



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL CASE NO.780 OF 1999

DAVID GACHOMO NJIRU PLAINTIFF

VERSUS

TEACHERS SERVICE COMMISSION & ANOTHER..... DEFENDANTS

RULINGS

The applicant was the subject of an investigation into his conduct under section 9(1) of the Teachers Service Commissioner Act in which it was alleged that he had had carnal knowledge of his pupil Poline Wambui on the 15th July, 1997 at around 8 a.m. in a maize plantation around Kianyambo Primary School. The substance of the charge is contained in a letter of interdiction dated the 15th December, 1997 in which the question of whether the applicant's name should be removed from the register of Teachers was to be investigated. The applicant was invited to make a statement in writing. He was informed that he would be given an opportunity of being heard in person by the Commission.

The Applicant made a written statement in which he denied the charge and sought to show that he and Poline Wambui were at the school assembly. He alleged that the Chairman of the School Committee and he were rivals for a piece of farm land. The hearing was conducted and the applicant proved found guilty of the charge and there upon it was determined that he should be dismissed from the teaching service and his name should be removed from the Register of Teachers.

The Applicant now applies to this court for the following relief:

- (i) An order of Certiorari directed at the Teacher Service Commission and Teachers Service Appeals Tribunal to remove into the High Court and quash their proceedings and Judgments/decisions in Disciplinary Case No.869/97.
- (ii) An order of mandamus directed at the Teachers Service Commission to reinstate the applicant in employment and reinstate his name in the Register of Teachers

His grounds are contained in his Amended Statement pursuant to order 53 rule (1) and (2) of the Civil Procedure Rule.

The proceeding before the Commission are contained in the annexure to the affidavit of Jehoshaphat Maroro State counsel who appeared for the Commission sworn on the 1st October, 1999. The substance of the proceedings is contained in a letter dated the 13th August, 1999 addressed to the Permanent Secretary Ministry of Education and Human Resource Development.

The letter set out the evidence of Poline Wambui and of two other pupils Eunice Wawira and Alice Wamuyu who were called as witnesses and who gave evidence that corroborated the story of the complainant. In the evidence before it the panel found the applicant guilty of the charge.

They considered the Applicant's statement which he made before the panel decision is that both the Teachers Service Commission and the Teachers Service Appealed Tribunal, to whom the Applicant appeal and which upheld the decision of the Commission, did not exercise due regard to the available evidence in adjudicating the matter in question. In more particular the appellant complained that the rules of Natural Justice had been violated by not being allowed to call all those witnesses the Applicant wished to call and by denying the applicant an opportunity to cross examine the witness.

Section 9(2) of the Teachers Service Commission Act are as follows:

(a) Shall inform the person concerned of the nature of the allegation made against him, shall afford that person adequate time for the preparation and presentation of his defence, and shall afford him the opportunity of being heard in person.

(b) May act on general evidence or statements relating to the character or conduct of the person concerned and shall not be bound to receive and consider only evidence admissible in a court of law.

As can be seen no complaint is made of the provision laid down in sub-section (a). The Applicant was given time to prepare and present his case and was allowed the opportunity of being heard in person.

Sub section (b) permits the Commission and the Appeals Tribunal to act on general evidence and statements relating to the character or conduct of the person concerned and is not bound to receive and consider evidence admissible in a Court of law.

A court is concerned in a case of this nature to examine the record of the proceedings to determine whether or not what was done was fair to the person concerned.

With regard to the complaint that this Applicant was not permitted to cross-examine the witnesses it is to be borne in mind that these are young students and that cross examination of these by one of their teachers could cause great distress. If however, failure to allow such cross-examination could lead to the person concerned being unfairly treated. This would be a good reason for complaint. Having examined the proceedings it does not appear that any prejudice occurred as a result of the Appellant not having been allowed to examine the witnesses. The crux of the matter was the commission's belief or otherwise in the truth of the allegations. They had both the Appellant and the complainant and her witness as before them and were able to judge what was the truth or not. The appellant was allowed to have two witnesses give evidence before the Appeals Tribunal but the Tribunal did not take their evidence into account for the reasons given. This is used to show that the second Respondent exhibited extreme bias against the Applicant. This does not appear to me to be the case and I am of the view that the appellant had a fair hearing before both the Commission and the Appeals Tribunal.

The Appellant also alleged that the proceedings and decisions of the Respondent were travelled of by matters extraneous to the matters in hand, malice and ill will. No particulars of these allegations are contained in the statement. I presume that extraneous matters may refer to the fact that a previous charge of a similar nature had been made against the Applicant as a result of which he had been interdicted dismissed and removed from the Register earlier.

The provisions of sub-section (b) of the Act permits the Commission to have regards to the character or conduct of the person concerned. It appears therefore to be a relevant fact that there had been a previous similar charge for the Commission to consider in their deliberations in this case.

Having considered the evidence adduced before the Commission and the Appeals Tribunal and bearing in mind the serious effect on the Applicants career and employment the findings imply nevertheless I think

that the Commission and Tribunal carried out the proceedings in a fair manner and the allegations against them are untouched and as such I refuse to make the order sought for.

The Applicant will pay the Respondent's costs.

Dated and delivered at Nairobi this 11th day of October, 2001

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE