

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E138 OF 2024**

**BETHE MUTANU MUTUA.....**  
**CLAIMANT**

**VERSUS**

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

**JUDGMENT**

**Introduction**

1. For determination is the Claimant's Statement of Claim dated 19<sup>th</sup> February, 2024, and filed on 29<sup>th</sup> February, 2024. Under the claim, the Claimant seeks the following reliefs as against the Respondent:-

- i. An order declaring the Respondent's decision to remove the Claimant from the register of teachers as unlawful, null, and void.
- ii. An order directing the Respondent to reinstate the Claimant to the register of teachers with retroactive effect from the date of her unlawful removal, with full benefits and entitlements.
- iii. An order directing the Respondent to post the Claimant to a suitable teaching position, preferably at Kitui Teachers College or Kyanika Secondary School.

- iv. Compensation for the lost income and other benefits suffered by the Claimant as a result of her unlawful removal from the register of teachers.
  - v. General damages for the financial and emotional hardship suffered by the Claimant.
  - vi. Costs of this suit.
2. The Respondent entered an appearance and filed a Response to the Statement of Claim dated 25<sup>th</sup> June, 2024, denying the Claimant's claim.
  3. The Claimant's case was heard on 6<sup>th</sup> May, 2025, when she testified in support of her case, adopted her witness statement, and produced her list and bundle of documents as exhibits in the case.
  4. The Respondent's case was subsequently heard on 30<sup>th</sup> September, 2025, when one Perpetua Wairimu Ngugi testified in support of the Respondent's case, adopted her witness statement, and produced the Respondent's list and bundle of documents as exhibits in the matter.
  5. Submissions were filed for both parties, and which have been duly considered.

### **The Claimant's Case**

6. The Claimant states that she has been a permanent and pensionable graduate teacher with the Respondent since 1995, initially posted to Kalimani Secondary School to teach Mathematics.

7. It is her case that in early 2015, with the Respondent's approval, she took an unpaid study leave to pursue a PhD at Kenyatta University under a sponsorship that lasted until 10<sup>th</sup> October, 2020, during which she developed severe Rheumatoid Arthritis, which required regular physiotherapy and which significantly impaired her health and academic progress.
8. The Claimant states that despite her efforts to continue treatment and recovery, her condition prevented her from completing the PhD program by the time her contract ended. She avers that on seeking medical advice, and due to her deteriorating health, she was unable to request deployment back to the Respondent at the end of her study leave in October 2020.
9. It is the Claimant's further case that after continued medical treatment, a medical report dated 27<sup>th</sup> May, 2022, confirmed that her health had significantly improved and she was fit to resume duty. She states that on 26<sup>th</sup> May, 2022, she contacted the Respondent seeking reinstatement and requested deployment to either Kitui Teachers College or Kyanika Secondary School.
10. The Claimant avers that on 11<sup>th</sup> October, 2022, the Respondent informed her that she had been removed from the teachers' register, which decision she avers was made

without due process and without considering her medical situation.

11. The Claimant asserts further that she never received any termination letter and was instead removed from the payroll, which ultimately resulted in her removal from the teachers' register.

12. The Claimant argues that the Respondent's actions in removing her from the payroll and teachers' register were unlawful and unfair. She asserts that the Respondent failed to consider her medical condition, which reasonably prevented her from seeking redeployment on time, and that she was denied due process, including the right to be heard.

13. The Claimant contends that the Respondent's actions violated the principles of natural justice and the Teachers Service Commission Act, 2012, and amounted to discrimination based on disability.

14. She further states that the decision was arbitrary, unreasonable, and ignored her long, dedicated service, resulting in significant financial and emotional hardship.

15. The Claimant states that the unlawful and unfair termination caused her several forms of harm, including loss of income due to removal from the payroll, psychological distress arising from anxiety and emotional strain, and reputational damage affecting her professional standing.

16. It is her case that the Respondent's actions deprived her of her livelihood, prompting her to file this suit seeking appropriate compensation.
17. She avers that despite her repeated requests for reinstatement, the Respondent has failed or refused to act on her claims.
18. On cross-examination, the Claimant confirmed that she is aware of the regulations for teachers and further that the Code provides guidelines to be followed when a teacher is sick. She confirmed that she was in the circumstances required to apply for sick leave, but did not know that she could send a relative or a colleague to report to the employer.
19. It is her testimony that she did not know that she was supposed to report back within 6 months for deployment. She further confirmed that she had no documents showing that she reported her illness to the Respondent/employer.
20. It is her position that she was later released to work at SEKU, but that the release letter was for study leave without pay and that the letter instructed her to report to the Respondent once SEKU confirmed her. She avers that her contract with SEKU was tied to her finalizing her Ph.D. studies, but which she did not finish due to illness.

21.It is her evidence that she continued working for SEKU on annual contracts whose renewal was determined by her progressing her Ph.D. She avers that she last had a contract with SEKU in 2022.

22.The Claimant further told the court that she only returned to the Respondent when she wrote a letter dated 26<sup>th</sup> May, 2022, while she did not have any contract between September 2020 and May 2022.

