



Onyango v Bridge International Academies (Employment and Labour Relations Cause 1458 of 2018) [2025] KEELRC 2288 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2288 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1458 OF 2018**

BOM MANANI, J

JULY 31, 2025

BETWEEN

STEVE ONYANGO CLAIMANT

AND

BRIDGE INTERNATIONAL ACADEMIES RESPONDENT

JUDGMENT

1. Through a Statement of Claim that was filed on 23rd October 2018, the Claimant instituted these proceedings against the Respondent to challenge its decision to terminate the employment relationship between them. The Claimant's position is that the decision was unlawful and ought to be annulled.
2. The Claimant avers that the Respondent employed him on 1st July 2016 in the position of Finance Director, East Africa. He contends that he worked diligently leading to his contract being confirmed on 1st January 2017.
3. The Claimant avers that on 14th August 2018, the Respondent issued him with a notice to show cause letter which required him to explain why his contract of service should not be terminated for gross misconduct. He contends that the Respondent accused him of failure to effectively supervise employees in the finance department and failure to diligently oversee its (the Respondent's) finance processes including its payroll function. He further contends that the Respondent accused him of failure to monitor its cash flow accounts and other financial transaction accounts and failure to detect and monitor anomalies and suspected fraud against it (the Respondent).
4. The Claimant also contends that the Respondent accused him of failure to: liaise with People Operations leadership on payroll payment processing in order to: detect and question variances and inconsistencies in expenditure; and track financial data and report concerns on any anomalies or inconsistencies.



5. The Claimant avers that the Respondent sent him on compulsory leave after investigations on the alleged fraud had been completed and an investigation report on the matter released. He contends that the compulsory leave was not anchored on his contract. As such, he contends that the decision to send him on compulsory leave was unfounded and without basis.
6. The Claimant avers that the time that was granted to him to respond to the accusations against him in the notice to show cause letter was insufficient. Nevertheless, he contends that he strived to proffer a response to the allegations within the constrained timelines.
7. The Claimant avers that the Respondent did not issue him with a hearing notice for the disciplinary hearing. Instead, it pre-scheduled the date for the hearing through the notice to show cause letter, a matter he considers was irregular. He contends that by the Respondent appointing the date to hear his case before it had considered his response to the notice to show cause, it demonstrated that it had predetermined his fate.
8. The Claimant contends that the Respondent relied on a KPMG report to terminate his services. Yet, he avers that the report did not implicate him in the alleged fraud.
9. The Claimant further contends that the Respondent fixed the disciplinary hearing on dates when it knew that he was away on his scheduled leave. He contends that despite his efforts to reschedule the hearing to a convenient date, the Respondent declined to do so thus rendering its decision to terminate his employment on 23rd August 2018.
10. The Claimant contends that the Respondent terminated his services on frivolous grounds. He contends that the Respondent merely used him as a scapegoat since there was no evidence to demonstrate that he was either involved in or personally benefited from the alleged fraud.
11. The Claimant avers that the responsibility to monitor, reconcile and update the payroll lay with the People and not Finance Department where he was attached. He contends that his role as Finance Director was limited to overall review of the payroll and effectuation of statutory deductions but did not extend to picking deviations in salaries for individual employees since he was not privy to their contracts of service and benefits.
12. The Claimant contends that the People Director had the responsibility of reviewing and approving payroll inputs, paysheets and M-Pesa upload files. Thus, he contends that if any payments were made from the M-Pesa platform which were outside the payroll cycle, the responsibility for this anomaly lay with the People and not Finance Director.
13. The Claimant avers that when he joined the Respondent, he detected loopholes in its systems and controls which presented major financial implications for the Respondent. He contends that the Respondent did not have a basic reconciliation system in place. It is his case that he took up the matter and advised the People Department and Payroll Accountant to streamline the process so that financial reconciliations could be done within the People Department.
14. The Claimant avers that his decision to fight corruption within the Respondent institution is the reason why the Respondent's management begun fighting and victimizing him. He contends that prior to his tribulations, he had called out the Respondent's Managing Director on what he perceived to be irregular financial dealings which the said Managing Director refused to account for. As such, he contends that he is a victim of witch-hunt.
15. The Claimant contends that although the letter terminating his services purports that his contract was terminated on 14th August 2018, he remained in the Respondent's employment until 23rd August



