



**Njoroge v Teachers Service Commission & another; Mwangi &
another (Interested Parties) (Civil Appeal 323 & 331 of 2019
(Consolidated)) [2024] KECA 1363 (KLR) (4 October 2024) (Judgment)**

Neutral citation: [2024] KECA 1363 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 323 & 331 OF 2019 (CONSOLIDATED)
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
OCTOBER 4, 2024**

BETWEEN

SAMUEL MAINA NJOROGE APPELLANT

AND

THE TEACHERS SERVICE COMMISSION 1ST RESPONDENT

MINISTRY OF EDUCATION 2ND RESPONDENT

AND

GRACE NJERI MWANGI INTERESTED PARTY

BOARD OF MANAGEMENT, THANGIRA UMOJASECONDARY

SCHOOL INTERESTED PARTY

*((Being an Appeal from the Judgment and Decree of the Employment and Labour Relations Court
of Kenya at Nyeri (Nzioki Wa Makau, J.) dated 15th May 2019 in ELRC No. 236 of 2016))*

JUDGMENT

1. Following the judgment and orders dated 15th May 2019 by the Employment and Labour Relations Court of Kenya at Nyeri (ELRC) (Nzioki Wa Makau, J.,) two appeals were filed. One was Civil Appeal No. Nyeri 323 of 2019 by the appellant Samwel Maina Njoroge against the Teachers Service Commission (1st respondent) and the Cabinet Secretary, Ministry of Education (2nd respondent) with the Board of Management, Thangira Umoja Secondary School as 1st interested party and Grace Njeri Mwangi as the 2nd interested party. The second appeal was Civil Appeal No. 331 of 2019 in which the Teachers Service Commission and Grace Njeri Mwangi were the 1st and 2nd appellants, respectively. The respondents were Samwel Maina Njoroge (1st respondent) and the Cabinet Secretary, Ministry of



Education (2nd respondent) while the Board of Management, Thangira Umoja Secondary School was the 1st Interested Party.

2. When the two appeals came before us for hearing, it was agreed by learned counsel Ms. Musyoka for Samwel Maina Njoroge and learned counsel Mr. Sitima for the Teachers Service Commission and Grace Njeri Mwangi, and an order was given, that the two appeals be consolidated since they arose from the same judgment, and the parties and issues were the same. In this judgment, the parties have been described in the same manner as in the Civil Appeal No. Nyeri 323 of 2019. For the record, the Honourable the Attorney General who represents the Cabinet Secretary and Ministry of Education was served with the appeals but did not file any response or submissions.
3. This is a first appeal. The responsibility of this Court is to reconsider all the evidence that was tendered before the trial court, evaluate it and draw its own conclusions while bearing in mind that it was the trial court that had the advantage of seeing and hearing the witnesses. (See *Selle & Another -vs- Associated Motor Boat Company Limited & Others* [1968]EA 123).
4. The background of this dispute was that Samwel Maina Njoroge (the appellant) was employed by the Teachers Service Commission (the 1st respondent) as a teacher. At the material time, he had been deployed at Thangira Umoja Secondary School in Murang'a County as the Principal. He was charged with the management and administration of the school. Between 22nd July 2016 and 26th July 2016, the students in the school went on strike. Following the strike, the 1st respondent's officials visited the school. They had allegedly received some anonymous letters to the effect that the appellant was sexually harassing girl students in the school, and that this was one of the reasons for the strike. Some girls recorded statements following interviews by the delegation from the 1st respondent.
5. On 8th August 2016, the appellant was issued with a handing over letter in which instances of the alleged sexual harassment were highlighted. The management of the school was handed over to the 2nd interested party. On 16th August 2016, the appellant was handed an interdiction letter dated 8th August 2016. The school account was frozen by the 1st respondent and his salary withheld. He was taken through a disciplinary process following which he was suspended for six (6) months.
6. In the appellant's claim before the ELRC, his case was that the respondents had proceeded against him on the basis of selective statements by some girl students that had been obtained under duress to say that he had harassed them; that the girls had sought to recant the statements but the respondents could not hear of this. He claimed that the investigations and the disciplinary process that he was taken through that led to the handing over, interdiction and suspension were unfair, unprocedural and offended the *Teachers Service Commission Act* and Code of Regulations, the *Employment Act* and *the Constitution's* Articles 47 and 237(2)(e). The claimant sought, inter alia, a declaration that the interdiction and suspension were unfair, illegal, null and void; that, upon such declaration, he be reinstated; that all his salary, allowances, benefits and dues be paid; and he be paid general damages, among other prayers.
7. The 1st respondent opposed the claim. It was stated that sometime in July 2016, an anonymous letter was received alleging that the appellant had sexually assaulted the students. On 2nd August 2016, a County Disciplinary Committee meeting was convened in the presence of the appellant who was allowed to respond to the allegations made against him. A case was established against him, and a decision was made to interdict him. A notice of interdiction was thereafter served upon him setting out the particulars of the allegations against him and he was required to respond to it within 21 days. After the interdiction, the appellant was to hand over to the 2nd interested party to pave way for further investigations.



