



**Agingu v Advtech Kenya Limited t/a Crawford International School & another
(Cause 604 of 2019) [2025] KEELRC 2762 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2762 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 604 OF 2019
L NDOLO, J
OCTOBER 9, 2025**

BETWEEN

EVERLYNE OYAMO AGINGU CLAIMANT

AND

**ADVTECH KENYA LIMITED T/A CRAWFORD INTERNATIONAL
SCHOOL 1ST RESPONDENT**

SUMMIT RECRUITMENT AND SEARCH AGENCY 2ND RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 9th September 2019, the Claimant sued the 1st and 2nd Respondents for wrongful dismissal and defamation. The 1st Respondent filed a Memorandum of Response dated 18th October 2019 and the 2nd Respondent filed its Memorandum of Response dated 10th May 2021.
2. At the trial, the Claimant testified on her own behalf with the 1st Respondent calling Jenny Coetzee and the 2nd Respondent calling Catherine Mbithe.

The Claimant's Case

3. The Claimant is a Teacher by profession. She states that she was employed by the 1st Respondent, pursuant to a recruitment process conducted and supervised by both the 1st Respondent and the 2nd Respondent.
4. The Claimant avers that the 1st Respondent placed an advertisement, seeking to recruit teachers for its school then being introduced in Kenya. The Claimant claims to have been called by the 1st Respondent's Managing Director, Jenny Coetzee who advised her to apply for a teacher's position in the school.



5. By her application, the Claimant submitted her curriculum vitae to the Managing Director. The Claimant was thereafter interviewed by the 2nd Respondent, serving as a recruitment agency.
6. The Claimant states that she provided all the requisite materials as sought by the 2nd Respondent over a series of WhatsApp interviews. On 15th August 2018, the Claimant executed a contract of employment with the 1st Respondent, which provided for:
 - a. A two-year contract as an English Teacher and Class Teacher for Year 9;
 - b. 3 months' termination notice or salary in lieu, save for summary dismissal for justifiable reason;
 - c. Summary dismissal on account of justifiable gross offences within the law.
7. The Claimant commenced her employment on 1st September 2018. However, on 4th October 2018, the Human Resource Manager, Beth Waititu issued her with a show cause letter, pursuant to allegations made by students against the Claimant.
8. The Claimant responded to the show cause letter, after which she was invited for a disciplinary hearing on 18th October 2018. She complains that at the hearing, the 1st Respondent abandoned the matters raised in the show cause letter and instead accused the Claimant of withholding material employment records and presenting inaccurate information to the recruitment agency.
9. The Claimant claims to have been presented with a document indicating that her previous employment with Oshwal School had been terminated on integrity issues, with the following concerns:
 - a. Comes across as headstrong;
 - b. Element of arrogance;
 - c. Abrasive personality;
 - d. Not good in a team;
 - e. Lacks emotional intelligence;
 - f. Not suitable to work with children and young persons.
10. On 26th October 2018, the Claimant was issued with a summary dismissal letter, alleging that she 'was deliberately dishonest and failed to uphold the required transparency and integrity during the recruitment process'.
11. The Claimant avers that the whole process leading to the decision to summarily dismiss her, and the allegations forming the basis of and the reason for the dismissal were false, illegal and unfair for the following reasons:
 - a. The Claimant was taken through a disciplinary hearing on the basis of matters unknown to her, and for which no charges against her had been drawn and presented to her in advance, and for which she had not been given a reasonable opportunity to prepare her defence;
 - b. Having abandoned the contents of the notice to show cause and the students' allegations going into the disciplinary hearing, the Respondent had no cause against the Claimant which could have been legally pursued;
 - c. Both the 1st and 2nd Respondents did not specify which material information had been requested for and on which the Claimant either failed to disclose or gave false information;