2018. In effect and by implication, he contests the Respondent's assertion that his contract of service was terminated on 14th August 2018.
16. The Claimant accuses the Respondent of having denied him access to his personal belongings after his employment contract was terminated. He contends that the Respondent pegged the right to collect the belongings on an impracticable clearance process.
 17. In response, the Respondent does not deny that the two had an employment relationship and that the Claimant was engaged as its Finance Director. However, it contests the Claimant's assertion that he was a diligent worker.
 18. The Respondent contends that part of the Claimant's responsibility as its Finance Director was to ensure that all payments it made were properly accounted for and were legitimate. Further, it contends that the Claimant was charged with the duty of monitoring and auditing its accounts in order to prevent fraud.
 19. The Respondent contends that the Claimant neglected this responsibility by failing to detect the fraud that was committed through the payroll system. It further contends that the Claimant failed to supervise processing of payroll data and allowed payroll payments to be made without the requisite accompanying payroll approvals.
 20. The Respondent contends that the Claimant failed to sufficiently explain the variances in staff related expenses each month and did not provide a fully reconciled balance sheet account for the payroll and related accounts. The Respondent avers that the duty to reconcile the payroll lay with the Claimant and not the payroll team as asserted by him. As such, it contends that the Claimant failed to provide it with accurate financial statements in his capacity as its Finance Director.
 21. The Respondent contends that accountants in the Claimant's department were responsible for posting inaccurate and fraudulent financial journals. It contends that the Claimant negligently approved and posted the aforesaid entries without first verifying their authenticity.
 22. The Respondent contends that despite several requests, the Claimant refused or negligently failed to reconcile and explain variances in the payroll account. It contends that as a result of this, the Respondent's finance team in India was tasked to check the entire financials of the Respondent following which, it (the team from India) discovered the impugned inconsistencies.
 23. The Respondent contends that the Claimant was validly sent on suspension to enable investigations into the matter since the fraud affected his department. It further contends that the Claimant was issued with a letter of show cause and responded to it but the response was insufficient thus resulting in the decision to subject him to a disciplinary hearing.
 24. The Respondent avers that it invited the Claimant to a disciplinary hearing on 15th August 2018 but he failed to turn up without valid reason. It contends that it adjourned the hearing to 20th August 2018 when the Claimant once again failed to show up. The Respondent contends that this forced it to reschedule the hearing to 22nd August 2018 but the Claimant still failed to attend the session.
 25. The Respondent avers that when the Claimant failed to turn up for the hearing on the three occasions, it resolved to determine the matter on the basis of the written representations he had made. It contends that after it evaluated the representations, it found the Claimant culpable of the charges against him and terminated his services.



26. The Respondent contends that having regard to the foregoing, it not only had valid reasons to consider terminating the Claimant's services but that it also accorded him fair procedure. As such, it contends that the decision to terminate the Claimant's contract was lawful.
27. The Respondent avers that the results of the KPMG investigation demonstrate that there was lack of oversight and verification of the data which was uploaded onto the M-Pesa platform. It contends that the investigations confirmed that the responsibility for this oversight lay with the Claimant.
28. The Respondent contends that it did not terminate the Claimant's services on account of culpability for fraud. Rather, it contends that the Claimant was found guilty of negligence of performance of his duties which facilitated commission of the fraud.

Issues for Determination

29. After evaluating the pleadings, evidence and submissions by the parties, the following issues arise for determination:-
 - a. Whether the Respondent lawfully terminated the Claimant's contract of service.
 - b. Whether the Claimant is entitled to the reliefs which he seeks through these proceedings.