8. Subsequently, the appellant was invited to attend a disciplinary hearing on 15th March 2017. It was the 1st respondent's case that the appellant's salary was lawfully withheld pursuant to Regulation 148(1) of the Teachers Service Commission Code of Regulations (CORT). That, the disciplinary process was conducted fairly and procedurally as the investigations were carried out and witnesses were interrogated in the appellant's presence; the appellant presented his case and challenged the adverse evidence; he was afforded the presumption of innocence before the decision by the disciplinary committee; and he was served with the letter of interdiction.

9. It is notable that on 28th February 2017 learned counsel Mr. Gisemba for the Attorney General informed the trial court as follows:-

“The CS Education does not intend to file defence or call witnesses. We do not oppose the suit. Claimant's prayers can be granted.”

The court then proceeded with the appellant's claim and the 1st respondent's defence to the claim.

10. In the judgment delivered by the learned Judge, after receiving evidence from the appellant and his witnesses and the 1st respondent and its witnesses, it was found as follows:-

“7. The provisions of the Code of Regulation for Teachers sets out elaborate processes to be undertaken in respect of teachers facing disciplinary cases. Whereas the charges against the Claimant were of a grave nature, the conduct of the matter left a lot to be desired. The investigative panel gave the Claimant a mere 20 minutes to present his defence and the notice to attend the disciplinary panel was less than the 30 days provided under the CORT. The 1st Respondent flouted its own manual in the haste to condemn the Claimant. Whereas the punishment meted out was in terms of the law and CORT, the Claimant has not been deployed subsequent to his punishment. This is contrary to his legitimate expectation. He was not issued with a letter as required under the CORT upon the expiry of the suspension. In the case before the court he sought relief regarding SACCO dues and interest on account of financial obligations. That relief is unavailable as the SACCO issue was never part of the process of the discipline case against him. The Claimant sought general damages. Ordinarily in this court, general damages are not granted though the law makes provision for such relief in certain circumstances. This is one of them as the 1st Respondent in conjunction with the 2nd Interested Party embarked on a process that was flawed whatever the merits of the complaints initially received. It was curious that the 1st Respondent did not avail the anonymous letter or leaflets that initiated the complaint. It is imperative that as the 1st Respondent exercises the prerogative to safeguard the learners under its care it does not infringe on the rights of others. In the case before me despite the sentence being served the Claimant has not been deployed as required. He was due to resume employment and in the finding of the court he is entitled to be reinstated on payroll from the date of expiry of his suspension, the 1st Respondent to issue him with a deployment letter and pay all his backdated salaries and allowances from the date of termination of his suspension to date. In addition, he will receive damages for the unlawful indefinite interdiction/suspension since the 1st Respondent has not reinstated the Claimant to its payroll since the conclusion of his suspension. He will also have costs of the



suit. The 2nd Respondent dodged a bullet and will not be liable for any of the payments due to the Claimant. As a parting shot, the Claimant is reminded of the sacred oath implicit in teaching that a teacher should never abuse the trust reposed in the said teacher as learners look towards the teacher for education and guidance. The principles enunciated by Mumbi J. in the case of *W.J. & Another v Astarikoh Henry Amkoah & Others* (supra) hold true as a teacher owes a greater duty of care towards students. The 1st Respondent on its part must sensitize its staff and the County Directors of Education countrywide to follow the law when executing its mandate in discipline cases against teachers to avoid situations where there is appearance of either hubris or flagrant disregard for the law and its own Code of Regulation for Teachers (CORT). In the final analysis I enter judgment for the Claimant against the 1st Respondent for:

- a. A declaration that the continued suspension of the Claimant despite his serving the sentence meted out by the disciplinary panel of the 1st Respondent is null and void and a deployment letter be issued to the Claimant with immediate effect;
- b. Immediate reinstatement of the Claimant to the 1st Respondent's payroll effective the date of termination of the 6 months suspension;
- c. Payment of arrears of salary from date of termination of the suspension to date;
- d. General damages of Kshs. 1,600,080/-
- e. Costs of the suit;
- f. Interest on the sums in c) and d) above at court rates from the date of judgment till payment in full. Only the sum in c) above to be subject to statutory deductions as per the provisions of Section 49 of the *Employment Act*, 2007.

It is so ordered.”

11. This is the judgment that aggrieved the appellant, and the 1st respondent and the 2nd interested party. In the appellant's memorandum of appeal dated 18th February 2019 the following were the grounds:-

- “ 1. That the Learned Judge erred in law and in fact in that all the circumstances the decision arrived at was wholly against the weight of the Law and evidence on record.
2. The Learned Judge erred in law and fact in holding that the punishment meted out against the Claimant was in terms of the Law and the Code of Regulations (CORT) for Teachers 2015 despite his finding that the 1st Respondent flouted its own manual CORT in the haste to condemn the Claimant and thus the 1st Respondent's conduct in the matter left a lot to be desired.
3. The Learned Judge erred in Law by failing to determine that the Appellants claim that his interdiction and suspension were irregular unprocedural and in



breach of the law as well as the Appellant's rights and rules of natural justice despite holding that the same were in blatant Breach of the COURT.

4. The Learned Judge erred in law and in facts by failing to consider the Appellant's evidence on record that his interdiction and suspension were illegal and unprocedural despite the overwhelming evidence adduced by the Appellant.
6. The learned Judge erred in arriving at a decision that the Claimant was entitled to be reinstated on payroll from the date of expiry of his suspension and not from the date of the interdiction despite faulting the entire process culminating in the appellant's interdiction and suspension.
7. The Trial Court erred in Law and in fact in failing to consider the claimant's uncontroverted evidence on record that he had since handed over Thangira Umoja Secondary School long before commencement of the cause and that the 1st Respondent's demand for him to hand over were malicious and only meant to embarrass and intimidate him.
8. The Learned Judge misapplied the law and evidence and failed to render justice by not addressing his mind as to the Claimant's innocence of the alleged sexual harassment claims despite there being evidence on record. 8.The Learned Judge erred in law and in fact by finding that the Appellant's claim for his SACCO dues and interest on account of financial obligations were never part of the discipline case despite the same having not been disputed by the 1st Respondent's and there being evidence that the SACCO dues arose as a result of the 1st Respondent's illegal and unprocedural withholding of the claimant's salary.
9. The learned Judge erred in law and in fact by finding that the continued suspension of the claimant was illegal yet failed to issue direction for respondent to unconditionally reinstate the appellant to his position prior to the suspension.
10. The Learned Judge erred in law and in fact by finding that the continued suspension of the claimant was illegal yet failed to issue directions for the Respondent to unconditionally reinstate the Appellant to his position prior to the suspension
11. The Learned Judge misapplied the Law and evidence by arriving at a decision that was wholly against the evidence adduced by the appellant in holding that the punishment and sentence served by the appellant was in terms of the law yet evidence adduced before the court was evident that there were no probable evidence to warrant this punishment and the procedure arrived at in determining the punishment was marred with a lot of irregularities.
12. The Learned Judge failed to accord the Appellant the justice he deserved and erred in law and in fact by failing to consider evidence of the alleged victims of sexual harassment who gave oral evidence in court and the same was uncontroverted.



