was unfair and unlawful as it violated the provisions of sections 41(1), 44(4), 45(2) and 43 of the Employment Act. Consequently, the Claimant sought the following reliefs:
- i. A declaration that the termination of his services was unprocedurally, unlawfully and unfairly terminated and in the circumstances the Claimant is entitled to compensation of his terminal dues as outlined in the statement of claim.
  - ii. The sum of Kshs 556,306.84 as particularized in the Statement of claim
  - iii. Costs of this suit and Interests at court rates from time of filing the suit until payment in full
  - iv. Any other relief the Honourable court may deem fit and just to grant.
6. The Respondent in its Reply to the Memorandum of Claim dated 23<sup>rd</sup> July 2018 and filed in court on 25<sup>th</sup> July 2018 denied the averments made by the Claimant in his Memorandum of Claim. In particular, the Respondent denied ever employing the Claimant.

### **Claimant's Case**

- 7. The Claimant testified on 6<sup>th</sup> November 2023 as CW1 and adopted his witness statement recorded on 9<sup>th</sup> April 2018 as his evidence in chief. He also relied on the list of documents dated 9<sup>th</sup> April 2018 and the supplementary list dated 2<sup>nd</sup> February 2023 in support of his case.
- 8. The Claimant stated that he was orally employed by the Respondent at a salary of Kshs 4000 which was later increased to Kshs 8000.
- 9. It was his testimony that he was terminated by the Respondent on 30<sup>th</sup> November 2016 on allegations that he was a culprit in an incident where thugs broke into the school at night. He averred that he was terminated from employment without being issued with a show cause letter and neither was he invited to a disciplinary hearing.
- 10. The Claimant further contended that during the course of his employment with the Respondent, he never went on annual leave; that he worked from 6am to 4:30pm and was not paid overtime; that he did not receive his salary for 7 months and also, that he was not paid salary in lieu of notice prior to his termination from employment.



11. In response to the allegation by the Respondent that the Claimant was never its employee, the Claimant told the court that he was employed by the Respondent on 4<sup>th</sup> April 2012 and worked for five years until he was unfairly terminated from employment.
12. The Claimant urged the court to award him the reliefs he sought in his Memorandum of claim
13. On cross examination, the Claimant maintained that he was employed by the Respondent orally in 2012.

### **Respondent's Case**

14. The Respondent called its current Principal, Kiprono Serem who testified as RW1 on 23<sup>rd</sup> January 2024. RW1 adopted his witness statement recorded on 5<sup>th</sup> January 2022 as his evidence in chief.
15. The Respondent's witness disputed that the recommendation letter dated 17<sup>th</sup> March 2016 produced by the Claimant in support of his case emanated from the Respondent. He stated that there was no such letter in the school records and that the former principal had denied authoring the said letter.
16. RW1 took the court through the employment procedure of subordinate staff in a public school and stated that the Board of Management through the secretary does an advert; that shortlisting is done and thereafter interviews are conducted. He explained that after the interviews, the qualified candidate is issued with an appointment letter stating the terms and conditions of service.
17. RW1 stated that when he reported to the school on 20<sup>th</sup> April 2018 handing over was done and from the documents placed before him, the name of the Claimant did not appear as a former employee of the Respondent in the records.
18. RW1 produced the handing over report in court which he stated included the assets of the school, the pupils, the teachers and staff by then as well as the school liabilities.
19. On cross examination, RW1 stated that he had not produced a list of employees from 2012 to 2018. He however stated that the handing over report he produced has employees employed in 2012. On the issue of the recommendation letter allegedly issued by the Respondent's former Principal to the Claimant, RW1 stated that no case of forgery was reported. He stated that his evidence was based on the records kept by the school.
20. Jane Onyango Oliech, the Respondent's former principal testified as RW2. She adopted her undated witness statement which was filed with the Respondent's bundle of documents as her evidence in chief. RW2 denied that she ever employed the Claimant or that she authorized the recommendation letter dated 17<sup>th</sup> March 2016 produced by the Claimant.
21. During cross examination, RW2 stated that when she joined the Respondent, she kept all the records of the school from the year 2011 to 2017. It was her testimony that she could not report the forgery incident to the police as she retired in 2021 while the said recommendation letter was filed in 2023.
22. At the close of the Respondent's case, the court directed parties to file written submissions. The Claimant's submissions were filed on 29<sup>th</sup> April 2024 while the Respondent's submissions were filed on 30<sup>th</sup> April 2024.

