



**Njuguna v Mount Kenya University (Cause E6563 of 2020)
[2023] KEELRC 2844 (KLR) (10 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2844 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6563 OF 2020
J RIKA, J
NOVEMBER 10, 2023**

BETWEEN

BEATRICE WAMUHU NJUGUNA CLAIMANT

AND

MOUNT KENYA UNIVERSITY RESPONDENT

JUDGMENT

1. The Claimant filed a lengthy Statement of Claim, which consists 75 paragraphs and 18 pages, on 22nd December 2020.
2. She states that she was employed by the Respondent University as a Graduate Assistant, on 11th January 2011.
3. The contract was for a renewable term of 2 years. Paragraph 4 of the Statement of Claim states that the commencement date was 11th January 2012, contrary to the rest of the Statement of the Claim, which gives the year of employment as 2011.
4. She was assigned teaching duty by the Head of Department, Accounting and Finance.
5. She also worked as a Departmental Examination Officer whose responsibility, included examination processing.
6. Her contract was renewed for 4 years, from 1st January 2014. She was assigned the role of an Assistant Registrar.
7. On 1st January 2016, she reverted to her position as Graduate Assistant, and became Examination Coordinator. Her gross monthly salary was Kshs. 120,000.
8. She was offered a 3rd contract for a period of 5 years, with effect from 1st January 2018. She was contemporaneously promoted to the position of a Tutorial Fellow, School of Business and Economic



- Studies, Department of Accounting and Finance. Part of her duties as a Tutorial Fellow included teaching Students, as instructed by the Head of Department.
9. She retained her role as an Examination Coordinator.
 10. 1 semester unit, was equivalent to 14 weeks or 42 hours, at 3 hours each week. Each staff was expected to discharge this contractual workload of 42 hours per unit each semester.
 11. The Department of Teaching Programmes, monitored teaching through a biometric device. Biometrics of each Lecturer and Student, were taken and recorded online in the Workload Platform. Details of units taught and payments made to Lecturers were captured in the platform.
 12. The Respondent was understaffed, and there were units that remained un-attended. This was addressed by engagement of part-time Lecturers, and secondly, by distribution of part-time work amongst the regular Lecturers.
 13. Part-timers for bachelor's degree programmes, physically taught, were paid an hourly rate of Kshs. 1,500. Diploma teaching, physically carried out, was paid at Kshs. 1,000 per hour. The maximum hours for bachelor's degree was set at 42 hours, and 30 hours for diploma.
 14. Courses taught virtually, attracted remuneration of Kshs. 25,000 per unit.
 15. The Claimant taught contractual units from 2012 to 2017, and was paid in accordance with her contract.
 16. She taught 5 part-time degree units in 2016-2017 and 5 part-time diploma units, both virtual. She was not paid a total sum of Kshs. 170,000.
 17. At paragraph 26 and 27 of the Statement of Claim, the Claimant states that the Respondent subsequently paid her, for 3 degree units under the preceding paragraph, and 1 diploma unit. The Respondent has continued to withhold the rest of the payments despite promising that payment was being processed.
 18. She claims that for the period 2017-2018, 3 virtual degree units were underpaid at Kshs. 13,500.
 19. From 2018 to July 2020, she taught a total of 65 units, comprising physical and virtual bachelor's degree, diploma, and certificate courses. She was not paid a total amount of Kshs. 2,229,500.
 20. The Claimant states that the Respondent had a policy of holiday lessons. Lecturers who taught during the holidays were paid Kshs. 30,000 per unit, subject to a minimum of 14 hours. She taught in August and December 2018, but was not paid a total of Kshs. 180,000.
 21. In her role as Examination Coordinator, she was involved in external examination moderation on 30th January 2020. She was preparing the moderated results for presentation before the University Examination Board. She was not able to attend to her normal classes on the period involved in examination results moderation. She informed her Supervisor of her inability to attend the classes. She engaged the class representatives with a view to rescheduling the aborted classes.
 22. In the course of engaging the Students, 2 of them came to the class late, in violation of the Respondent's policy. They were denied access by the Claimant.
 23. A 3rd Student Betty Maina, also came late, but when asked to leave by the Claimant, declined to do so. A section of the Students became rowdy, urging Betty not to leave. But immediately her biometrics were taken, she stood up and left the class, saying she was not coming back.



