



**Kenya Union of Pre-Primary Education Teachers v Gateway to Learning Center  
(Appeal E002 of 2023) [2025] KEELRC 2399 (KLR) (29 August 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2399 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
APPEAL E002 OF 2023**

**J RIKA, J  
AUGUST 29, 2025**

**BETWEEN  
KENYA UNION OF PRE-PRIMARY EDUCATION TEACHERS .... APPELLANT  
AND  
GATEWAY TO LEARNING CENTER ..... RESPONDENT**

*(An appeal from the Judgment of the Hon. Chief Magistrate Charles Obulutsa, dated 4th April 2023, in Kericho C.M.E.L.C Cause Number E006 of 2022, between the parties herein)*

**JUDGMENT**

1. The Appellant filed the Claim at the Trial Court, on behalf of its member Irene Chepwagen [Grievant].
2. Irene is a former Employee of the Respondent. She was employed as a teacher.
3. She alleged to have been unfairly and unlawfully dismissed by the Respondent. The Appellant prayed for a raft of remedies on her behalf, including notice pay; compensation for unfair dismissal; terminal benefits; and costs.
4. The Trial Court found that the Appellant did not establish its Claim on a balance of probabilities, and dismissed it, in a Judgment dated 4th April 2023, which is the subject of this Appeal.
5. Among the grounds warranting dismissal of the Claim, was that the parties did not call any witnesses, instead putting reliance on bare pleadings and documents.
6. The Appellant filed this Appeal through a Memorandum of Appeal, dated 3rd May 2023, listing the following grounds: -
  - a. The Trial Court erred by finding that the Grievant's contract was not terminated by the Respondent, and by finding that she resigned.



- b. The Trial Court erred by disregarding the pleading that the Grievant was employed from the year 2012.
  - c. The Trial Court erred by failing to find that the Grievant was on sick leave for suspected Covid-19 infection.
  - d. The Trial Court erred by disregarding unchallenged documentary evidence, showing that the Grievant was subjected to a maximum salary of Kshs. 40,000.
  - e. The Trial Court erred by finding that the Grievant exhausted her annual leave entitlement.
  - f. The Trial Court erred by finding that the Grievant absconded duty for a whole month.
  - g. The Trial Court erred by disregarding the Grievant's bank statements, detailing unexplained salary variances, going below the basic salary.
7. The Appellant proposes: -
- a. The Appeal is allowed.
  - b. Judgment of the Trial Court is set aside, and substituted with a Judgment allowing the prayers sought in the Trial Court.
  - c. Any other suitable relief.
  - d. Costs to the Appellant.
8. The parties agreed that the Appeal is considered on the strength of the Record. The Appellant supports its Appeal, through Submissions dated 22nd April 2025. The Respondent relies on Submissions dated 29th May 2025. The Appeal was last mentioned before the Court on 20th June 2025.

**The Court Finds: -**

9. The Appellant opted not to present the Grievant before the Trial Court, and can hardly be heard to complain, that the decision of the Trial Court disregarded evidence placed before it.
10. The Trial Court observed that parties had opted not to call witnesses. If there were any evidential gaps, the Appellant cannot blame the Court for reaching the finding that the Appellant had not established its Claim, on behalf of its member, to the required standard.
11. The Record indicates that the Grievant was listed as a witness. Why did the Claimant not present her before the Trial Court, to tell her own story directly to the Court, particularly because there were contested issues, including when she was employed; whether she was initially a volunteer; and whether termination was at the instigation of the Appellant, the Respondent, or mutually instigated.
12. These are issues that the Appellant regurgitates through the Appeal, having failed to present the Grievant to the Trial Court, to give evidence.
13. While the E&LRC [Procedure] Rules 2016 and 2024 [Rules 21 and 59 respectively] allowed /allow the Court to determine disputes on the basis of pleadings, affidavits, documents and submissions made by the parties, not all disputes are suited for determination by this mode.
14. Where a Trade Union brings a Claim on behalf of its member, and details of the member's contract of employment are contested, that member ought to be availed to the Court, to explain details of his or her contract. The Claimant Union was not party to the Grievant's contract of employment, and did



not share her employment history, to expect the Trial Court to reach a finding that the Claim had been established, merely on the pleadings, documents and submissions made by the Claimant.