### **The Claimant's submissions**

23. The Claimant in his submissions framed the issues for determination to be:
  - i. Whether the Claimant was employed by the Respondent



- ii. Whether the Claimant was unlawfully , unprocedurally and unfairly terminated from employment by the Respondent
  - iii. Whether the Claimant is entitled to compensation for unlawful, unprocedural and unfair termination from employment as prayed for in the statement of claim
  - iv. Whether the Claimant is entitled to an award of certificate of service
  - v. Who should pay costs and interests of this suit
24. On the first issue, the Claimant submitted that in his statement and orally in court , he stated that he was orally employed by the Respondent as a grounds man with effect from 4<sup>th</sup> April,2012 on permanent basis and his employment was never reduced to writing by the Respondent.
  25. While citing Section 10 of the *Employment Act*, the Claimant submitted that the employer is required to keep the details of every employee. According to the Claimant, since the Respondent disputed to employing him, the Respondent had the obligation to prove the same which it did not.
  26. On the second issue, the Claimant submitted that in his oral testimony, he stated that he was not issued with a show cause letter nor invited to a disciplinary hearing before he was terminated unfairly from employment by the Respondent. According to him, the allegations leveled against him were not true and that a mere suspicion cannot amount to his being terminated from employment without following the procedure. In this regard, the Claimant submitted that the Respondent did not produce any evidence before court to justify the allegations.
  27. It is therefore the Claimant’s submission that the termination of his employment was unfair for want of both substantive justification and procedural fairness.
  28. On the issue whether the Claimant is entitled to compensation for the unlawful, unprocedural and unfair termination from employment as prayed for in his Memorandum of Claim, the Claimant submitted that he was entitled to the same as he had proved that the termination was unfair and unlawful.
  29. On the claim for one month pay in lieu of notice, it was submitted that the Claimants stated in court that he was not given a written one month's notice of termination prior to termination of his services from employment as per the provisions of section 35(1)(c) of the *Employment Act*. The Claimant therefore submitted that having proved that he was unfairly and unlawfully terminated from employment, the court should award him one month’s salary in lieu of notice
  30. On the claim for compensation for unfair termination, the Claimant submitted that having proved above that he was unfairly terminated as the termination did not follow due process, he ought to be compensated for the unfair termination as was stated in the case Benjamin Langwen vs National Environment Management Authority (2016) eKLR. The Claimant therefore sought for an award of (12 months' salary) for the unfair termination to the Claimant as pleaded.
  31. On the claim for overtime and off days dues, it was his submission that in his evidence before the court, he stated that he used to work from Monday to Friday from 6:00A.M to 4:30A.M. and was never given any payment for working overtime for the entire period he was in the Respondent’s employment. According to him, this evidence was unrebutted by the Respondent who failed to avail to court Attendance Sheet or Muster Roll or any documentation to state otherwise. He therefore submitted that he worked overtime and urged the court to award him the relief as tabulated in the statement of Claim.



32. On the prayer for underpayment of wages, it is the Claimant's submission that in his pleadings and oral testimony in court, she averred that she was paid a basic salary of Kshs 8,000 exclusive of house allowance and other allowances. According to the Claimant, the monthly Salary paid to the Claimant was an underpayment and against the Regulation of Wages(General) (Amendment) Order of the respective years he worked. He therefore sought to be awarded underpayment dues for the entire period he worked for the Respondent.
33. As for the prayer for salary arrears, the Claimant submitted that in his testimony in court, he stated that he was not paid salary from May 2016 to November 2016 and that the Respondent did not produce anything before the court to prove that the salary areas were paid to him. The Claimant therefore sought to be awarded salary arrears for the 7 months he was owed.
34. On the claim for leave dues and public holiday dues, the Claimant stated that he never went for his annual leave for the period he was in employment with the Respondent. He also stated that he worked on public holidays. According to the Claimant, the Respondent did not produce leave forms to show that the Claimant went on leave or was paid leave dues and neither was an attendance register produced before the court to disapprove the claim for public holiday dues. The Claimant thus urged the court to award him the relief under this head.
35. On the award of house allowance and service pay, the Claimant submitted that he is entitled to the grant of these awards as the same were not paid by the Respondent and neither did the Respondent dispute that he was owed the said reliefs.
36. In the end, the Claimant urged the court to compensate and award him the reliefs he sought in his Memorandum of claim as he have proved that he was unfairly and unlawfully terminated from employment.