24. The Claimant decided to walk out and reported the incident to the Deputy Director of Teaching Programmes, Ayub. Ayub urged the Claimant to continue implementing the policy on class reporting hours, by taking biometrics.
25. On 13th February 2020, Dean Henry Yatich, forwarded a letter to the Claimant, which was alleged to have been written by the Students, raising certain complaints against the Claimant.
26. She responded to the letter. A few days later, she received a letter to show cause why she should not be suspended on allegations of rudeness; neglect of duty; and use of abusive language.
27. She was invited for disciplinary hearing around 17th March 2020. She states that the Staff Disciplinary Committee was not properly constituted. Some of the members were openly biased. She was unfairly and unlawfully dismissed on 19th July 2020.
28. The Claimant prays for Judgment against the Respondent for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Unremitted tax at Kshs. 671,672, deducted from the Claimant's November 2013 to November 2018 salary.
 - c. Kshs. 64,428 being the difference of the amount demanded by the Claimant and the amount paid by the Respondent.
 - d. Kshs. 2,339,500 being the amount due from the Respondent on account of part-time classes taught by the Claimant. [The amount is quoted at Kshs. 2,229,500 at paragraph 31 of the Statement of Claim].
 - e. Kshs. 180,000 being the amount due on account of Distance and Institution-based electronic learning.
 - f. Kshs. 360,000 in notice of 3 months.
 - g. 12 months' salary in compensation for unfair termination at Kshs. 1,440,000.
 - h. Costs.
 - i. Interest.
 - j. Certificate of Service to issue.
 - k. Any other suitable relief.
29. The Respondent filed its Statement of Response dated 7th June 2021. The Respondent begins by faulting the Statement of Claim, for being prolix, argumentative, full of evidence and submissions.
30. It is conceded that the Claimant was employed by the Respondent. The letter of appointment was erroneously dated 11th January 2011, instead of 11th January 2012. The Claimant worked under various contracts which were extended.
31. Her designation as a Departmental Examination Officer, was defined in the letter of appointment, and did not include teaching of Students.
32. The Claimant taught between 2017 and 2020, and was paid all her dues. She is not owed any money by the Respondent. Payment was confirmed by the Respondent's Finance Department. The sums claimed were made in afterthought, to vex and embarrass the Respondent, after the Claimant's



- contract was terminated. The claims were never raised during employment. The Respondent states that the claims are statute-barred.
33. The Claimant habitually sent Students away from her class, for allegedly coming late. She admitted to this, in her letter dated 5th March 2020. The incident on 13th February 2020 was not an isolated one. Students complained that she had sent some of them away, without giving them a hearing. She created a standoff with her Students. She did not behave like a Teacher, and a role model should.
 34. She was booed by Students, who demanded that their colleague should be allowed back in class. She was unprofessional. She chased away Students and used derogatory language. She inconvenienced her class collectively, in dealing with the indiscretions of one Student.
 35. The Students formally complained against the Claimant for: -
 - I. Use of derogatory language. On 13th February 2020 she disagreed with the Students on rescheduling of a class, telling them that their opinion did not matter, and that, “I don’t care whether you will be out on a date, or going to be fucked on a Friday.”
 - II. She denied a Student who had arrived late, an opportunity to explain herself. She told the Students that it was not her business, to take the Respondent’s rules and regulations to their homes, and immediately left the class, banging the door behind her.
 - III. She signed her attendance sheet, while leaving instructions that no Student should sign, to confirm their attendance.
 - IV. She missed two consecutive classes without proper and timely communication, inconveniencing Students.
 36. The Respondent states that Betty Maina is not a party to the proceedings, and cannot answer the allegations against her, made by the Claimant.
 37. The complaints by the Students were specific and communicated to the Claimant. She was asked to respond, responded on 5th March 2020, and her assertion that she was not instructed on the complaints is contradictory.
 38. She was invited for disciplinary hearing through a memo dated 12th March 2020. She was given a full hearing. The disciplinary committee was properly constituted. It was not the Claimant’s role to select who sat in the committee. No member of the committee was biased against the Claimant. Termination was justified, and executed fairly. The Respondent urges the Court to dismiss the Claim with costs.
 39. The Claimant gave evidence and rested her Claim, on 13th July 2022. The Respondent’s Assistant Registrar, Janet Akumu Kajwang, gave evidence on 20th April 2023 when the hearing closed. The Claim was last mentioned on 14th July 2023, when Parties confirmed filing and exchange of their closing submissions.
 40. The Claimant adopted as her evidence-in-chief, her witness statement and further witness statement on record. She exhibited documents marked number 1-25, and supplementary documents listed number 26-27. Further documents include a notice to produce, exhibited as number 28, supplementary notice to produce, exhibit 29, and certificate of electronic authentication, exhibit, 30.
 41. The Claimant told the Court that she was employed by the Respondent as a Graduate Assistant. She was contracted for the second time, as an Assistant Registrar. There was restructuring, and she reverted to teaching. She was to teach 6 units initially. She graduated with a master’s degree, and was allocated



- teaching of 3 bachelor's degree units. These were contractual units. The salary was Kshs. 120,000 per month.
42. There was excess teaching workload. Lecturers were assigned part-time work. Diploma courses were remunerated at Kshs. 1,000 per hour, while degree courses were remunerated at Kshs. 1,500 per hour.
 43. Remuneration also depended on whether teaching was physical or virtual. Virtual teaching was remunerated at Kshs. 25,000 per programme, while physical teaching attracted remuneration at Kshs. 30,000 per programme.
 44. The Claimant taught diploma, physical and virtual, in 2016-2017. 3 units were paid, 2 were not. The Respondent retained complaint forms for unpaid dues. The Claimant realized anomaly in her payments, and lodged complaints. The Finance Department acknowledged receipt of the forms, but later misplaced them. The Claimant was asked to refill. She was to receive the cheque in January 2020. She did not receive it.
 45. She was dismissed in July 2020. She was advised by the Director Human Resources, to write a demand letter, detailing her claims. She did so, but no payment was made. Details of classes taught were captured online. She was paid 39 hours, while she taught 42 hours.
 46. The year 2019-2020 was not captured online. The Claimant recorded the classes taught in her notebook. She sourced her evidence from her notebook, based on the academic calendar.
 47. When she was absent from classes, she was involved in administrative work. She organized make-up classes for the 2 weeks she was away on administrative duty.
 48. She was alleged to have been rude, and neglectful of duty. She answered all allegations at the disciplinary hearing. The Student complaints were not warranted. Policy required they are in class, 5 minutes before the classes started. 3 of them arrived late, beyond 10.30 a.m. The Claimant refused to admit them.
 49. One of them had missed classes for 5 weeks. She explained that she had been working for a water company. She insisted she would not keep off but would continue sitting, creating a scene.
 50. The Claimant stepped out to consult the Director of Teaching. It was agreed that the Director would be recording biometric student attendance. The Students interpreted the Claimant's enforcement of attendance time, as rudeness and unreasonable.
 51. The reasons for termination were not justified. The Claimant was enforcing school policy. Dismissal was unfair. The Respondent was not following its own policy, in responding to Betty Maina's absence from the class. She had been away, working for a water company.
 52. Cross-examined, the Claimant told the Court that teaching duty, was captured under the clause on 'any other duty,' in her letter of appointment. Other duties were specific.
 53. She was assigned teaching of 6 units, over and above the duties listed in the letter of appointment. She was also assigned duty as an Examination Officer / Coordinator.
 54. She was on full employment in 2016-2020. She graduated in December 2017. She was assigned graduate studies, upon graduation. She previously handled diploma Students. She taught units as allocated by the Head of Department.
 55. In one semester, the Respondent had 60 units with only 5 staff to teach. The Claimant had 3 regular and 8 virtual units. It was in excess of the units she was to take, under the workload policy.



56. She filled all the part-time acceptance forms for each year. Workload online portal had all the computations.
57. The Claimant received invitation to the disciplinary hearing. She attended and answered all the allegations. She filed submissions before the disciplinary committee. She was an academic staff, and expected the Deputy Vice-Chancellor and Registrar Academics would be present. She raised this at the hearing, but did not have a document to support this.
58. She took notes of semesters which had not been uploaded online in 2019-2020. In 2016-2017 there was no workload online platform. Her claims are founded on the available documents.
59. It was the Claimant's obligation to ensure that the Respondent remitted taxes. She was aware that it is the duty of KRA to collect taxes. The KRA portal did not reflect payments made on account of the Claimant.
60. Redirected, the Claimant told the Court that the Head of Department assigned the units. Directorate of Teaching communicated the available units for allocation. Units were excess, with qualified staff to teach the units, insufficient. Available staff ended teaching excess units, regardless of policy. Part-time teaching acceptance forms were filled in, within the semester. The Claimant had served the Respondent for long, without any complaint. She did not expect that there would be a problem with payment. She did not retain copies of the acceptance forms. She discussed non-payment with the Director Human Resources, who advised that she documents all the claims. She did so, went to Finance Department, who assured the Claimant that she would be paid her dues.
61. Assistant Registrar, Janet Akumu Kajwang,' was the Human Resource Officer, at the time the dispute arose. She adopted as her evidence-in-chief, her witness statement and documents filed by the Respondent.
62. She confirmed that the Claimant was employed by the Respondent as an Assistant Registrar, and also an Examiner. She was seconded as an Examination Coordinator. She became a Tutorial Fellow in 2018. She retained the role of Examination Coordinator. She served as Examination Coordinator for 2 years, 2016-2018. Her term in this position, was extended in 2019.
63. On 13th February 2020, there were complaints lodged by Students from the Department of Development Studies, against the Claimant. She told Students that she did not care, if they were going out to be fucked on a Friday. She told them, that their opinion did not matter, because at the end of the day, she was still going to be paid her salary. She locked out a Student who was late. She missed 2 lectures. She admitted to some of the complaints against her. She alleged that she was enforcing Respondent's rules and regulations. The allegations against her led to disciplinary proceedings.
64. She attended the hearing. She requested to submit additional documents which was allowed. She was advised on her right to be accompanied to the hearing by a representative of her choice. It was concluded after hearing that the Claimant was guilty. The committee recommended that she is summarily dismissed.
65. She did not appeal as advised.
66. There was a limit on the number of units she could handle. She was paid all her dues for units taught.
67. Concerns on the composition of the disciplinary committee were raised in the Claim, not at the disciplinary hearing. Members of the committee were drawn from the Finance and Planning Committee, mandated to review disciplinary cases. It was during Covid-19 period and the Respondent operated within certain constraints.



