



Mendi & another v Kenya Educational Trust Ltd t/a Pembroke House (Cause E041 of 2022) [2025] KEELRC 1755 (KLR) (18 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1755 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E041 OF 2022
AN MWAURE, J
JUNE 18, 2025**

BETWEEN

PETER MUTURI MENDI 1ST CLAIMANT

BERNARD WAFULA OCHUNA 2ND CLAIMANT

AND

**KENYA EDUCATIONAL TRUST LTD T/A PEMBROOKE
HOUSE RESPONDENT**

JUDGMENT

1. The Claimant commenced this cause vide a Statement of Claim dated 9th November 2022.

Claimants' case

2. The 1st Claimant avers that he was employed as a Sports Coach on 6th September 2009, and also worked as a class assistant from 8:15 am to 3:45 pm while the 2nd Claimant, was employed on 1st September 2009, was a Sports Coach, head of the camping store, and head of bicycles.
3. The Claimants aver that both were responsible for teaching various sports, including squash, tennis, football, rugby, hockey, cricket, and netball, during regular school hours and also led extra curriculum tennis and squash classes in the mornings and evenings. Their supervisor, Mr. John Wright, coordinated extracurricular activities and managed staff and sports assistants.
4. The Claimants aver that during the Michaelmas term, which ran between September to December, they were informed that they could only charge for 10 lessons per child, contradicting previous agreements that allowed parents to consent to extra classes.
5. The Claimants aver that the Respondent introduced student-signed attendance sheets for extracurricular activities.



6. On 2nd April 2022, the Claimants received show cause letters regarding discrepancies in sports billing records. Other coaches, Charles Koli and Lazarus Wanjala, faced similar letters, but no white coaches did.
7. The Claimants aver that they responded via work emails, which were disabled upon termination, and were required to present signed attendance sheets to the Deputy Headmaster.
8. The Claimants aver that their termination was unjustified, arguing that attendance sheets were not required and discrepancies in billing records could not be verified at the time of their disciplinary hearing.
9. The Claimants aver that the accounts office had instructed them to limit lessons per term and carry forward extras. The disciplinary hearing, conducted without their direct supervisor, presented an investigation report citing student interviews on attendance.
10. On April 21, 2022, the Claimants, along with two colleagues, were dismissed for allegedly coercing students into signing extra billing forms and so violating the school's Child Protection Policy.
11. The Claimants further aver that their dismissal was part of a broader termination of all sports coaches and that their dismissal letters mirrored those of others. They appealed the decision within the given seven-day window.
12. The Claimants aver that their termination was unfair and discriminatory, noting that before their appeal period expired, the Respondent had already advertised their positions on LinkedIn.
13. The Claimants aver that their appeal, heard on 28th April 2022, was recorded, but they did not receive the recordings and were later informed their appeal was unsuccessful.
14. The Claimants aver that at the time of their dismissal, both of them were earning Kshs.85,504/=.
15. The Claimants aver that after approaching the Labour Office in Naivasha, they were initially refused assistance and were not issued a dispute letter. A meeting was later held on 17th May 2022, where the labour officer advised them to take their case to the Children's Office instead of addressing their employment dispute.
16. The Claimants aver that their dismissal was discriminatory, as only black coaches were investigated and disciplined, while sign-up sheets in their classes were handled differently than those in classes taught by white coaches.
17. The Claimants aver that the past handling of child coercion allegations was inconsistent and selective across faculty members.
18. The Claimants aver that the Respondent has historically treated black and white faculty members differently. They cite a 2021 incident where a staff-organized student trip violated the Child Protection Policy, yet no action was taken against those involved. In another case, a white teacher physically assaulted a pupil but faced no consequences.
19. The Claimants aver that these examples highlight preferential treatment based on race. Having served the school for over 12 years, they had extensive training on the Child Protection Policy and were surprised by the allegations against them.
20. Following their termination, the Claimants aver that the school actively discouraged other employers from hiring them, leading to professional and social ostracisation.
21. The Claimants pray that:



- a. This Honourable Court declares that the services of the Claimant were unfairly terminated
- b. This Honourable Court declare that the Claimants were discriminated against
- c. This Honourable Court orders the Respondent to pay the Claimants:
 - i. 12 months' compensation for unfair termination
 - ii. General damages for discrimination and unfair labour practices at the workplace
- d. The Respondents do issue the Claimants with a Certificate of Service as is required under section 51 of the [Employment Act](#).
- e. The Respondent be ordered to bear the costs of the suit with interest thereon.

