



**Kimeu v Teachers Service Commission (Cause E008 of 2022)  
[2023] KEELRC 3386 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3386 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
CAUSE E008 OF 2022  
B ONGAYA, J  
DECEMBER 20, 2023**

**BETWEEN**

**MATHEW MUMBU KIMEU ..... CLAIMANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the Memorandum of Claim on 19.07.2020 through Fred K. Musyimi & Associates Advocates. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the dismissal of the claimant was unfair and unlawful for want of procedural fairness.
  - b. Damages for wrongful termination of employment
  - c. Payment of pension and gratuity pay for the claimant's 33 years of service.
  - d. 1-month salary in lieu of notice at Kshs.81,212.00
  - e. The loss of earning for the remainder of the contract period until age of retirement in the sum of Kshs.1,786,664
  - f. Interest at court rates on (b), (c), (d) and (e) from the date of filing the claim until payment in full
  - g. Cost of this claim
2. The respondent's memorandum of response was filed on 28.04.2023 through Ms. Sylvia Ngere Advocate. The respondent prayed that the claim be dismissed with costs as the same is devoid of any merit.



3. The claimant's case was that he was employed by the respondent on permanent and pensionable basis from 07.05.1985.
4. That on 20.08.2018 he received a letter of interdiction dated 05.07.2018 from the respondent's county director regarding allegations of immoral behaviour, specifically, that he had a sexual intercourse with a pupil.
5. Through a letter dated 16.01.2019 the claimant was invited to a disciplinary hearing on 14.02.2019 at the respondent's offices in Makueni County.
6. The claimant states that he was not supplied with any documentary evidence or witness statements that would be used at the hearing in order to adequately prepare his defence.
7. The claimant did not receive any communication from the respondent regarding the decision reached and as a result, he visited the respondent's offices in Kilimanjaro Road, Upper Hill in Nairobi and sought to know the decision that was reached at the hearing. However, he was denied access and service.
8. The claimant contends that failure to be informed of the decision reached denied him the chance to appeal the decision before the Teachers Service Review Committee.
9. The claimant maintains that the decision of the respondent to terminate his employment was irregular for reasons that he was not allowed a chance to examine the evidence that would be adduced against him in advance.
10. The claimant was charged with the offence of defilement at Makindu SPMC S.O Case no. 55 of 2018 but was acquitted of the offence.
11. On the part of the respondent, it is stated that on or about June, 2018 the TSC Sub County Director Kilungu received information alleging that on or about 18.04.2018 the claimant had a sexual intercourse with one a pupil at AIC Ndolo Day and Boarding Primary School & Special School. The incident allegedly took place at the claimant's house.
12. A preliminary investigation was conducted at AIC Ndolo Primary school whereat, they conducted investigations through oral interviews, analysis of written statements and reports.
13. From the foregoing the panel resolved that on the premise of all the evidence adduced, the claimant had a case to answer and that he should be interdicted on the grounds of immoral behaviour for having sexual intercourse with a class 6 pupil.
14. The claimant attended the disciplinary hearing on 14.02.2019 accompanied by two witnesses.
15. At the hearing the victim pupil narrated how the claimant called her while she was on her way to harvest sisal near the teacher's house in April, 2018 at around 11.00 am. He called her and told her to get into his house. He then led her into his bedroom whereat he asked her to remove her clothes and, he removed his clothes and proceeded to have sexual intercourse with her.
16. The disciplinary panel decided that the claimant was in breach of the code of regulations for teachers and as such recommended for his dismissal and removal of his name from the respondent's register of teachers. The respondent maintains that the claimant was promptly informed of the respondent's decision vide a letter dated 21.03.2019.
17. The respondent maintains that the dismissal of the claimant from the teaching service was lawfully effected pursuant to the provisions of the law, specifically the code of regulations and that he was given a fair hearing and due process was followed.