Analysis

30. The Claimant tendered in evidence a contract of service which shows that the parties entered into an employment relationship whose commencement date was agreed as 1st July 2016. By this contract, the Respondent engaged the services of the Claimant as Finance Director, East Africa. Clause 7 of the contract provides that the Claimant was to perform such duties as would, from time to time, be specified by the Respondent.
31. The schedule to the contract states that the Respondent was to provide the Claimant with his Job Description. It further states that the Respondent reserved the right to update the Job Description from time to time.
32. On the other hand, the Respondent tendered in evidence the Job Description for the position of Financial Director. The document shows that some of the responsibilities for the position included the following:-
 - a. Ensuring that systems and controls are put in place to minimize and mitigate risk of fraud/leakage as well as proactively auditing key functions and accounts of the Respondent.
 - b. Managing the external audit processes for the Respondent's financial statements and ensuring that the Respondent was compliant with its internal policies and relevant regulations.
 - c. Leading cash and risk management.
33. As has been seen earlier in the judgment, the Respondent's case is that the Claimant failed to discharge these functions by failing to detect the fraud that was committed in the payroll system. It further contends that the Claimant failed to supervise payroll data and allowed payroll payments to be made without the requisite accompanying payroll approvals.
34. The Claimant has vehemently contested these accusations. He contends that responsibility for the matters which the Respondent accuses him of vested in the People and not Finance Department.
35. The Claimant maintained that management of the payroll function was the responsibility of the Human Resource (People) Department. It was his case that payroll inputs (data), including M-Pesa



- uploads, were collated, approved and fed into the system by the People Department. He contended that this data was private and confidential to each employee and therefore was not available to the Finance Department.
36. It was his case that it was only after the People Department had executed the above procedures that the payroll would be presented to the Finance Department for payment. He contended that payroll payments were effected only after approvals by the People Department.
 37. The Claimant maintained that because approvals for all the payroll data, including the M-Pesa upload files, were done by the People Department, the Finance Department could not make any changes to the M-Pesa upload files. He contended that it was only the People Department which could make changes to them (the M-Pesa upload files).
 38. The Claimant stated that the only thing which the Finance Department could do in respect of the payroll was to verify the lump sum figures which appeared in it. He contended that this did not extend to scrutinizing specific components on individual employees' pay as this information was confidential and therefore not available to the Finance Department.
 39. In cross examination, the Claimant confirmed that some of his responsibilities as the Respondent's Finance Director were: to build a highly reliable financial system for the Respondent; to maintain budgetary controls; and to ensure that controls and systems were in place to obviate fraud.
 40. The Claimant further confirmed that the Respondent supplied him with information that was necessary for carrying out his work. He also admitted that he was inducted on the Respondent's M-Pesa payment process when he was hired.
 41. The Claimant stated that he had a finance team that reported directly to him. He further stated that he had a finance officer in Uganda who reported to him. He conceded that it was his responsibility to ensure that what these officers did was within the Respondent's financial controls.
 42. The Claimant further stated that he was acquainted with the operations of the Respondent's M-Pesa platform. He confirmed that he was the administrator of the M-Pesa platform and that it was his responsibility to admit new users under the guidance of the Respondent.
 43. The Claimant however insisted that he only had overall information relating to the data on the M-Pesa platform. He contended that details of individual employee benefits were not known to him.
 44. The Claimant said that his role was limited to monitoring movement of the Respondent's finances. He averred that if he detected serious variances in payments, he was required to flag them for purposes of reconciliations.
 45. When shown the email correspondence at pages 43 to 44 of the Respondent's trial bundle relating to discussions on variances in the teachers' payroll, the Claimant confirmed that he had been made aware of the variances. For instance, he confirmed that the Respondent's officers copied him into an email of 13th June 2017 which flagged a variance of Ksh. 14,000,000.00. He admitted having been copied into some other emails which raised similar concerns.
 46. The Claimant stated that he took up these issues in his capacity as Finance Director. He said that his office provided explanations for some of the issues that were flagged. However, he conceded that the email correspondence from him did not suggest that he had isolated and acted on the flagged variances.
 47. In re-examination, the Claimant stated that the Respondent did not furnish him with his Job Description. He stated that the Job Description which the Respondent tendered in evidence had not