68. Teacher–Student relationship was governed by the University Handbook. The Claimant could not make her own rules and apply them to her class, in the name of the Respondent. She was policing Students, without reference to institutional rules. The Respondent had specific workload policy for each Lecturer. Examination Coordination was a secondment role. The units the Claimant seeks payment for, were in defiance of the workload policy.
69. Cross-examined, Kajwang’ told the Court that she was the Human Resource Officer, at the time the dispute arose. She was not the Human Resource Director.
70. The Claimant was an Assistant Registrar, since 2012. She processed examination results. She initially was a Graduate Assistant. She was seconded as an Examination Officer. At the end of her contract, she had become an Examination Coordinator, and Tutorial Fellow.
71. She was dismissed for neglecting her class. She admitted that she walked out, following disagreement with her Students. She was expected to teach on 13th February 2020. Students stated that she missed 2 classes.
72. Kajwang’ was responsible for employer-employee relations. The Claimant could only take 3 units. She could only teach 1 extra unit. Between May 2017 to August 2018, she taught 16 units. All except a few, were paid.
73. Kajwang’ was not able to say if the document at the Claimant’s page 10, was an extract of the workload platform. It was indicated to be so. Page 13 of her documents indicates that she was paid Kshs. 367,850. Her salary was Kshs. 100,000 per month. The Respondent paid taxes. She was paid Kshs. 20,000 allowance for Examination Coordinator role. Her net salary was below Kshs. 100,000 monthly.
74. The units taught could be paid cumulatively based on the semester, the year, or the month. Kshs. 367,850 may have been a cumulative figure. The Head of Department allocated teaching modules. The modules assigned to the Claimant have not been exhibited before the Court by the Respondent.
75. Staff made their claims for payment, by filling a form. One indicated the hours and units taught on the form. The form was verified and submitted to the Finance Department for payment. Kajwang’ was not aware that the Claimant complied with this procedure, and was advised that payment was being processed.
76. The Respondent did not exhibit the Students’ handbook before the Court. Students were to begin studies as scheduled. The Claimant was right on insisting that Students arrive on time.
77. It was acknowledged that the Claimant was processing examinations on 2 occasions when she did not teach. She used abusive language. The letter of dismissal invoked various statutes of the Respondent in justifying termination. The statutes mirrored the *Employment Act*, with similar wording. Insulting students amounted to insulting the Respondent. The complaint letter was signed by class representatives, Development Studies. it refers to class of Public Finance. Public Finance was served by other units such as Bachelor of Commerce. It also comprised Public Administration. It was only Students from Development Studies who complained.
78. The Claimant was asked to respond to the complaints. Kajwang’ was not involved with the disciplinary hearing. The minutes are not exhibited. A report of the hearing is exhibited. Kajwang’ was not aware if the Claimant was entitled to the minutes of the disciplinary hearing. The Claimant was not entitled to choose who sat in the disciplinary committee. There was nothing in the Respondent’s statutes, which compelled certain officers to sit in the disciplinary committee.



79. Taxes were remitted. Kajwang' did not have documents to show this. The Claimant was paid all her dues. Kajwang' confirmed with Finance Department that she was paid all her dues.
80. There were 2 Deputy Vice-Chancellors. The Finance, Planning and Administration Committee undertook the disciplinary process. Allegations against the Claimant, related to academic staff. The Deputy Vice-Chancellor was not involved.
81. Redirected, Kajwang' restated that taxes were remitted. The Respondent has not faced any prosecution for not remitting taxes. The Claimant was given adequate opportunity to respond to the complaints made by the Students, and the allegations against her, leading to summary dismissal.
82. The issues as understood by the Court, are whether the Claimant is owed arrears of salary for units taught under the part-time programme; whether she was summarily dismissed for valid reason; whether dismissal was carried out fairly; and whether she merits the remedies sought.