18. The parties filed their respective submissions. The Court has considered the parties' respective cases and makes finding as follows.
19. To answer the 1<sup>st</sup> issue the parties were in a contract of service and as pleaded for the claimant and admitted for the respondent, the respondent employed the claimant as a teacher since sometimes on 07.05.1985.
20. To answer the 2<sup>nd</sup> issue, the Court returns that the respondent dismissed the claimant from the teaching service by the letter of dismissal dated 21.03.2019 effective 14.02.2019 on account of the immoral behaviour as had been alleged against him.
21. The 3<sup>rd</sup> issue is whether the dismissal amounted to unfair dismissal. The claimant testified that after the hearing of the disciplinary case as pleaded for the respondent, he did not receive the dismissal letter. He testified that he learned about his dismissal from a friend known as Ibrahim who was a TSC Commissioner and who conveyed that his file showed that he had been dismissed by the respondent. He testified thus, "The issue is that I have a son-in law. I was discussing issues and he introduced me to a person who turned out to be a Commissioner. My son in-law is Daniel Wambua. Ibrahim learned I was interdicted. He told me he would find out status. He took my TSC number. Through Wambua he communicated I had been dismissed. It was in May 2022. Decision to dismiss was on 21.03.2019 per respondent. That it was mailed to P.O. Box 10 Nunguni – Nunguni was an address of the School I was last deployed to and I had been interdicted. Interdiction letter instructed me to keep away from School." In cross-examination, the claimant confirmed that at the hearing of the disciplinary case he completed attendance sheet at page R71 and he indicated his address as 10 Nunguni and further, "It is the address I indicated for Communication." He further testified that he never checked at the school because the interdicted letter stated he should keep off the school. While he indicated nearest TSC office to report monthly, he testified that the TSC Sub-County Director advised him not to report after he had attended the hearing as there was no need to do so. The respondent's witness No. 1 ( RW1) testified that she could not tell if the dismissal letter was delivered. RW2 stated that the dismissal letter had been sent to the address the claimant had provided. Page R.75 was the certificate of postage. The Court has considered the evidence and in view of the certificate of postage, on a balance of probability the Court finds that the claimant must have received the letter of dismissal from the Postal Corporation. While making that finding the Court considers that the claimant being an experienced teacher and in view of the serious allegations levelled with a preferred criminal case would not have had the capacity to promptly write to the respondent about the outcome of the disciplinary hearing. He cannot be trusted in saying that he was locked out from accessing the respondent's offices in Nairobi while he failed to visit the Sub-county office. His account about Ibrahim was hearsay and was of low probative value. His allegation of denial of the right to appeal administratively because he did not receive the letter of dismissal is found incredible.
22. The claimant lamented that he was not provided relevant documents but confirmed that he had not requested for copies and paid for the copying charges as required by applicable regulation.
23. The claimant confirmed that the pupil testified at the hearing of the disciplinary case but he had not cross-examined the pupil as the issue of cross-examining was strange to him.
24. In the circumstances the Court returns that the respondent has a valid reason per section 43 of the *Employment Act* as at dismissal and further the reason was fair per section 45 of the Act as it related to the claimant's conduct, capacity, compatibility and the respondent's operational requirements per section 45 of the Act. The respondent also accorded the claimant due procedure of a notice and hearing per section 41 of the *Employment Act* and the applicable respondent's regulations governing



the teachers' service. The respondent's submission that the termination was not unfair in substance and procedure is upheld.

25. To answer the 5<sup>th</sup> issue, the Court returns that as submitted for the respondent, the claimant was terminated on 21.03.2019 and three years of limitation of action under section 90 of the [Employment Act](#) lapsed on 21.03.2022 but the suit was belatedly filed on 19.07.2022. The Court upholds the respondent's submission that the suit was time barred accordingly.
26. To answer the 4<sup>th</sup> issue, the Court finds that the termination not having been unfair, the remedies as prayed for will collapse as unjustified. The respondent has succeeded but considering all circumstances of the case each party to bear own costs of the case.

In conclusion judgment is hereby entered for the respondent against the claimant for:

- a. Dismissal of the suit.
- b. Each party to bear own costs of the suit.
- c. The Deputy Registrar to forthwith return the case file to the Machakos Court's Sub-registry.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 20<sup>TH</sup> DECEMBER, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