15. On the specific Grounds of Appeal, the Court is of the view that: -

16.

(a) Termination or resignation? The circumstances leading to the Grievant's exit from employment, were disputed. The circumstances would have been clarified had the Grievant been presented as a witness before the Court.

17. Relying on the documents filed by the parties, the Trial Court correctly found that the Grievant had been away from her workstation from 3rd August 2020 to 3rd September 2020, without authorisation.

18. She was required to sign a termination letter; sign a resignation letter; or take leave until she was willing to resume duty, upon meeting all conditions. She did not take any of these options, but requested for time to consult her Advocate. She does not seem to have answered the Respondent after consulting her Advocate, and the Respondent wrote to her on 12th September 2020, informing her that it considered her to have opted for termination of her contract.

19. The Court does not think that the Trial Court erred, by not finding that the Respondent terminated the Grievant's contract. It seems to the Court that the relationship between the parties was not working. The Grievant was given to long periods of absence from work without the leave of the Respondent, and had serial warnings on this and other disciplinary lapses. It was a relationship where trust and confidence had completely collapsed, and mutual separation warranted.

20. The Trial Court did not err, by not attributing termination decision to the Respondent alone.

21.

(b) Employment from the year 2012? The Grievant alleged that she was employed in the year 2012, while the Respondent's position was that she was initially a volunteer. The Trial Court concluded that she was a volunteer from 2012, earning a stipend of Kshs. 5,000 monthly, until 21st August 2019, when she was employed as a teacher. There was no letter of employment, or other document exhibited by the Claimant, to show that the Grievant was employed by the Respondent, from the year 2012. Without such a document, and without the oral evidence of the Grievant, there was nothing to persuade the Trial Court that the Grievant was employed from the year 2012 and not 2019.

22.

(c) Away on sick leave? The list of documents filed by the Claimant, dated 7th February 2022, does not include any medical document, establishing that the Grievant was away on medical ground. She does not appear to have complied with Section 30 of the *Employment Act*, requiring that she notified the Respondent of her absence and reasons for the absence, and requiring also that she supplied a medical certificate of her inability to work, issued by a qualified medical practitioner. She did not even appear before the Court to explain that she was away from work due to illness. She was a teacher, and her absence would prejudice her pupils, and the school. The Trial Court did not err, by failing to find that she was away on medical grounds.

23.



- (d) Subjected to a maximum salary of Kshs. 40,000? This ground is unclear. How did the Trial Court fail to consider that the Grievant was ‘subjected’ to a maximum salary of Kshs. 40,000? The Trial Court found at page 7 of 14 of the Judgment, that the Grievant exhibited a statement, showing she earned Kshs. 40,000 monthly. What exactly, is the Appellant’s challenge, concerning the salary paid to the Grievant, at Kshs. 40,000? The Court is unable to find any error in the Judgment, concerning the salary paid to the Grievant.
24. [e], [f] and [d], exhaustion of annual leave; abscondment for a whole month; and unexplained salary variances in the bank statements. These grounds are similarly devoid of merit. The Grievant had been away from duty without formal leave of the Respondent. The Claimant pleaded under paragraph 1 of reliefs sought, for Kshs. 40,000 as ‘leave not taken’ and Kshs. 360,000 under paragraph 7, as ‘leave not taken.’ It was the Claimant’s responsibility to present the Grievant before the Court to establish these repeated claims for leave, instead of waiting to come on appeal to advance the position that the Trial Court erred, by finding that the Grievant had exhausted her annual leave entitlement. It was likewise for the Claimant to avail the Grievant to the Trial Court, to explain her salary statements, and establish that there were unexplained variances.
25. The Appeal has no merit.
- It Is Ordered: -
- a. The Appeal is declined.
  - b. Costs to the Respondent.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, PURSUANT TO RULE 68[5] OF THE E&LRC [PROCEDURE] RULE, 2024, THIS 29TH DAY OF AUGUST 2025.**

**JAMES RIKA**

**JUDGE**