- been shared with him. He denied that the responsibilities in the document were part of his roles as the Respondent's Finance Director.
48. However, it is noteworthy that during cross-examination, the Claimant had conceded that some of the responsibilities in the document shared by the Respondent were part of his responsibilities as the Respondent's Finance Director. As such, and based on this concession, the court is convinced that the Claimant was aware of the responsibilities that attached to the position of Finance Director.
 49. The Claimant called two witnesses who contended that the finance department was not entrusted with the role of reconciliation of the Respondent's payroll. They contended that this function belonged to the People Department. However, neither of the witnesses was able to verify whether or not the Claimant's responsibilities included what is contained in the Job Description which was tendered in evidence by the Respondent.
 50. Although the Claimant insisted that his role with respect to the M-Pesa uploads was overall and that data relating to specific employee benefits did not fall within his docket, he did not provide cogent evidence to support this claim. On the contrary, the document shared by the Respondent setting out the responsibilities of its Finance Director demonstrates that the holder of that office was expected to put in place mechanisms to obviate fraud against the Respondent generally. As such, the court is convinced that the Claimant's responsibility included ensuring that there was no fraud committed against the Respondent including through its M-Pesa platform.
 51. The email correspondence between the parties demonstrate that the Claimant was kept in the loop regarding the variances in staff salaries. It is therefore apparent that he was aware of the red flag suggesting impropriety in the management of the Respondent's finances.
 52. That these improprieties happened despite the fact that the Claimant was required to have put in place mechanisms to prevent fraud can only imply that he failed to discharge his duties diligently. And hence, the Respondent's contention that the Claimant was negligent in the discharge of his mandate as its Finance Director.
 53. The conclusion in the preliminary KPMG report which was tendered in evidence by the Claimant indicates that the sum of Ksh. 63,736,660 was paid out to individuals who were not in the M-Pesa upload file that had been approved. It further indicated that some of the payments were made twice.
 54. The report attributed this state of affairs to, inter alia: lack of monitoring and reconciliation of salary expense from one month to another; lack of oversight over the finance team responsible for initiation and approval of payments on the M-Pesa platform; lack of communication between the payroll and finance teams regarding pertinent payroll details; and failure to raise a red flag after one Venkat was excluded from emails forwarding the M-Pesa upload files to the payables team.
 55. The Claimant contends that the report does not implicate him in the fraud. However, it is apparent that it (the report) implicates some members of staff in the finance department who were under his supervision.
 56. According to the evidence presented to court, the responsibility for obviating fraud against the Respondent lay with its Finance Director, a position which the Claimant held. As the person in charge of the Finance Department, the responsibility of ensuring effective oversight over the finance team lay with the Claimant. As such, the fact that the KPMG report blames the loss of funds on weaknesses in these areas can only imply that the Claimant had failed to ensure that there were appropriate controls in place to prevent the loss.



57. Having regard to the foregoing, the court is satisfied that the Respondent has demonstrated that it had valid reasons to entertain a genuine belief that the financial loss it suffered was due to the Claimant's negligence in the discharge of his duties. As such, I find that the Respondent has established that it had a valid reason to consider terminating the Claimant's employment.
58. It is important to note that the standard of proof that is placed on the Respondent to establish its case against the Claimant is on a balance of probabilities. All that the Respondent is required to do in order to discharge this burden is to present facts which show that it had grounds to entertain a genuine belief that the Claimant had committed the infraction in question (see *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR). In my view and having regard to the evidence on record, the Respondent has discharged this burden.
59. Notwithstanding that an employer has valid reason to terminate an employee's contract of service, he must observe fair procedure whilst processing the release of the employee from his employment. This requirement is founded on section 41 of the *Employment Act*.
60. The law requires the employer to: notify the employee of the charge against him; allow the employee the opportunity to respond to the accusations; and allow the employee the opportunity to be accompanied and represented in the process by a co-employee of his choice or a representative of his/her trade union.
61. In the instant case, the Respondent notified the Claimant of the accusations against him through the notice to show cause letter dated 14th August 2018. The Respondent contended that it had suffered financial loss because of the Claimant's failure to diligently discharge his function as Finance Director. Particulars of and possible reasons for the loss were stated in the letter. In the court's view, by the Respondent issuing the Claimant with this letter, it satisfied the requirement of notifying him of the accusations that had been leveled against him.
62. The letter shows that the Respondent asked the Claimant to respond to the accusations and attend a meeting scheduled for 15th August 2018 during which he was to make representations on the matter. Admittedly, the time provided in the letter for the Claimant to offer his response was short. However, it is apparent from the evidence on record that the session proposed for 15th August 2018 did not take off and that the Claimant was allowed to offer his response to the letter of show cause after that date. In the court's view, this accommodation resolved the challenge of inadequacy of time for the Claimant to respond to the show cause letter.
63. The Claimant contends that it was inappropriate for the Respondent to appoint the date for the disciplinary session through the show cause letter. The show cause letter stated as follows on the matter:-
"You are to provide a written response on the subject and report to the office on Wednesday 15th August 2018 at 10 am and will be expected to make any representations you may have on the subject."
64. The law does not obligate an employer to consider an employee's written response to a show cause letter before he (the employer) can invite him (the employee) for a disciplinary hearing. Although it is desirable for the employee's response to the show cause to be considered before a decision on the need for a disciplinary hearing is made, the employer may consider the response on the day of the disciplinary hearing. What is important, in my view, is for the employee to be given an opportunity to respond to the charges that are leveled against him and for the employer to consider the response before he decides on the employee's fate. As such, I do not think that much turns on the fact that the Respondent set the date for the disciplinary case in the notice to show cause letter.



65. The evidence on record shows that the Respondent invited the Claimant for a hearing session that was scheduled for 15th August 2018 but the session did not take off. It was adjourned to 20th August 2018 to enable the Claimant procure witnesses. However, on that day, the session collapsed and was fixed for 22nd August 2018.
66. The record shows that the Claimant indicated that he was still not able to make arrangements to attend the meeting on 22nd August 2018 physically since he said he was away on a pre-planned break. However, the Respondent was unwilling to reschedule the hearing. As such, it (the Respondent) gave him the option of proceeding with the hearing through call in. The Respondent also advised the Claimant to ask his witnesses to use the same means to attend the session.
67. In response, the Claimant wrote to say he could not call into the meeting because of his location. He contended that attending the session in the manner which the Respondent suggested would hamper his participation in the process.
68. The above evidence shows that although the hearing of the disciplinary session was initially scheduled for 15th August 2018, the process was pushed forward more than once following requests by the Claimant. Unfortunately, the matter was not heard owing to the Claimant's absence. As such, the Respondent made a decision on the case on 23rd August 2018 in the absence of the Claimant.
69. Although the Claimant was away on a preplanned break, the evidence on record demonstrates that the Respondent made every effort to accommodate him by providing a window for him to adjust his programme. When it became apparent that the Claimant could not alter his programme, the Respondent allowed him to attend the hearing through call in but the Claimant was still not agreeable to the proposal.
70. The Claimant's reason for failure to avail himself for the hearing was that he was on his annual leave. However, during cross examination, he was not able to confirm that the leave had been approved by the Respondent.
71. In *Issak v Independent Electoral and Boundaries Commission* [2024] KEELRC 2517 (KLR), the court observed as follows on an employee's obligation to submit to a disciplinary session convened by the employer:-
- “The employee is under a duty to remain available to the employer during the suspension period. Employment subsists and hence, upon recall, the employee should unconditionally attend to the address as directed..... The employee cannot hold the employer hostage and take the position that he can only attend disciplinary hearings at his option and time. While the claimant was on suspension, he remained an employee of the respondent under its instructions and directions. The direction to attend a disciplinary hearing was a lawful instruction and direction.”
72. Taking into account the totality of the above evidence, the court finds that the Respondent made every effort to accommodate the Claimant for the disciplinary hearing but the Claimant failed to take advantage of the accommodation. As such, the court is satisfied that the Claimant was accorded an opportunity to present his case but did not utilize it.
73. The record shows that when the Claimant received the accusations against him, he immediately asked the Respondent to facilitate him to access witnesses. It appears from the evidence on record that whilst some of the witnesses were in the Respondent's employment, others were not.



