



**Mwatsupha v BOM Kaya Twi Secondary School (Cause E031 of 2024)  
[2025] KEELRC 2124 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2124 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E031 OF 2024**

**M MBARŪ, J  
JULY 17, 2025**

**BETWEEN**

**MESHARAD R. MWATSUPHA ..... CLAIMANT**

**AND**

**BOM KAYA TWI SECONDARY SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the Memorandum of Claim through his trade union, Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA), on 17 April 2024. The respondent was served with a summons but failed to attend or file a response.
2. The matter proceeded through formal proof.
3. The claim is that the claimant, Meshard Mwatsupha, is a member of KUDHEIHA as his trade union. The union and the Ministry of Education have a CBA that covers the respondent as a public school.
4. The claim is that the respondent employed the claimant as a laboratory technician, a professional cadre covered by the Collective Bargaining Agreement (CBA). While the claimant was working for the respondent, it became apparent that the respondent had a shortage of teachers, especially in Islamic religious studies and Kiswahili subjects.
5. The claimant offered to assist, a gesture that the school principal approved. Robert Aran allowed the claimant to teach as a short-term measure and as an alternative. Upon taking up this role, the claimant enrolled at Pwani University for an undergraduate degree programme in Bachelor of Education Arts to qualify as a teacher.
6. On 14 February 2022, the school administration changed at a meeting held with the claimant as the subject matter. The claimant was sent away from her duties because she did not have a Teachers Service



Commission (TSC) service number. Her employment was effectively terminated. Efforts to explain her case were not taken heed of. No payment of terminal dues was made despite the union's intervention.

7. The claimant is seeking the following dues,
  - a. Salary payment per the DPM circular of 2018,
  - b. 3 months' notice pay per the CBA,
  - c. Underpayment of house allowance per the public service circular,
  - d. Service gratuity for 19 years,
  - e. Accumulated annual leave pay,
  - f. Holidays worked,
  - g. Unpaid salaries,
  - h. 12 months' compensation,
  - i. Costs of the suit,
8. The claimant testified in support of her case and emphasized that she was employed by the respondent as a laboratory technician on 23 February 2002 at a monthly wage of Ksh. 19,165. She was responsible for the general management of the school laboratory and assisting students in their studies. The school suffered a progressive shortage of teachers, and she offered to tutor the students in Islamic studies and Swahili classes, which the school principal approved. She continued with her duties as a laboratory technician.
9. In 2015, the claimant enrolled at Pwani University to pursue an undergraduate degree, to enhance her skills as a tutor. She did so with permission from the respondent and the principal. However, on 14 February 2022, a board meeting was held, and an objection was raised regarding her employment. The claimant's employment was terminated because she lacked a TSC service number. This occurred despite the claimant being a laboratory technician and having received approval to pursue further studies. Her employment was terminated without due process or the payment of her terminal dues.

### **Determination**

10. As addressed above, the respondent did not enter an appearance or file a response.
11. The respondent employed the claimant as a laboratory technician through a letter dated 1 March 2002, which took effect on 23 February 2002.
12. By January 2021, the respondent had retrained the claimant as a laboratory technician at a wage of Ksh. 19,165 per month.
13. Through a letter dated 15 September 2006, the respondent confirmed that the claimant was employed as a laboratory technician at the school. Through a letter dated 2 August 2019, the respondent confirmed that the claimant was undertaking her teaching practice at the school.
14. Termination of employment, whether for gross misconduct, must abide by the fair procedure of section 41 of the *Employment Act*.
15. Section 43 of the *Employment Act*, 2007 provides that:



- (1) In any claim arising out of the 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.
16. Section 45 (2) of the Act provides that:
- (2) A termination of employment by an employer is unfair if the employer fails  
To prove-
    - (a) That the reason for the termination is valid;
    - (b) That the reason for the termination is a fair reason -
      - (i) related to the employee's conduct, capacity or compatibility; or
      - (ii) Based on the operational requirements of the employer; and
    - (c) That the employment was terminated in accordance with fair procedure
17. Whatever reasons the employer may have for terminating employment, the question then is whether the employer had a genuine reason to warrant the Claimant's summary dismissal and whether, in reaching its decision, the Respondent employed fair procedure.
18. In the board meeting held on 14 February 2022, before the respondent decided to dismiss the claimant from her employment, there was no notice or requirement for her to attend and present her case. Despite being employed as a laboratory technician and offering to work as a tutor in Islamic studies and Swahili, the respondents failed to comply with the provisions of Section 41 of the *Employment Act*.
19. Under sections 43 and 45 of the *Employment Act*, a termination of employment that lacks justification and is without due process is unlawful and unfair.
20. The claimant is seeking salary payment per the DPM circular of 2018.
21. Her employment remained that of a laboratory technician. There was no formal employment as a tutor. Per the letter of employment, the salary due is Ksh. 19,165 per month.
22. However, for the unfair and unlawful termination of employment, the claimant, having served the respondents diligently and offered extra duties, is hereby found to be entitled to compensation of ten months' gross pay, all at Ksh. 191,650.
23. Notice pay under the CBA for one who has served over 10 years is 3 months' gross pay. In this case, the claimant, as a member of KUDHEIHA, is entitled to Ksh. 48,495.
24. The claim for gratuity pay for 19 years is due under the CBA at 15 days' pay for every year worked, all at Ksh. 182,067.50.
25. The claimant defined the respondent as a public school for accumulated annual leave. The courts take judicial notice that public schools are ordinarily on holiday after every three months, including a long break in November and December. See *Sila v Principal Masii Secondary School & another* (Cause 1484 of 2015) [2022] KEELRC.
26. The particulars of such a claim are not specified in the claim for holidays worked and not paid.



27. Regarding the claim for unpaid salaries, the period for which the alleged unpaid salary is alleged to be due is not specified.
28. Under Section 51 of the *Employment Act*, a certificate of service is required to be issued at the end of employment.
29. On costs, the claim is found to have a good foundation, and hence, costs are due. Under section 12(4) of the *Employment Act* and Rule 70 of the *Employment and Labour Relations Court (Procedure) Rules*, costs are hereby assessed at Ksh. 50,000.
30. Accordingly, judgment is entered for the claimant against the respondent in the following terms;
  - a. Employment terminated unfairly,
  - b. Compensation Ksh 191,650,
  - c. Notice pay Ksh 48,495.
  - d. Service gratuity Ksh 182,067.50,
  - e. Certificate of service,
  - f. Costs of Ksh. 50,000.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 17 JULY 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