Respondent's Statement of Response

22. In opposition to the Statement of Claim, the Respondent filed a Statement of Response dated 9th December 2022.
23. The Respondent avers that the Claimants were dismissed on 21st April 2022, in a justified manner. The inquiry, led by a respected coach and the Deputy Headmaster Pastoral, focused on discrepancies in the sports extras billing records for the Lent term in 2022, revealing inconsistencies between sign-up sheets and submitted billing for payment.
24. The Respondent avers that it issued Notices to Show Cause on 2nd April 2022, citing serious dishonesty by the Claimants, potentially violating the Pembroke House School Code of Conduct and section 44 of the [Employment Act](#), warranting summary dismissal. The Claimants were given seven days to respond.
25. The Respondent denies various allegations, including claims regarding the timing of work email deactivation and submission of sign-up sheets. The Respondent avers that billing discrepancies involved coercion and intimidation of students and rejects the Claimants' assertion that only billing sheets were required. Lastly, the Respondent questions the Claimants' stated direct supervisor and requests clarification.
26. The Respondent avers that it provided an Investigation Report detailing complaints against the Claimants, interviews conducted, and findings, but denies claims about biased interviews.
27. The Respondent avers that it maintains that the disciplinary process was fair, giving the Claimants a chance to respond before a panel that found them guilty of child coercion, intimidation, wilful neglect, and breach of trust, warranting summary dismissal under Section 44 of the [Employment Act](#).
28. The Respondent avers that following the Claimants' termination, final dues were paid, and they were given the opportunity to appeal, which was heard by a panel that upheld the dismissal.
29. The Respondent clarifies that the LinkedIn job posting was for a Graduate Sports Intern, not a permanent role.
30. The Respondent denies the allegations in paragraphs 32 to 43 of the Statement of Claim, stating that the labour officer found the summary dismissal lawful and that matters concerning minors were referred to the Children's Office.
31. The Respondent maintains that the Claimants were found guilty of coercion and fraud, with evidence proving their misconduct. It challenged the Claimants' allegations regarding missing sign-up sheets,



- dismisses claims of discriminatory treatment, and demands further details on certain allegations. Additionally, it warns the Claimants of potential legal action for defamatory remarks.
32. The Respondent avers that the Claimants violated company policies and multiple legal provisions, justifying their dismissal. It refutes claims of interference with their future employment and demands proof of alleged community censure.
 33. The Respondent maintains the disciplinary process was fair, with proper notification and adherence to child protection laws, arguing the Claimants were given opportunities to defend themselves.
 34. The Respondent dismisses allegations of racial discrimination as unsubstantiated and notes the Claimants failed to collect prepared Certificates of Service.
 35. The Respondent avers that the termination is defended as lawful and procedurally sound.
 36. The Respondent avers that the Statement of Claim is misconceived and an abuse of the Court process.
 37. The Respondent avers that the claims are without basis, and it is denied that the Claimants are entitled to any reliefs as alleged.
 38. The Respondent prays that the Statement of Claim be dismissed with costs.

Evidence in court

39. Claimant Witness (CW1), Peter Muturi Mendi, adopted his witness statement dated 9th November 2022f together with the list of documents dated even date and another list of documents dated 18th January 2024 marked as exhibits 1 to 12 as his evidence in chief.
40. In cross-examination, CW1 stated that the school has code used to protect the children and their welfare. He stated that he was issued with show cause letter which he responded to. He further stated that he was explained that he would be taken through the disciplinary process. Being dissatisfied with the decision of the disciplinary committee, he appealed against the decision.
41. In re-examination, CW1 stated that he was issued with Investigation report after being issued with the show cause letter.
42. CW2, Bernard Wafula Ochuma, adopted his witness statement dated 9th November 2022, together with list of documents dated even date as exhibits 13 to 21 as his evidence in chief.
43. In cross-examination, CW2 stated that he appealed but his appeal was dismissed. He stated that he did not complain before on discrimination.
44. In re-examination, CW2 stated that he was given 14 days to response to the show cause letter but needed 21 days.

Respondent's case

45. RW1, Michael Amaru, the Respondent's Human Resource Manager, adopted his witness statement dated 15th February 2023, a further witness statement dated 15th December 2023 together with the list of documents dated 23rd June 2023 marked as exhibits 1 to 56 and a further list of documents dated 20th November 2023 marked as exhibits 1 to 40 as his evidence in chief.
46. In cross-examination, RW1 stated that the Claimants were terminated for coercion and intimidation of pupils. He stated that the policy provided a response to the notice to show cause letter within 7 days.



- He stated that there were 5 Kenyan Assistant coaches and one was cleared while the rest were taken through the disciplinary process.
47. In re-examination, RW1 stated that the teachers who were doing extras curriculum were the Kenyans and not the expatriates.
 48. RW2, Yvonne Wheeler, the Respondent's Head of pastoral care and safeguarding needs, adopted her witness statement dated 15th February 2023 as her evidence in chief.
 49. In cross-examination, RW2 stated that there is a code of conduct where it is required all staff members to report on any concern.
 50. Parties were directed to put in written submissions.