74. The Claimant expressed his fears that since the Respondent had barred him from accessing his workmates, he could not conduct them for purposes of testifying in the matter. However, Respondent wrote to him on 14th August 2018 on the matter in the following terms:-
- “As discussed in the meeting, you are also able to have current Bridge staff as a witness, we just requested that you need to make a formal request to the People Operations Director. We did not deny you access, we just provided a process.”
75. The Respondent went further to state as follows:-
- “We can only facilitate current employees as witnesses if you want them. For former Bridge staff it will be your responsibility to call them to attend as a witness.”
76. The above correspondence demonstrates that the Respondent was not averse to the Claimant calling witnesses in his defense. Further, it demonstrates that the Respondent was willing to facilitate witnesses whom the Claimant required as long as they were in its employment. The correspondence further confirms that the Respondent left it to the Claimant to arrange for the attendance of any former employees whom he wished to call as his witnesses. In effect, the court is satisfied that the Respondent allowed the Claimant the opportunity to present witnesses during the proposed hearing.
77. In the Claimant’s letter to the Respondent dated 16th August 2018, he acknowledged receipt of the KPMG report from the Respondent. However, he pointed out that the report was redacted making it difficult for him to comprehend it. As such, he asked the Respondent to furnish him with the complete report.
78. There is no evidence that the Respondent responded to this request. Yet, it is apparent that this report was central in the proposed disciplinary process.
79. In the witness statement by Andrew White, he contends that the information which was redacted related to the names of the employees who had been interviewed by KPMG and who were low ranking in comparison to the Claimant. He contends that the redaction was necessary in order to protect the said employees from reprisals. However, there is no indication that this justification was offered to the Claimant when he asked for the full report. The Respondent simply ignored the request.
80. It was necessary for the Respondent to justify to the Claimant its decision to redact whatever information it removed from the report and explain to him why it thought that the information was not necessary for preparation of his defense. However and as the record shows, this was not done. Absent this explanation, how was the Claimant to tell what information had been redacted from the report? How was he to tell whether the information was essential for his defense?
81. The Claimant also contended that material which was crucial for his defense was stored on his work laptop computer which the Respondent asked him to surrender immediately he was served with the letter of show cause. The Respondent does not deny that it took back the Claimant’s work laptop computer immediately it issued him with the letter of show cause. As a matter of fact, the show cause letter asked him to hand over all of the Respondent’s assets which were in his possession before he proceeded on compulsory leave.
82. In the email correspondence at pages 189 to 190 of the Respondent’s consolidated bundle, the Claimant avers that he handed over the laptop on 14th August 2018 in compliance with the Respondent’s directions in the notice to show cause letter. It is also apparent that he asked the Respondent to facilitate him to retrieve his personal data and information from the laptop. Apart from agreeing to hand over the Claimant’s personal items upon undertaking the clearance process, there is