The Court Finds: -

83. The letter appointing the Claimant as Graduate Assistant, issued by the Respondent, is dated 11th January 2011.
84. It is not clear from her evidence, if the correct year was 2011 or 2012. The Respondent however clarified that the year 2011 was stated by error. The correct year is 2012.
85. The effective date is indicated to be 1st January 2012. The contract was for a period of 2 years. The letter states that the Claimant would also serve as the Departmental Examination Officer.
86. The Claimant accepted the terms and executed the letter of appointment on 25th January 2012.
87. At the end of the 2 years, her contract was renewed with effect from 1st January 2014, for 4 years. She was designated as an Assistant Registrar, Teaching Programmes.
88. She was reverted to the substantive position of Graduate Assistant, after 2 years, with effect from 1st January 2016. The memo communicating reversal, is dated 4th January 2016, issued by Human Resource Director, Charles Kireru.
89. With effect from 1st July 2016, the Claimant was appointed Examination Coordinator, Department of Accounting and Finance, for a period of 2 years. The position was in addition to her substantive role of Graduate Assistant, and she was paid responsibility allowance of Kshs. 15,000 and telephone allowance of Kshs. 3,000 monthly, for the added responsibility.
90. Her contract as a Graduate Assistant was renewed at the end of 4 years, for another 5 years, beginning 1st January 2018.
91. The renewal came with a promotion, from Graduate Assistant to a Tutorial Fellow, in the School of Business and Economic Studies, Department of Accounting and Finance, effective 1st February 2018.
92. Her monthly salary was Kshs. 100,000 comprising basic of Kshs. 52,000; transport allowance at Kshs. 15,000; and house allowance at Kshs. 33,000.
93. Her last 5-year term contract did not last the 5 years. She was summarily dismissed with effect from 7th July 2020. She served 2 ½ years of her final 5-year term contract.
94. The reasons justifying summary dismissal are stated in the letter dated 10th July 2020. The Claimant was informed that the disciplinary committee found her guilty of rudeness; use of abusive language; and neglect of duty, all amounting to gross misconduct.



95. There is no dispute on salary, and allowances paid to the Claimant, under the various job titles, in any of the contracts above, from 2012 to 2020. She was paid her salary and allowances, as contracted, at Kshs. 120,000 monthly.
96. The dispute revolves around her summary dismissal, and remuneration which the Claimant states, was not paid, for teaching part-time classes.
97. Reasons justifying summary dismissal. The reasons as stated above, were rudeness; use of abusive language; and, neglect of duty.
98. Rudeness and use of abusive language, were grounds primarily rooted in the complaint letter written by Students of Bachelor's Degree course, in development studies, dated 13th February 2020.
99. The Students complained that the Claimant: -
 - I. Sent some of them out of class without valid reasons.
 - II. Used derogatory language. On 13th February 2020 at around 10.40 a.m. she told them, after a disagreement on when to schedule a make-up class, "I don't care whether you will be out on a date or going to be fucked on a Friday." She insisted that the opinion of the Students did not matter, and she would end up getting her salary any way.
 - III. Upon a Student arriving slightly late and begging the Claimant to be allowed to explain the slight lateness, the Claimant told the Student that it was not her business to take the [Respondent's] rules and regulations to the Students' homes. The Claimant then left the class, banging the door behind her.
 - IV. She walked out after signing the attendance register, while instructing that the Students should not sign the attendance register.
 - V. The Claimant had missed 2 consecutive lectures, without proper and timely communication with the Students.
100. The letter was signed by no less than 7 Business Development class representatives. It was a collective complaint, not an individual complaint from the Students.
101. The letter was placed before the Claimant, who responded on an unspecified date, through a letter addressed to Head of Department, Accounting and Finance.
102. She states that she had given rules to the Students, on her first interactions with them. They included: =
 - i. Lateness will not be tolerated up to 10.30 a.m. and every Student should be in class at least 30 minutes after the start of the class.
 - ii. No wearing of caps, marvins and slippers in class.
 - iii. No chatting, texting, facebooking or listening to music while in class [earphones].
 - iv. Attendances were mandatory, during both CATs, unless officially out of campus.
103. It is not clear if these rules were part of the rules promulgated by the Respondent, governing teacher-student relationship. The Claimant did not refer to the University Handbook, only stating that she gave the above rules to her Students.
104. She conceded that she had sent away some Students, explaining that they were no more than 5 of them.