Claimants' written submissions

51. The Claimants submitted that the Respondent did not give a valid reason for terminating their services and neither did they follow the procedure to the latter in termination and thus the termination was unfair and unlawful.
52. The Claimants relied on Section 45(1) and (2) of the *Employment Act* which provides that, for termination to pass the test of fairness, the employer must establish by evidence that it was done on the basis of valid and fair reasons(s) and upon following a fair procedure.
53. In *Walter Ogal Anuro v Teachers Service Commission [2013] eKLR* the Court held that:

“For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer to effect the termination.”
54. In *Kichoi v Teita Estate Ltd [2022] eKLR* the court relied on the case of *Bamburi Cement Limited v Willian Kilonzi [2016] eKLR* where the court stated as follows:

“The question that must be answered is whether the Appellant's suspension was based on reasonable and sufficient grounds. According to section 47(5) the burden of proving that the dismissal was wrong rests on the employee, while the burden of justifying the grounds of wrong dismissal rest on the employer.”
55. In *Kichoi v Teita Estate Ltd (Supra)* the court held that the allegations against the claimant were unreliable due to inconsistencies, vague dates, and reporting delays. The investigative report was flawed, with its author admitting errors. Without a proper disciplinary hearing, the claims lacked credibility, leading the court to conclude that the claimant was unfairly targeted and the employer failed to justify the termination.
56. In *Anthony Mkala Chivati v Malindi Water & Sewage Company Limited [2013] eKLR* the court stated that section 41 of the *Employment Act* places the responsibility of procedural fairness on the employer in cases of termination due to misconduct, poor performance, or incapacity. The employer must inform the employee of the charges, allowing them the right to be notified. The employee must then be given a fair opportunity to prepare, respond, and present their case, either personally, in writing, or through a representative. In cases of summary dismissal, the employer is required to hear and consider the employee's representations before making a final decision.



57. The Claimants submitted that the systemic racial discrimination by the Respondent, arguing that black faculty members faced stricter scrutiny and disciplinary actions compared to their white counterparts. The Claimants highlighted inconsistencies in policy enforcement, such as requiring students to personally sign attendance sheets for black coaches while allowing white coaches to sign on their behalf.
58. The Claimant submitted that the Respondent failed to provide the sign-up sheets to disprove claims of differential treatment. Legal frameworks, including Convention No. 111 on Discrimination (Employment and Occupation) Convention, 1958, the *Employment Act*, and *the Constitution* of Kenya, prohibit discrimination based on race. Courts have upheld similar claims, including *Ol Pejeta Ranching Ltd v David Wanjau Muhoro* (2017) eKLR and *Janine Buss v Gems Cambridge International School Ltd* [2016] eKLR, which emphasize the employer's burden of proof in discrimination claims. Additionally, in *Koki Muhia v Samsung Electronics East Africa Ltd* [2015] eKLR, the court found discriminatory practices in workplace treatment.
59. The Claimants submitted that the Respondent selectively enforced disciplinary measures, violating their constitutional rights to equality and dignity, warranting judicial intervention.
60. The Claimants submitted that they are entitled to the reliefs sought and the costs of the suit.
61. The Claimants urged the Honourable Court to allow the Statement of Claim as prayed.

Respondent's written submissions

62. The Respondent submitted that it complied with Section 44(c) and 45(2)(b) of the *Employment Act* in terminating the Claimants both substantive justification and procedural fairness.
63. In *Kenya Ports Authority v Fadhil Juma Kisuwa* [2017] eKLR the Court of Appeal stated that under section 41, an employer must explain the reason for dismissal and allow the employee to present representations. The employee has the right to have a colleague or union representative present at the disciplinary hearing if they choose. However, the court cannot impose their presence on the employee. The necessity of an oral hearing depends on the nature of the dispute and the overall circumstances of the case. The Respondent also relied on the case of *Walter Ogal Anuro v Teachers Service Commission*(supra) where the court stated that there must be both substantive justification and procedural fairness.
64. In *Anthony Mkala Chitavi v Malindi Water and Sewerage Company Limited* (supra) the court held that Procedural fairness in Kenya requires an employer to inform an employee of the charges leading to possible dismissal, granting them the statutory right to be notified. The employee must be given a proper opportunity to prepare, be heard, and present their defence in person, in writing, or through a representative. In cases of summary dismissal, the employer is obligated to hear and consider the employee's representations before making a final decision.
65. The Respondent submitted that the Claimants failed to establish the alleged discrimination on a balance of probabilities and demonstrated that no differential treatment was accorded to any individual.
66. The Respondent submitted that the Claimants are not entitled to the relief sought and leave the Honourable Court to deal with issue of costs.
67. The Respondent urged this Honourable Court to dismiss the claim.