- d. The 1st Respondent never took any initiative to verify the allegations by the 2nd Respondent, with the Claimant or any other sources, including Oshwal Academy, before reaching the decision to summarily dismiss the Claimant;
 - e. The 1st Respondent acted on fabricated and unsubstantiated claims, resulting in the Claimant losing her employment on hearsay and innuendo, illustrating a premeditation on the part of the 1st and 2nd Respondents;
 - f. As proof of the reason being premeditated, the 1st Respondent employed another teacher next Monday after sending the Claimant away on Friday.
12. The Claimant further complains that the publication of the information as contained in the document shown to her and other persons at the hearing, and the issuance of the dismissal letter defamed her among other teachers, staff members, her friends and family.
 13. The Claimant adds that in perpetuation of the defamation, the 1st Respondent continued to give negative references to prospective employers, with one such negative reference being given to Greensteds International School, where the Claimant lost an employment opportunity.
 14. The Claimant therefore seeks the following remedies:
 - a. A declaration that her summary dismissal by the 1st Respondent was wrongful and unfair;
 - b. A declaration that the information published and relied upon by the Respondents was false, defamatory and libellous, entitling the Claimant to damages for defamation;
 - c. A declaration that the Claimant is entitled to her terminal benefits and to both compensatory and exemplary damages, as hereunder:
 - i. 3 months' salary in lieu of notice.....Kshs. 1,110,000
 - ii. 12 months' salary in compensation.....4,440,000
 - iii. Exemplary damages.....4,440,000
 - d. An order directing the 1st Respondent to withdraw the dismissal letter, accompanied by an apology, expunging of all records referring to the dismissal and issuance of a clean certificate of service;
 - e. An order directing the 1st Respondent to retract any adverse and negative recommendations issued to third parties and prospective employers;
 - f. An order of injunction to restrain the 1st and 2nd Respondents from any further publication of false and defamatory statements against the Claimant to any third parties, other schools and employers;
 - g. Costs plus interest.

The 1st Respondent's Case

15. In its Statement of Response dated 18th October 2019, the 1st Respondent asserts that it is a separate entity from the 2nd Respondent, without any correlation in business and in practice. The 1st Respondent states that the 2nd Respondent was only engaged to assess the Claimant's job application and to carry out interviews on behalf of the 1st Respondent.



16. The 1st Respondent avers that vide an employment contract dated 13th August 2018, the Claimant was employed as a Teacher for a term of two (2) years, effective 1st September 2018. The appointment was subject to a six (6) months' probation period.
17. The 1st Respondent further avers that the Claimant was employed on the understanding that all the documents presented by her at the job application and interview stage, were accurate with no misrepresentation whatsoever.
18. The 1st Respondent states that upon the Claimant's employment and during her probation, complaints were received from several students, alleging that they had been bullied and/or harassed by the Claimant.
19. The said students documented their complaints, pointing out specific accusations including; use of foul, abusive and disrespectful language, rudeness, constant harassment and bullying.
20. The 1st Respondent was prompted to carry out investigations into the allegations, with the Claimant being duly informed of the allegations made against her.
21. According to the 1st Respondent, the investigations ascertained that the allegations against the Claimant were well founded and were substantiated by oral evidence tendered by several students.
22. The 1st Respondent claims that in the course of the investigations, it came to learn that the Claimant had made misrepresentations in her profile presented during the recruitment exercise. Specifically, the Claimant is said to have concealed pertinent and deal breaker facts concealing her past work experience. In this regard, the Claimant is accused of:
 - a. Failing to present an updated and accurate curriculum vitae, as required and requested during the recruitment exercise;
 - b. Failing to disclose accurate and true details of her past employment record; and
 - c. Failing to disclose that she had been terminated from her immediate former job and failing to disclose that the reasons for the termination were related to her competency and general conduct towards students.
23. Based on the foregoing, the Claimant was issued with a show cause notice dated 4th October 2018. The 1st Respondent states that the notice contained the allegations levelled against the Claimant, together with the evidence tendered against her. The Claimant was required to respond to the show cause notice by 8th October 2018.
24. By a subsequent letter dated 15th October 2018, the Claimant was invited to a disciplinary hearing scheduled for 18th October 2018, which she attended in the company of an employee of her choice. The 1st Respondent states that the Claimant was accorded ample opportunity to respond to the allegations levelled against her.
25. The 1st Respondent adds that at the hearing, the Claimant was informed of new evidence that had come to the attention of the 1st Respondent. It was therefore agreed that the hearing be adjourned to 26th October 2018, to accord the Claimant enough time to respond to the new evidence.
26. It is pleaded that after the hearing, it was found that the Claimant had been dishonest as follows:
 - a. The Claimant had indicated in the recruitment form that, at the time of recruitment, she was working at Premier School as the Director of Student Advancement while in reality, she had