105. She explained that 3 Students were late on 13th February 2020. 2 had already left the class on account of their lateness. The 3rd, a stubborn lady insisted on staying. The Claimant was at crossroads because if she allowed the lady to stay, she would have been deemed to have discriminated against the 2 Students who had obeyed her rules, and left the class. The Claimant walked out, after apologizing to the rest of the class. She writes that she regretted the incidence.
106. The Claimant mentions another incident relating to 20th February 2020 relating to a Student who attended classes for only 30 minutes, before leaving with an explanation that she was working elsewhere. The Court does not think this incident was part of the Student complaints, over which the Claimant was being asked to explain.
107. On the 2 classes missed, the Claimant replied that she had explained to the Students that she was involved on 30th January 2020, and 6th February 2020, with her extraneous responsibilities as an Examination Coordinator, and could not attend class. She had alerted her supervisor. Her absence was on account of factors beyond her control.
108. The Claimant considered that the complaints had been addressed, and resolved by the concerned parties. She had apologized.
109. The Court has formed the view, that the Claimant did not discount the accusations made against her, on rudeness and use of abusive language.
110. Her explanation on missing 2 classes, based on her extraneous responsibility as an Examination Coordinator, had some resonance, but was not fully convincing.
111. The Students did not complain, that the Claimant was merely absent from her 2 classes; they asserted that she was away, without proper and timely communication to them, which occasioned them a lot of inconvenience.
112. The Claimant was not involved in Examination Coordination abruptly; she must have had notice of her engagement. It was her unplanned absence, that the Students were complaining against. It is this that the Respondent found, and the Court agrees, amounted to neglect of duty.
113. Her walkout after disagreeing with the Students on reporting time, which she does not dispute, clearly amounted to neglect of her teaching responsibility. It was not cured by her apology before walking out, which she states, she made to the rest of the Students. By walking out of the class, she absented herself from the place appointed for the performance of her work, without the leave of the Respondent, or other lawful cause, which is an act of gross misconduct under Section 44 [4] [a] of the [Employment Act](#).
114. In her submissions before the disciplinary committee, the Claimant changed her stance on accusations of rudeness and use of abusive language. While her earlier position was that the accusations were borne of misunderstandings and disagreements with her Students, which had since been resolved, with an apology tendered by the Claimant, she now adopted the stance that the Students had accused her falsely and maliciously, because she was strict and disciplinarian.
115. She did not establish that the rules she decreed to her Students, in her strict and disciplinarian mien, were part of the Respondent's rules and regulations, or sanctioned in any way by the Respondent. Kajwang told the Court that the Claimant was "policing the Students without reference to the institutional rules." The Claimant did not discount this feeling expressed by her Employer, in any of her responses to the allegations made against her. The Court does not think it would augur well for the Respondent, if individual Lecturers were let to create their own rules and regulations willy-



- nilly, to govern their relationships with their Students. Institutions have their collective standards and instruments of governance.
116. She did not expressly deny that she told Students she did not care if they went out on dates, or to be fucked, on Friday. She did not deny that she told them that it was not her duty to take the rules and regulations to their homes. She did not deny that she told them, she would still be earning her salary at the end of the month. These statements were vulgar and rude in the extreme.
 117. The conduct of the Claimant as a Lecturer, was appalling. She did not treat her Students respectfully. She used unacceptable language. She did not set a good example as a Teacher. While claiming to be strict and a disciplinarian, she used vulgar language against her Students. The Respondent was justified in feeling that the insults against its Students, amounted to insults against the Respondent. Its institutional reputation would suffer, if Students who paid fees to be mentored and tutored by the Respondent, reported back to their families, friends, relatives, and the general public, that a Lecturer employed by the Respondent, told them that she did not care if they were out on dates or being fucked on Fridays, and that she would in any event, receive her salary at the end of the month.
 118. The Court is convinced that the Respondent had solid and valid reasons to justify termination of the Claimant's contract, by way of summary dismissal. Substantive demands under Sections 43 and 45 of the *Employment Act*, were met.
 119. Procedure. The Student complaints as observed above, were availed to the Claimant. She was given adequate opportunity to respond. She responded
 120. The Claimant responded at length, through her undated letter to the Head of Department Accounting and Finance. She was allowed to submit before the staff disciplinary committee. Her submissions were comprehensive. She appeared before the disciplinary committee and had adequate opportunity to defend. A decision to summarily dismiss her was made, and communicated to her. She was advised on her right of appeal, which she opted not to exercise.
 121. Clause 2.9 of the Respondent's Terms and Conditions of Service, approved by the Council on 22nd June 2018, creates different level disciplinary committees.
 122. Teaching staff disciplinary committee comprises Vice-Chancellor, Deputy Vice-Chancellor, Registrar Academic Administration, Dean of relevant School, Head of relevant Department, a Senate Representative, and Human Resource Director- Secretary.
 123. Administrative staff disciplinary committee comprises Deputy Vice-Chancellor, Head of relevant Department/ Section, a Senate Representative, and Human Resource Director-Secretary.
 124. The last disciplinary committee under clause 2.9.4 is the support staff disciplinary committee, comprising Deputy Vice-Chancellor, Head of relevant Department, and Dean of relevant School.
 125. The Claimant was both academic and administrative staff. The disciplinary committee primarily seized of her matter ought to have been the teaching staff disciplinary committee under clause 2.9.2 headed by the Vice-Chancellor. Failing that committee, she could be heard by the administrative staff disciplinary committee. She was part teaching staff, part administrative staff. There is no reason why she was taken before another committee.
 126. Kajwang told the Court that the allegations against the Claimant related to academic staff. But the Claimant inexplicably, was taken before the Finance Planning and Administration Committee, according to the evidence of Kajwang, on cross examination.



127. Kajwang stated that disciplinary proceedings took place within the constraints of Covid-19 pandemic. This did not explain why it was not possible to convene the correct disciplinary committee under clause 2.9.2 of the Terms and Conditions of Service. Covid-19 did not stop the right committee from convening. Kajwang conceded that the Claimant raised concerns, on the composition of the disciplinary committee.
128. The Court agrees with the Claimant's contention that procedure was faulty, the disciplinary hearing having been conducted by the wrong disciplinary committee. On this account, procedure was unfair, and did not meet the standards of fairness contemplated under Sections 41 and 45 of the Employment Act, read with clause 2.9 of the Respondent's Terms and Conditions of Service.
129. Arrears of salary. This carries the bulk of the Claim, which has been characterized by the Respondent as prolix and argumentative.
130. There is no dispute as observed elsewhere in this Judgment, about the salary and allowances payable and paid to the Claimant, under her contract. Salary and allowances were paid in accordance with her contract, and clause 2.8 of the Terms and Conditions of Service.
131. The dispute is on part-time teaching. The Claimant pursues the following under this head: -
- a. Bachelor's degree and diploma classes taught virtually, between January and December, 2016-2017 academic year at Kshs. 170,000.
 - b. Underpayment of degree and diploma classes virtually taught between May and August, 2017-2018 academic year at Kshs. 13,500.
 - c. Payment for degree and diploma classes for the period between 2018 to 2020, at Kshs. 2,229,000.
 - d. Holiday teaching over August and December holidays in 2018-2019 at Kshs. 180,000.
132. These are prayers for specific reliefs. The Claimant was not able to specifically prove, that these arrears of salary, incurred from her part-time lecturing, are owing.
133. She told the Court that she filled part-time teaching acceptance forms. She did not retain copies, and none was availed to the Court. The forms were filled within the semester, and would reflect part-time teaching details.
134. Without the acceptance forms, the Claimant did not establish that she was offered these extraneous assignments, and that she accepted the assignments, and was not paid for discharging the assignments.
135. She did not lodge any claim for payment of part-time teaching, until she was summarily dismissed. She wrote to the Respondent on 21st July 2020, a week after termination demanding payment for part-time teaching.
136. In the view of the Court, remuneration for work carried out outside the terms and conditions of the executed contracts, needed specific proof. The Claimant did not supply such proof, and conceded that she did not have the part-time acceptance forms, supporting the specific units she claims to have taught without payment.
137. The part-time teaching arrangement was not clearly defined in a document exhibited before the Court. It was a work arrangement outside the contract of employment. The existing contract catered for the Claimant's role as a Graduate Assistant, Tutorial Fellow and Examination Coordinator.