#### **The Respondent's submissions**

37. On its part, the Respondent identified the issues for determination to be:-
  - i. Whether the Claimant was an employee of the Respondent
  - ii. Whether the claimant is entitled to the prayers sought
38. With regards to the issue whether the Claimant was an employee of the Respondent, the Respondent submitted that the Claimant in his pleadings stated that he was paid a gross salary of Ksh. 4.000/= which was later adjusted to Ksh.8000. According to the Respondent, besides filing a copy his National Identification Card, calculation of terminal dues, demand letter and a certificate of postage, the Claimant did not produce any document or oral testimony in support of the claims of permanent employment and payment of salaries to him by the Respondent.
39. With regard to the recommendation letter which the Claimant based his employment relationship with the Respondent on, it was submitted that the former Principal vide her written statement adopted in court and in her sworn evidence confirmed that she headed the school during the years the Claimant alleges to have been employed in the school but did not employ the Claimant nor issue him with the said letter.
40. While citing the case of Benard B Kones Ndiema v Twin Oaks Limited [2022] eKLR in support of the argument that the Claimant did not prove an employment relationship between himself and the Respondent, it was the Respondent's submission that the Claimant had failed to establish through his documentary and viva voce evidence that there was an employer-employee relationship between him and the Respondent.



41. It is the Respondent's submission that the circumstances of the present case do not meet the definition of an employer and employee under the Employment Act 2007 and thus the Claimant has not demonstrated to this Honourable Court both the factual and legal basis for the Court to allow the prayers sought.
42. The court was urged to make a finding that the Respondent has proved on a balance of probabilities that there has never been any employer-employee relationship existing with the Claimant and that there was no unfair or unlawful termination. That as such the Claimant is not entitled to the reliefs sought.

### **Determination**

43. From the above analysis, the issues that fall for this court's determination are; \_
  - i. Whether there was any employment relationship between the Claimant and the Respondent, and if there was,
  - ii. Whether the Claimant's employment was terminated unfairly and unlawfully
  - iii. Whether the Claimant is entitled to the remedies sought.

### **Whether there was any employment relationship between the claimant and the respondent**

44. The Claimant in his pleadings and oral testimony before the court pleaded that he was employed by the Respondent on 4<sup>th</sup> April 2012 as a grounds man on permanent terms. It was his evidence in court that he was orally employed by the Respondent's former principal, RW2. In support of his claim, the Claimant produced a recommendation letter dated 17<sup>th</sup> March 2016 purportedly issued to him by the Respondent's principal at the time.
45. This assertion was disputed by the Respondent who denied ever engaging the Claimant in its institution and distanced itself from the recommendation letter produced by the Claimant as evidence that he was its employee.
46. In the case of *Casmur Nyankuru Nyaberi v Mwakikar Agencies Limited* (2016) eKLR, cited by the Respondent in its submissions, the court stated as follows;-
  - “8. The jurisdiction of the Employment and Labour Relations Court as far as employment matters are concerned is limited by the existence of an employment relationship as defined in law and the Court must always satisfy itself on this account before proceeding any further.
  11. This Court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer. This does not however release the Claimant from the burden of proving their case. Even where an employment contract is oral in nature, the Claimant must still adduce some evidence whether documentary or viva voce to corroborate their word. More importantly, where an employee believes that the employer has in its possession some documents that would support the case of the employee, that employee is obligated to serve a production notice.”
47. The question at this point is whether the recommendation letter dated 17<sup>th</sup> March 2016 produced by the Claimant can be construed to imply that there was an employment relationship between the Claimant and the Respondent herein.



48. In its defence, the Respondent through its witness took the court through the procedure ordinarily taken by the Respondent when engaging a person to work for it. RW1 stated that the Board of Management through the Secretary of the Board, who is the Principal, places an advert of the vacancy in a public domain and after receiving applications, shortlisting is done and the applicants are then invited from interviews and thereafter, the qualified individual is issued with an appointment letter which clearly states the terms and conditions of employment.
49. In support of this position, RW2 asserted that as a principal, she did not have the mandate to employ anyone unless through the school committee. It was her testimony that whenever the school wanted to employ somebody, the committee held a meeting and after approving the request for employment of a staff, the position was advertised.
50. Under the Basic Education Regulations, 2015, the employment of subordinate staff is managed by the Board of Management. Regulation 17 provides as follows:-
- “ 17. Appointment of non-teaching staff
- Every Board of Management shall, pursuant to section 59 (p)of the Act, recruit, employ, remunerate, promote, demote or terminate the services of any of its employees.”
51. From the above regulation, it is clear that only the Board of Management is mandated by the Basic Education Act to employ support staff. The averment made by the Claimant that he was orally employed by the Respondent’s former principal does not hold water as she did not have the authority to employ him. It therefore matters not whether the Recommendation letter emanated from the principal or not as she had no locus to employ the Claimant.
52. To this end, the Claimant failed to prove on a balance of probabilities that there was indeed an employment relationship between himself and the Respondent.
53. Having found no proof of existence of an employment relationship, it is not logical to determine issue (ii) and (iii) as they were dependent on the existence of an employment relationship.
54. Consequently, the claim is dismissed in its entirety with an order that each party bears its own costs

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 9<sup>TH</sup> DAY OF MAY 2025**

**MAUREEN ONYANGO**

**JUDGE**