- no indication that the Respondent communicated to the Claimant its willingness to permit him to retrieve information from the laptop which was work related and necessary for his defense.
83. Section 4 of the *Fair Administrative Action Act* obligated the Respondent to, inter alia, provide the Claimant with information, materials and evidence it was going to rely on to make its decision against him. These included the complete KPGM report and the data which the Claimant says was on his work laptop computer. Although the laptop computer was the property of the Respondent, it (the Respondent) was nevertheless under duty to permit the Claimant to access it (the laptop computer) to retrieve the data he required for his defense.
 84. As such, the court finds that the Respondent's failure to provide the Claimant with the full KPMG report and the data on the laptop computer compromised his right to prepare his defense thus affecting the propriety of the disciplinary process against him. To this extend, the court declares the disciplinary process against the Claimant unfair.
 85. The next issue for consideration is whether the Claimant is entitled to the reliefs which he seeks through these proceedings. But for the failure to supply the Claimant with the necessary material to prepare his defense, the court has established that the Respondent had valid reasons to consider terminating his contract and substantially complied with the procedural strictures in closing the employment relation between the parties. As such, in formatting the reliefs to be granted to the Claimant, the court will bear this reality in mind.
 86. As indicated earlier, the court has found that the Respondent failed to provide the Claimant with some materials which were necessary for preparation of his defense. As such and to this extent, it has declared the decision to terminate his contract as procedurally unfair.
 87. The Claimant prays for an order that the decision to send him on compulsory leave breached his contract of service. On the other hand, the Respondent insists that it was within its right to send the Claimant on compulsory leave as the suspected fraud affected his department.
 88. The Claimant's contention is based on the fact that there is no provision for compulsory leave either in the contract between the parties or in the Respondent's Employee Handbook. In contrast, the Respondent contends that its handbook provides for suspension of an employee from duty which serves the same purpose as compulsory leave.
 89. It is true that neither the Claimant's contract of service nor the Respondent's Employee Handbook provides for compulsory leave. However, the fact that this form of temporary disbarment of an employee from the workplace is not expressly provided for in the two instruments does not mean that the Respondent could not invoke it if it was necessary to temporarily remove the Claimant from the workplace in order to undertake the disciplinary process. This fact is affirmed by the Court of Appeal in the case of *Mutwol v Moi University* [2022] KECA 537 (KLR) where the court observed as follows:-
"In our view, we are not persuaded that there must be provision in the contract of employment providing for compulsory leave before an employee can be sent on such leave. The flip side of it is that there is no law that prohibits the placement of an employee on compulsory leave."
 90. The above decision by the Court of Appeal is binding on this court. As such, the court finds that the mere fact that the Claimant's contract and the Respondent's Employee Handbook were silent on compulsory leave did not render the Respondent's decision to send the Claimant on compulsory leave pending disciplinary action against him illegal.
 91. The Claimant has prayed for salary in lieu of notice to terminate his contract of service. However, it is doubtful that he is entitled to this remedy.