23.She further told the court that she has no proof that her letter of 26<sup>th</sup> May, 2022 was received by the Respondent. She further confirmed that she had no treatment sheets, discharge summaries, or prescriptions as proof that she had been unwell.

24.The Claimant finally told the court that three years had lapsed by the time she filed this suit.

25.The Claimant prays that the court allow her claim and award her the reliefs sought.

### **The Respondent's Case**

26.The Respondent states that the Claimant, as an employee of the Teachers Service Commission (TSC), was required to comply with the TSC Act, the Employment Act, the Code of Regulations for Teachers (2015), the Code of Conduct and Ethics, and related administrative circulars.

27. It is the Respondent's position that on 7<sup>th</sup> October 2013, the Claimant requested for an unpaid study leave to pursue a PhD at Kenyatta University while serving as a Tutorial Fellow at South Eastern Kenya University (SEKU). It avers that the Respondent Commission instructed the Claimant to complete the required study leave forms, but she failed to obtain institutional clearance before leaving her duty station. The Respondent states that as a result, the Claimant was cited for desertion of duty, and that following disciplinary proceedings, she was found guilty and suspended for three months.

28. The Respondent states that after suspension, the Claimant was posted to Chinga Boys Secondary School effective 2<sup>nd</sup> July 2015, but she did not report. It avers that she later renewed her request to be released to SEKU, but it was initially declined because she had not reported to her posting station, and was subsequently rerouted and posted to Kathome Secondary School, after which her request was eventually approved effective 1<sup>st</sup> November 2015.

29. It is the Respondent's case that the Claimant's release to SEKU was granted on contract terms, and her absence was treated as unpaid study leave, subject to the Code of Regulations for Teachers. It states further that the Claimant could not be permanently released because she was not eligible for onboarding into the university's federated superannuation system, which requires permanent and pensionable employment.

30. The Respondent further states that under the study leave rules, the Claimant was required to report back to the Commission for posting at least 30 days before the expiry of her study leave contract.
31. It avers that having secured a contract beginning 14<sup>th</sup> October 2015, she was obligated to either submit proof of permanent and pensionable employment at SEKU or report back to the Commission at least 30 days before 13<sup>th</sup> October 2016 if her contract was not renewed.
32. The Respondent states that the Claimant failed to provide proof of permanent and pensionable appointment at SEKU or any contract extension, despite being reminded through a letter dated 3<sup>rd</sup> September 2020. The Respondent avers that the Claimant did not respond until 26<sup>th</sup> May 2022, when she sought redeployment.
33. The Respondent further states that it reiterated the conditions of her release in a letter dated 11th October 2022 and informed her that she could not be reinstated, as she had effectively terminated her services by failing to report back after her contract ended. The Respondent avers that although the Claimant later claimed illness through letters dated 31<sup>st</sup> October 2022 and 1<sup>st</sup> March 2023, the Commission maintained its position in a letter dated 4<sup>th</sup> July 2023.

34. The Respondent argues that the Claimant's employment with SEKU ended on 10<sup>th</sup> October 2020, and her reappearance more than a year and a half later amounts to desertion of duty and voluntary termination of her employment. It further contends that she offered only a general medical report dated 27<sup>th</sup> May 2022, without evidence of illness during the period from October 2020 to May 2022. Additionally, the Respondent notes that the Claimant could have invoked Regulation 111(4) of the Code of Regulations for Teachers to have her former head of institution notify the Commission of her medical incapacity, but she failed to do so.

35. The Respondent states the Claimant's allegation of being removed from the teachers' register is false. It avers that the letter dated 11<sup>th</sup> October 2022 merely communicated that her request for reinstatement or redeployment had been denied and did not indicate removal from the register. The Respondent further clarifies that the Claimant was only removed from the payroll on 2<sup>nd</sup> November 2015 after she was approved for study leave without pay, but her name remained on the register of teachers, and therefore, her request for reinstatement to the register is baseless.

36. The Respondent maintains that salary can only be paid for work performed, and since the Claimant was not working for the Commission, and was instead earning salary as a Tutorial Fellow at SEKU, she suffered no loss of income

attributable to the TSC, hence all the Claimant's prayers lack merit and urges that the suit be dismissed with costs.

### **Analysis and Determination**

37. Upon careful consideration of the parties' pleadings, the witnesses' oral testimony, and the parties' submissions, the following issues arise for determination:-

- i. Whether the Claimant was unlawfully removed from the register of teachers
- ii. Whether the Claimant's prolonged absence amounted to desertion of duty or was unlawfully terminated from service.
- iii. Whether the Claimant is entitled to the remedies sought

### **Whether the Claimant was removed from the register of teachers**

38. The Claimant alleges that she was removed from the register of teachers without due process. She contends that on 11th October, 2022, the Respondent informed her that she had been removed from the teachers' register, a decision she avers was made without due process and without regard to her medical situation, which reasonably prevented her from seeking redeployment on time.

39. On its part, the Respondent asserts that the Claimant was removed from the payroll since she was released to proceed on unpaid leave way back in the year 2015, but that she was not removed from the teachers' register, and their

letter of 11<sup>th</sup> October 2022 only conveyed refusal to reinstate her after lapse of her study leave.