Analysis and determination

68. The court has considered the pleadings on record and the submissions on record and the issues for determination are as follows:
- a. Whether the Claimants were unfairly terminated
 - b. Whether the Claimants were discriminated at the workplace
 - c. Whether the Claimants are entitled to the reliefs sought
 - d. Who should bear the costs of the suit.
69. In *Walter Ogal Anuro v Teachers Service Commission (Supra)* the court held that for the test for termination to be established there must be substantive justification and procedural fairness.
70. In this case, the Claimants state they both worked for the Respondents since 2009 and so they worked for about 12 years each.
71. The Claimants were given letter to show cause dated 2nd April 2022. They were accused of complaints raised by parents and pupils regarding authenticity and billing of extra reports records for the last term for extra curricula sports. They were asked to file a response within 7 days.
- The Claimants on 12th April 2022 were invited to attend disciplinary hearing and was scheduled for 20th April 2022. They were informed they could invite fellow employees as their witness. They were to be away from work place until the date of the hearing.
72. The hearing took place on 20th April 2022 and the Claimants did not invite any witnesses. The following day on 21st April 2022 they were served with dismissal letters.
73. They appealed the termination but the appeal was dismissed and their termination was upheld.
74. The law relating to termination of employment is well established and statutorily provided in Sections 41, 43 and 45 of the *Employment Act*. Section 45(1) states as follow-
- “
- “(1) No employer shall terminate the employment of an employee unfairly.”
A valid reason must be provided to justify termination.
75. Then Section 43(1) and (2) of *Employment Act* states as hereunder-
- 43.
- (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.
76. The Respondents did provide some records as exhibits in court with entries of the billings of extra sports for pupils. There is not clear evidence who prepared those records and the parents and students who were purported to have complained against the Claimants were not asked to prepare any verification statements. As it is only the word of the Respondent as per their records as against the



words of the Claimants. The court would be hesitant to take such evidence as valid reasons to end a long career of an employee. The two Claimants had served this school for 12 years and there were no serious complaints against them on record during that period. The issue of valid reason is wanting.

77. The court also picked issues with the disciplinary hearing. The Claimants were invited for disciplinary hearing and they did attend the same. The Court did not have the benefit of proceedings of the hearing. The Respondents should have availed the minutes of the hearing and the same should have been verified by the signatures of both the panellists who conducted the hearing as well as those of the Claimants. The court is not given evidence of what took place at the disciplinary hearing.

78. The court finds that even though the disciplinary hearing took place there was no clear report of how the proceedings took place and what tilted the balance against the Claimants.

In that case the court finds procedural fairness was not established.

In the often quoted case of Walter Ogal Anuro v Teachers Service Commission Supra – the court holds the firm test of both substantive justification and procedural fairness are not met.

79. Also in many other authorities including Loice Otieno v Kenya Commercial Bank Ltd Cause 1050 of 2011 where the Court held: -

“Summary dismissal even in the face of fundamental breach of employment of contract/ obligations or gross misconduct must not be resorted to without complying with procedural fairness and natural justice. An employer who summarily dismisses an employee without a hearing will be failing afoul of Section 41(2) of the Employment Act.”

80. The court does not deny that a hearing happened in this case but is all shrouded in darkness as to the process and the outcome.

81. Also in Kenfreight E.A. Limited & Banson Nguti [2016] eKLR the court held: -

“The main issue for determination was whether it was sufficient for the Appellant to have terminated the Respondent’s employment by issuing the contractual notice or payment in lieu thereof or whether the termination ought to have been based on valid reasons and whether fair procedure ought to have been followed.”

82. The Respondent did tabulate the payments due to the Claimants though is not clear what the same represented as it states –

1. Salary upto July 21st April 2022.

It is not clear whether this was payment in *lieu* of notice or what.

83. Also there is extra approved sports billing and once again is not clear what the same was based on.

84. The court is persuaded the Claimants were unlawfully and unprocedurally terminated and on that judgment is entered in their favour.

85. As for the claims of racial discrimination and despite robust submissions by the Claimants’ counsel the court finds no substantive proof of the same. These are allegations which are not proved or substantiated. The claim is therefore not proved.

86. Having found that the Claimants were unfairly and unprocedurally terminated the Court awards them the following benefits-



- i. 6 months compensation for a termination at Kshs.85,504 X 6 = Kshs.513,024/= and costs of the suit.
- ii. Interest to be paid at 14% per annum from date of judgment till full payment.
- iii. Certificate of service to be issued within 30 days from today's date.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 18TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