left Premier School and at the time of recruitment, she had just been terminated from Oshwal Academy;

- b. The Claimant had indicated in the recruitment form that her salary at Premier School was Kshs. 365,000 while it was established that her salary was Kshs. 180,000.
27. The 1st Respondent made a decision to summarily dismiss the Claimant and a letter to that effect was issued on 26th October 2018.
28. The 1st Respondent denies the Claimant's claim for defamation, stating that all the information used comprised of statements of truth. The 1st Respondent maintains that the Claimant has not pleaded any particulars of defamation.

The 2nd Respondent's Case

29. In its Memorandum of Response dated 10th May 2021, the 2nd Respondent admits having been the 1st Respondent's human resource recruitment agent, in the process leading to the Claimant's employment by the 1st Respondent. The 2nd Respondent admits that the 1st Respondent sought its services in interviewing the Claimant.
30. The 2nd Respondent accuses the Claimant of deliberately suppressing and misrepresenting material facts regarding her employment record and history, with intent to deceive and/or mislead the 2nd Respondent.
31. The 2nd Respondent states that subsequent to a successful interview of the Claimant and recommendation to the 1st Respondent for employment, the 2nd Respondent discovered that the Claimant had misrepresented information relating to her employment status and last salary in her previous employment.
32. The 2nd Respondent avers that the Claimant misrepresented that at the time of the interview, she was working at Premier School as Director of Student Advancement and Teacher of English and Literature. The 2nd Respondent states that this information was false as the Claimant, had at the time, left Premier School and joined Oshwal Academy, where her employment had been terminated.
33. The Claimant also misrepresented that her last salary at Premier School was Kshs. 365,000 while in fact her salary at the time of leaving the said School was Kshs. 180,000.
34. The 2nd Respondent maintains that the above non-disclosure and misrepresentation of facts was material in the 2nd Respondent's decision to recommend employment and the terms thereof. Consequently, the 2nd Respondent withdrew its recommendation of the Claimant for employment by the 1st Respondent.
35. The 2nd Respondent asserts that it was not a party to the employment contract between the Claimant and the 1st Respondent. The 2nd Respondent pleads that its services to the 1st Respondent ended after submitting the interview marks and recommendation.
36. The 2nd Respondent denies authoring any unauthenticated or unsigned document in relation to the Claimant. The 2nd Respondent maintains that it did not take part in the Claimant's dismissal.
37. The claim for false publication against the Claimant is denied. The 2nd Respondent denies any malice and pleads privilege, justification and fair comment with respect to any information submitted to the 1st Respondent, in the course of business.



38. The 2nd Respondent states that the information given by way of recommendation and withdrawal thereof was given in confidence and upon fair assessment.
39. The 2nd Respondent challenges the jurisdiction of this Court to determine the claim of defamation.

Findings and Determination

40. There are two (2) issues for determination in this case:
- Whether the termination of the Claimant's employment was lawful and fair;
 - Whether the Claimant is entitled to the remedies sought.

The Termination

41. The Claimant's employment was terminated by letter dated 26th October 2018, stating as follows:

"Dear Evelyne

Re: Termination Of Employment For Gross Misconduct

We refer to the disciplinary hearings held on 18 and 26 October 2018 at the Crawford International School, and which was attended by yourself, your witness, the School's Management team and the Human Resources Manager.

Having reviewed the information provided during your recruitment, we have established that you withheld material employment record and knowingly went ahead to present inaccurate information to the recruitment agency.

Crawford International School is an institution that upholds the highest level of honesty and integrity to all employees.

Upon consideration of all facts, circumstances as well as representations during the said meetings, we have concluded that you were deliberately dishonest and failed to uphold the required transparency and integrity during the recruitment process.

Accordingly, your employment is hereby summarily dismissed effective Friday, 26 October 2018.

Kindly therefore clear with the Human Resources department by close of business, 26 October 2018. Your dues will be computed as per your Employment Contract and the [Employment Act](#), upon successful completion of handover.

As stipulated in the [Employment Act](#), 2007 you are free to appeal within 7 days of the date of this letter. The appeal would be handled by two executives from AdvTech; details as follows:

- Mr. Jaco Lotz, International Business Development Executive,
Email: jlotz@advtech.co.za
 - Dr. Siza Majola, Group HR Executive
Email: smajola@advtech.co.za
- Yours sincerely,
(signed) (signed)
Jenny Coetzee Beth Waititu



42. By this letter and other evidence before the Court, the Claimant was accused of withholding material employment records and presenting inaccurate information in the course of recruitment.
43. In particular, the Claimant had indicated her immediate last employer as Premier School, leaving out her stint at Oshwal Academy from where she had been dismissed. Additionally, the Claimant had given her salary at Premier School as Kshs. 365,000 while the correct salary was Kshs. 180,000.
44. While the Claimant did not deny the foregoing omissions and misrepresentations, she complained that these allegations did not form part of the charges placed before her for response.
45. It is on record that at the initial disciplinary hearing on 18th October 2018, the Claimant was informed of new evidence that had come to the attention of the 1st Respondent. As a result, the disciplinary hearing was adjourned to 26th October 2018 to allow the Claimant an opportunity to respond to the emerging evidence.
46. In my view, the new evidence was not remote to the initial allegations brought against the Claimant, by way of complaints by students. I am also satisfied that the Claimant was availed adequate opportunity to respond to this part of the evidence.
47. In adjudicating claims of unlawful termination of employment, the Court is required to answer the twin questions as to whether there was a valid reason for the termination, and if due process was observed in the termination transaction.
48. Regarding the reason for termination, Section 43 of the [Employment Act](#) requires the employer to establish a reason that would cause a reasonable employer to terminate employment.
49. In *Zeddy Cheronoh Sambu v National Oil Corporation of Kenya* [2022] KEELRC 743 (KLR) my brother Dr. Gakeri J held that a false salary figure presented by a prospective employee is a valid reason to deny employment. It would follow logically that an employee who is on-boarded on the basis of a fictitious salary figure may be removed from employment on this account.
50. In the persuasive decision in *Mckinley v B.C. Tel* (2001) 2 S.C.R. 161 the Canadian Supreme Court stated the following:

“Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee’s dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent in the work relationship, or is fundamentally or directly inconsistent with the employee’s obligations to his or her employer.”
51. The non-disclosure and misrepresentation by the Claimant, which has been discussed in the foregoing part of this judgment, was in my view, in the realm of a deal-breaker. One can therefore safely say that the Claimant obtained employment by deceit and the employer was within the law to terminate the employment on this ground.
52. With respect to the question of procedural fairness, there is evidence that the Claimant was issued with a show cause notice and when new evidence was discovered, she was given extension of time to respond. Overall, I have no reason to fault the conduct of the disciplinary proceedings.



53. Consequently, I find and hold that the termination of the Claimant's employment was substantively and procedurally fair. The claims for compensation, notice pay and exemplary damages are therefore without basis and are dismissed.
54. As held in *John Ward v Standard Limited* [2006] eKLR for a claim on defamation to succeed, particulars of the actual statement complained of must be clear. The Claimant failed to achieve this standard and the claims thereon fail and are disallowed.
55. Ultimately, the Claimant's entire claim fails and is dismissed with costs to the Respondents.
56. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF OCTOBER 2025

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JUDGE

Appearance:

Mr. Namada for the Claimant

Mr. Wachira for the 1st Respondent

Mr. Olala for the 2nd Respondent