40. Section 30 of the Teachers Service Commission Act, 2012, provides that removal from the register is a formal administrative act requiring clear communication and grounds such as professional misconduct.

41. The evidence before the court shows that the Claimant's study leave and contract with SEKU ended on 10<sup>th</sup> October 2020. It is also evident that the Respondent wrote to the Claimant on 3<sup>rd</sup> September 2020, reminding her to either provide proof of renewal of contract or report back 30 days before the expiry of her contract, which instructions the Claimant did not bother to respond to until 26<sup>th</sup> May 2022, nearly two years later.

42. The Claimant did not prove that indeed a removal order was issued by the Respondent under Section 30 of the TSC Act, or that she received such a decision.

43. Accordingly, I conclude that the Claimant's claim that her name was removed from the teachers' register is therefore baseless and unsupported.

**Whether the Claimant's prolonged absence amounted to desertion of duty or was unlawfully terminated from service**

44. The Claimant's study leave lapsed in October 2020, and she did not report to the Respondent for deployment for an

entire 19 months (Oct 2020 – May 2022). Further, although the Claimant claims to have been unwell, she did not produce medical evidence for the critical period of the alleged ailment, but instead, continued working at SEKU on annual contracts up to 2022, contrary to her obligation to return to the Respondent.

45. Regulation 129, of the Code of Regulations for Teachers (2015) provides that a teacher must report back 30 days before the expiry of study leave, and that failure amounts to absconding.

46. Further, Regulation 111(4) allows a colleague or relative to notify the Respondent of a teacher's illness where the teacher is too ill to submit a sick leave, and which the Claimant admits she did not do. The Claimant instead, relies on a single medical report dated 27<sup>th</sup> May 2022, confirming she was fit to resume work from 2022, and not that she was incapacitated from the year 2020 to 2022. In the case of ***TSC v WJ & Another [2021] eKLR***, the court held that medical incapacity as a defence must be substantiated with contemporaneous medical records.

47. The Claimant has therefore not led sufficient proof of medical illness as an excuse for her long absence.

48. The Respondent, in its letter of 11<sup>th</sup> October 2022, replying to the Claimant's request for deployment, explained why

she could not be reinstated. In ***Stanley Omwenga v TSC [2015] eKLR***, it was held that TSC is not obligated to hold a hearing where a teacher fails to report from study leave and cannot be contacted, as termination occurs by operation of the Code of Regulations for Teachers.

49. Further, in ***Judicial Review Misc App No. 85 of 2017, Republic v TSC ex parte Daniel Ng'ang'a***, it was held that a teacher who overstays study leave without reporting back is deemed to have left service voluntarily.

50. Again, in ***Peter O. Okeyo v TSC [2019] eKLR***, a teacher's failure to report back to work after study leave was upheld as constituting desertion of duty, and the termination was upheld.

51. It is evident that the Respondent did communicate with the Claimant, both before and after the expiry of her study leave. It is also clear that the Claimant failed to heed the instructions given by the Respondent/employer concerning her study leave, and only returned to the Respondent seeking to be deployed in May 2022 when her study leave lapsed close to 2 years earlier, and when her contract with SEKU was not renewed.

52. In the circumstances of this case, the Claimant cannot belatedly claim that she was not given due process. In my considered view, what the Respondent did in the circumstances was adequate.

53. In whole, I find and hold that the Claimant was not terminated, but she instead deserted duty.

**Whether the Claimant is entitled to the remedies sought**

54. Under her claim, the Claimant seeks an order declaring the Respondent's decision to remove her from the register of teachers as unlawful, null, and void, an order directing the Respondent to reinstate her to the register of teachers with retroactive effect from the date of her unlawful removal, with full benefits and entitlements, an order directing the Respondent to post the Claimant to a suitable teaching position, preferably at Kitui Teachers College or Kyanika Secondary School, compensation for the lost income and other benefits suffered by the Claimant as a result of her unlawful removal from the register of teachers, general damages for the financial and emotional hardship suffered by the Claimant and costs of this suit.

55. The Court has held that the Claimant was not and has not been removed from the Respondent's register of teachers, and on this account, her prayers for a declaration that her removal is unlawful and the order for her reinstatement to the register fail and are dismissed.

56. Further, the prayer for deployment is similarly not available to the Claimant on account of desertion of duty. The court has held that she was not terminated, but had voluntarily deserted and is therefore not entitled to be deployed.

57. The claims for compensation for the lost income and benefits, and general damages for the financial and emotional hardship suffered similarly fails on the basis that the Claimant continued working with SEKU up until May, 2022 and it was only when her contract was not renewed that she sought to return to the service of the Respondent. She did not in my view lose anything, and if she did, it was not on account of the Respondent, but her own doing.

58. The Claimant's case thus fails and is dismissed in its entirety.

59. I make no orders on costs.

60. Judgment accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Mwashemu present for the Claimant

Mr. Mulaku present for the Respondent

Ms. Esther S - C/A