13. The Learned Judge erred in law and in fact by failing to award the Appellant the monetary losses, he had incurred and suffered as a result of the unlawful and unprocedural interdiction and suspension which were specifically pleaded and evidence adduced before the court. The Appellant adduced evidence to the effect that had the 1st Respondent and not illegally and unlawful suspended him he would not have incurred the numerous financial losses.
 15. The learned Judge erred in fact and in law by failing to consider the fact that apart from loss of his income and other financial benefits, the Appellant had also lost privileges and benefits including but not limited to promotions that came with the position he held at the time of interdiction and subsequent suspension.
 16. The Learned Judge erred in Law and in fact by directing the 1st Respondent to pay the Appellant General Damages in the sum of Ksh.1,600,080 yet considering the injustice and embarrassment meted on the Appellant from the time of interdiction the said sum was inordinate too low in the circumstances.
 17. That the learned Judged erred in law and in fact in failing to accord the Appellant justice in respect to his pleadings and evidence by not granting orders protecting the Appellant from any further consequential decisions and orders by the 1st Respondent emanating from the flawed process which were issues and facts canvassed before the Trial court.
 18. The learned Judge erred in law and in fact by failing to consider the Appellant's submissions and decided case laws that the interdiction and suspension of the Appellant without even payment of his half salary was an unfair labour law practice and a breach of the provisions of *the constitution*.”
12. In the memorandum of appeal by the 1st respondent and the interested party, the following were the grounds:-
- “ 1) The learned Judge acted in excess of his Jurisdiction by determining and subsequently granting Orders which were neither pleaded in the body of the Claim by the 1st Respondent nor canvassed at trial thereby denying the Appellants the right to a fair hearing as provided Under Article 50 of *the Constitution*.
 2. The learned Judge erred in law and fact by admitting and making a finding on matters that were not properly before the Court and by so doing, appeared to set the agenda for the litigants in clear contravention of settled principles relating to pleadings and admissibility of evidence.
 3. The learned Judge misdirected himself by making an un-supported finding that the Appellants had disentitled the 1st Respondent of salaries when in fact:
 - a. The issue of salary and allowances following expiry of the “6 months’ suspension period” was neither pleaded nor urged or tested at the hearing of the Claim.



- b. The Parties neither, led evidence nor interrogated the specific issues on posting and payment of salary to the Claimant following expiry of the 6 months Suspension period.
4. The learned Judge misdirected himself in law and fact when he made and/or reached an unproven finding that the Appellants had failed and/or refused to give the 1st Respondent a letter of deployment following the expiry of the 6 months Suspension period.
5. The learned Judge erred in law and fact by directing the Appellants to pay the 1st Respondent General Damages in the sum of Kshs.1,600,080/= and by so doing reached a finding that contravenes the Employment Act and Jurisprudential practice in the award of Reliefs in the Employment and Labour relations matter.
6. The learned Judge erred in law and fact when he failed to appreciate and/or pay attention to: substantial Issues of law and fact, the evidence and other materials tendered by the Appellants to demonstrate that the offence by the 1st Respondent was founded on an act of gross professional misconduct, and in so doing diminished the mandate of the 1st Appellant to investigate and punish an errant teacher, the 1st Respondent.
7. The learned Judge erred in law and fact when he failed to appreciate and/or pay attention to the nature of Offence the 1st Respondent was accused of and called to answer, and in so doing failed to protect and promote the best Interests of Children/learners in accordance with Article 53 of the Constitution.
8. The learned Judge erred in law and fact in arriving at a decision, which was contrary to the law, facts, and the body of the evidence produced, submissions, authorities and judicial precedent tendered before Court.
9. The learned Judge erred in law and fact when he held that the 1st Appellant denied the 1st Respondent a fair hearing, thereby failing to appreciate, on the basis of the evidence presented, that:
 - a. The 1st Respondent was accorded a fair opportunity to defend himself.
 - b. The action against the 1st Respondent followed due process, was fair, lawful and Constitutional as It fell within the definition and thresholds for disciplinary process under Contract Law.”
13. In the submissions by learned counsel for the appellant, once the trial court found that the 1st respondent flouted its own CORT and that the disciplinary process that was conducted against him was flawed from the beginning and culminated in his interdiction and suspension, it was wrong for the court to uphold the same interdiction and suspension.
14. Reliance was placed on the decisions in Onyango Oloo -vs- Attorney General [1986-1989] EA 456 and Judicial Service Commission -vs- Daniel Vihinja [2020]eKLR for the holding that a decision made in breach of the rules of natural justice cannot be cured by holding that it would be right since if the



principles of natural justice are violated, it matters not the same decision would have been reached following such violation to be null and void. This is what learned counsel submitted:-

“8.....once the trial court found that the 1st respondent in an effort to condemn the appellant proceeded in blatant breach of the Law and laid down procedures of practice, the Court ought to have arrived at a decision that whatever decision was arrived at by the 1st respondent through an irregular process was null and void.”

