



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
MISC.CIVIL APPLICATION NO.117 OF 2003**

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW
AND
IN THE MATTER OF THE TEACHERS SERVICE COMMISSION ACT (CAP 212**

**LAWS OF KENYA)
AND
IN THE MATTER OF AN APPLICATION FOR CERTIORARI BY**

REPUBLIC APPLICANT

VERUS

THE TEACHERS SERVICE COMMISSION RESPONDENT

RULING:

The applicant PAUL OLWENY NGOWE has moved this court under Part 6 of Law Reform A, order 53 rules 3 & 7 of CPR and s.3A CPA seeking for an order of certiorari to be directed against the Teachers Service Commission (the Respondent) to remove into this court and quash the Respondent’s decision dated 27/2/2003 by which the applicant was dismissed from the Teaching Service.

The Respondent were served with the chamber summons on 9/10/03. It showed the hearing date as 3rd December 2003. However no reply was filled to the motion and were absent and unrepresented in the hearing date and the matter proceeded exparte.

In his supporting affidavit and submission by his counsel the applicant stated that he was employed as a teacher on 1/5/97 and since then taught in different schools.

On 21/6/02 he was served with a Notice dated the same date interdicting him from the service. The notice informed him that he had deserted his teaching duties and also forged a transfer letter. The last paragraph of the notice read:

“Before the Commission proceeds to investigate, consider and determine your case, you are invited to make a statement to the Commission in writing, which should be received by the Commission within 21 days from the date of this letter. Before your case is determined you will be given an opportunity of being heard by the Commission

in person.”

The applicant promptly on 28/6/03 wrote to the Respondent denying all the allegation. What remained therefore is for him to be called and given a hearing before a decision was made as per the notice. Subsequently the cause was set down for hearing several times but was always adjourned by the respondent. Finally a letter was sent to the applicant informing him the case will be heard on 27/2/2002. On that day he did not appear and a decision was made to dismiss the applicant from service. The applicant on receiving the decision wrote to the respondent and informed them that he received their letter inviting him for a hearing after the hearing date had passed. He therefore appealed and asked respondent to reconsider their decision but his appeal was rejected. It is the dismissal order he is now asking the court to quash.

Applicant as stated above said that he received the letter informing him of the hearing after the hearing day had elapsed. He submitted that it was against the rules of natural justice to have been condemned unheard.

Further it was submitted that the decision to dismiss him was irregular and unlawful as it was done under s.71(4) of the Code of Regulation which was not quoted on the interdiction notice.

As I stated the Respondent made no reply to the motion and I therefore do not have their side of the story. However from the annexures of the applicant, it is clear that the decision to interdicte him was done before he was heard. It is also clear that the matter had been fixed for hearing more specifically hearing had been scheduled for 19/9/2002 but the respondent cancelled it due to “some unavoidable circumstances.” It was then set for hearing on 6/12/02 but once again the respondent cancelled it for a similar reason. It was then scheduled for hearing on 16/1/2003. On that day it was deferred because of absence of witnesses. It was then set for hearing on 27/2/03 when the applicant failed to attend and decision was made. When he appealed and informed respondent that he did not receive the letter in time, the Commission through a letter dated 5/5/2003 rejected the appeal and told him they saw no reason why he never received the letter informing him of the date in time. The letter inviting him for the hearing is dated 10/2/02 – 17 days before the hearing date. However there is no indication when it was sent. Applicant states it was sent through ordinary mail. In absence of any response from respondent stating when the letter was actually sent, and knowing our postal system I think it is quite possible that the applicant received the letter late. He informed the respondent as much in his appeal but still they denied him a chance to be heard. I quite concur with the applicant that the respondent’s act of making a decision without hearing him is against the rules of natural justice. The applicant had already denied the allegation in writing.

The respondent themselves adjourned the hearing three times and the only time the applicant failed to appear they were quick to make a decision against him. His explanation as to his absence fell on deaf ears.

From the above therefore I find that the Respondent violated the rules of natural justice and will allow the application on that ground alone and order as follows”

(a) The order made by the respondent on 27/2/03 dismissing the applicant from Teaching Service do and is hereby quashed. (b) That the respondent do in the shortest time possible reconvene its disciplinary committee (tribunal) and hear the complaint against the applicant expeditiously after giving him adequate notice of the hearing date.

(c) The respondent to pay costs of this application.

It is so ordered.

KABURU BAUNI

JUDGE

9/2/04

Signed, dated and delivered on 9/2/04 in presence of the applicant.