92. The evidence on record shows that the decision to terminate the Claimant's contract of service was informed by his failure to provide sufficient controls to prevent fraud against the Respondent through its (the Respondent's) M-Pesa platform. Negligent performance of duty is one of the grounds of gross misconduct under section 44 (4) (c) of the *Employment Act* which entitles an employer to terminate an employee's contract of service without notice in terms of section 44(1) thereof.
93. But for the procedural deficiencies which have impaired the Respondent's decision to terminate the Claimant's contract, it is apparent that the Respondent had legitimate grounds to summarily terminate the Claimant's employment for gross misconduct without notice. Taking this factor into consideration, the court declines to grant the relief for salary in lieu of notice.
94. The evidence on record shows that the Claimant's employment was terminated on 23rd August 2018. That means that he remained in the Respondent's employment until 22nd August 2018.
95. The Claimant has sought salary for the days he is deemed to have been in the Respondent's service in August 2018. In the letter of termination of the Claimant's contract, the Respondent offered to pay his salary up to 14th August 2018. It is unclear why the Respondent excluded the other days that ran up to 22nd August 2018 yet the Claimant was still its employee up to this time. In the premises, the court enters judgment for the Claimant for salary for twenty two (22) days from 1st August 2018 to 22nd August 2018.
96. Although the Claimant pleaded that his monthly gross salary was Ksh. 892,500.00, the Respondent contested this fact through its Statement of Response. Apart from the figure of Ksh. 850,000.00 which is quoted as the Claimant's monthly salary in the employment contract between the parties, no other evidence was tendered to establish that his salary was Ksh. 892,500.00. As such, the court concludes that his exit monthly salary was Ksh. 850,000.00. In the premise, he is awarded Ksh. 623,333.00 as salary for the twenty two (22) days he was in service in August 2018.
97. The Claimant has claimed for pay in lieu of outstanding leave days up to the time his contract of service was terminated. However, he did not provide details of the outstanding leave days.
98. In the Respondent's letter of 23rd August 2018, it placed the balance of the Claimant's accrued leave days at 14. As such, the court enters judgment for him for payment of Ksh. 396,666.00 to cover the outstanding 14 leave days admitted by the Respondent.
99. The Claimant has prayed for the release of his personal belongings which he contends that the Respondent is withholding. In response, the Respondent contends that it is ready to release any of the Claimant's items which may be in its possession once he undertakes the clearance process. As such, the court directs the Respondent to permit the Claimant to collect his personal belongings which it may be holding as soon as he completes the clearance process.
100. The Claimant has also prayed for compensation for the unfair termination of his contract of service. As pointed out earlier in the judgment, save for the procedural flaws that impaired the Respondent's decision to terminate the contract between the parties, the said decision was founded on legitimate grounds. Taking this reality into account, the court grants the Claimant compensation which is equivalent to his salary for one month for purposes of redressing the procedural flaws mentioned above. The award under this head shall be Ksh. 850,000.00.
101. The Claimant has prayed for Ksh. 53,550,000.00 representing loss of future income for 5 years. However, section 49 of the *Employment Act* does not contemplate this kind of remedy. As such, it is declined.



102. The amount awarded to the Claimant is subject to the applicable statutory deductions.
103. The Claimant is awarded interest on the amount awarded at court rates from the date of this judgment.
104. Since the Claimant has partially succeeded in the cause, he is awarded half costs of the suit.

Summary of the Findings and attendant orders

105. After evaluating the pleadings, evidence and submissions on record against the applicable law, the court makes the following findings and attendant orders:-
 - a. The Respondent's decision to terminate the Claimant's employment was procedurally flawed and is declared unfair on this account.
 - b. The Respondent's decision to send the Claimant on compulsory leave was lawful.
 - c. The Claimant's prayer for pay in lieu of notice to terminate his contract of service is declined.
 - d. The Claimant is awarded salary for the twenty two (22) days he was in the Respondent's service in the month of August 2018 in the sum of Ksh. 623,333.00.
 - e. The Claimant is awarded pay in lieu of accrued leave for fourteen (14) days in the sum of Ksh. 396,666.00.
 - f. The Respondent is ordered to release the Claimant's personal effects once the Claimant undertakes the clearance process.
 - g. The Claimant is awarded compensation for the unfair termination of his contract of service in the sum of Ksh. 850,000.00.
 - h. The Claimant's prayer for compensation for loss of future income for five (5) years is declined.
 - i. The amount that has been awarded to the Claimant is subject to the applicable statutory deductions.
 - j. The Claimant is awarded interest at court rates from the date of this judgment.
 - k. The Claimant is awarded half costs of the suit.

DATED, SIGNED AND DELIVERED ON THE 31ST JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