138. Part-time teaching ought to have been captured in another agreement. Clause 2.4 of the Terms and Conditions of Service makes reference to outside work, and part-time appointment, which must explicitly be so designated.
139. There was need to conclude a separate agreement, or an addendum to the contract of employment, setting out clearly, the terms and conditions of part-time teaching. This was additional work to the Claimant's contractually defined work, which needed to be clarified through another agreement, supplementing the regular contract.
140. In the end it was the word of the Claimant against that of her former Employer, on payment of part-time dues. She claims she was not paid. Kajwang told the Court that she was assured by the Respondent's Finance Department that payment was made. But Kajwang also told the Court on cross-examination that "all units, except for a few, have been paid." It is possible that the Claimant taught part-time units, which she was not paid for, but this possibility does not amount to proof of her specific claims.
141. It is also possible, as suggested by the Respondent, that the Claimant took many units, beyond what was allowed by the Respondent. She told the Court that "we ended up taking the excess units, regardless of the policy." Any excess work carried out by an Employee, must be authorized by the Employer, and within the range of what is allowable. Without clear terms and conditions of part-time teaching, reduced into a separate contract, or an addendum to the existing contract of employment, it is a difficult undertaking to establish that part-time work was done, and whether the Claimant was denied payments for her part-time work. The Court cannot put reliance on her recollection of classes taught by her, some of which she stated were recorded by her on a notebook. What sort of employment record is her own notebook?
142. She testified that she taught for 42 hours, but was paid for 39 hours. She referred to degree and diploma classes, physical and virtual, but also claims payment for something she characterizes as 'certificates.'
143. Remuneration was not at a consistent frequency. It could be made cumulatively based on the semester, month or year. At one point, the Claimant was paid Kshs. 367,500 in a month. Part-time teaching, was a flexible arrangement, entered into by the Parties outside of the written contract of employment. It was carried out by internal, as well as external Lecturers [moonlighters]. It was completely outside the scope of the employment contract executed between the Claimant and the Respondent, and appears to have been intended to be carried out through contracts for service, as opposed to the contract of service, subsisting between the Claimant and the Respondent.
144. External Lecturers taking the same part-time teaching, were not Employees of the Respondent. There was no contract of service, or for service, clearly defining the rights and obligations of the Parties, under the part-time teaching programme. It is an arduous task, for the Court to enforce rights and obligations, in a contractual vacuum. It was the evidential burden of the Claimant, to prove the terms and conditions of part-time teaching, and the specific figures she desires the Court to order the Respondent to pay to her. She has not discharged this burden.
145. There is some element of truth in the Respondent's Statement of Response, that the Statement of Claim is prolix and discursive. It is not supported by necessary evidence, particularly in relation to the prayer on part-time teaching.
146. The prayer for unremitted taxes has not been established. The Claimant made reference to online KRA services, as her source of information, in alleging non-remittance. She also justified this claim, on the ground that it is her civil obligation to ensure taxes are paid. She did not call evidence from the tax collector. She did not show that she lodged any complaint with KRA on non-remittance of her PAYE



tax. She did not exhibit her form P9 or any other tax returns, filed with the KRA, showing that tax was deducted but not remitted. She did not exhibit her tax ledger, to support that any demand for PAYE, has been made to her by KRA. If she has any dispute with her former Employer on remittance of PAYE to KRA, the best recourse is to pursue such dispute with KRA, which is best equipped to investigate and adjudicate on tax compliance dispute.

147. Remedies. The prayer for tax refund at Kshs. 671,672 has no foundation and is declined. The difference of Kshs. 68,428 being the amount demanded by the Claimant, in his demand letter, and the amount actually paid by the Respondent, is a very confusing prayer. The demand letter dated 25th August 2020, contained all the demands made under this Claim. The Court did not understand, if the Claimant is pleading that she was paid all the amounts demanded, save for a difference of Kshs. 68,428. The prayer is declined for want of clarity. Kshs. 2,339,500 claimed as remuneration for part-time classes is declined for reasons given above. There was no evidence of holiday teaching, and Kshs. 180,000 owed to the Claimant by the Respondent on account of such teaching and the prayer is not sustainable. Summary dismissal was on account of an act of gross misconduct which does not warrant notice of 3 months to the Claimant. Under Section 44 [1] of the *Employment Act*, summary dismissal is defined as “ termination of employment without notice or with less notice than that to which the Employee is entitled by any statutory provision or contractual term.”
148. Procedure was flawed. Termination was unfair on account of flawed procedure. The Claimant worked for 8 years, 2012 to 2020, and save for her last minute indiscretions, had a clean record. She had been variously promoted by the Respondent, and entrusted a wide spectrum of responsibilities, cutting across administration and teaching. Her last contract was for 5 years. Regrettably, she was largely to blame for the circumstances that led to her summary dismissal. She used unprintable vulgarities against the Students who were placed under her wings. She had worked for half the contractual period when she was summarily dismissed. She is granted 2 ½ months’ gross salary in compensation for unfair termination at Kshs. 300,000.
149. Certificate of Service to issue.
150. No order on the costs. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

In sum it is ordered: -

- a. Termination was procedurally flawed and therefore unfair.
- b. The Respondent shall pay to the Claimant compensation for unfair termination equivalent of her 2 months’ gross salary at Kshs. 300,000.
- c. Certificate of Service to issue.
- d. No order on the costs.
- e. Interest granted at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 10TH DAY OF NOVEMBER 2023.

James Rika

Judge