15. Learned counsel submitted that, on the evidence, the appellant was given only 10 minutes to the appointed time when called upon to appear to answer the allegations of sexual harassment, that thus contravened Regulation 146(6)(c) of the CORT that allowed him at least seven (7) days. Further, that under Regulation 143(3) of the CORT the County Director was required, when instituting investigations, to liaise with the Board of Management of the School, which was not done. The Chairperson of the Board had testified to say that the Board was not involved in the investigations. The investigations report was supposed to be presented to the Board, which was not done, it was submitted.
16. Of importance, Ms. Musyoka submitted, at the center of the disciplinary process was how the complaints of sexual harassment had originated. The witnesses of the respondents could not agree on whether they had received “an anonymous letter” received at the County Office, or an “anonymous note” posted by mail, or “leaflets posted by stakeholders,” or “many letters written”. More serious, counsel went on, was the fact that none of the letters, notes or leaflets were handed over to the appellant during the investigations, and neither was they produced in court.
17. If the interdiction and suspension were irregular and unlawful, it was argued, then the appellant was entitled to be paid his salary and dues, and compensated as was pleaded in the amended statement of claim.
18. According to learned counsel for the 1st respondent and 2nd interested party, the investigations were conducted in compliance with the CORT, the appellant was invited to appear before the investigations panel and was given an opportunity to respond to the allegations. It was submitted that there was sufficient evidence implicating the appellant with sexual harassment, and therefore that the interdiction and eventual suspension were merited. Consequently, it was argued, the finding that there was a breach of regulations in the process leading to the interdiction and suspension was made in error.
19. The trial court found that despite the appellant having served the suspension, he had not been deployed or reinstated on the payroll, and that his dues had not been paid. Learned counsel Mr. Sitima submitted that the issue of the appellant not being given a letter of deployment after the expiry of the six months, or the issue of his being returned to the payroll to be paid his salary and dues were not pleaded in the amended statement of claim. These issues did not receive any evidence from the appellant or rebuttal from the respondents, and ought not have been the subject of decision in the judgment.
20. Counsel relied on *Caltex Oil (Kenya) Limited -vs- Rono Limited* [2016]eKLR and *Aga Wanjiru Mwaniki -vs- Jane Wanjiru Mwaniki* [1997]eKLR. In the latter case, this is what the Court observed:-

“In the present case the issue of revocation of the grant was neither raised nor canvassed by any party. Nor was it amongst the issues before the court. With respect, it was not open to the learned Judge in this case to deal with the issue. If this issue had to be dealt with, he should have invited the advocates for the parties to make submissions on it. This was not done. A principle of natural justice that parties should be heard before being condemned was ignored and a decision reached in defiance thereof. Such a verdict cannot be entertained.”



21. The learned Judge granted general damages of Kshs.1,600,000.00 for unlawful indefinite interdiction/suspension since the 1st respondent had not reinstated the appellant to its payroll after the conclusion of the suspension. Learned counsel Mr. Sitima submitted that, first, the issues of reinstatement or non-payment of salaries and dues were not pleaded, and no evidence had been tendered on them. Secondly, it was submitted, that there is a general rule that general damages are not recoverable in cases of alleged breach of contract. (See Kenya Tourist Development Corporation - vs- Sundowner Lodge Limited [2018]eKLR).
22. It was argued that since damages arising from breach of contract are usually quantifiable, general damages cannot be awarded as that would amount to duplication. Learned counsel cited to us the decision of this Court in *Walter Musi Anyanje - vs- Hilton International Kenya Ltd & Another, Civil Appeal No. 269 of 2003* in which it was observed as follows:-

“Is an employee whose services have been terminated entitled to general damages? This Court in Kenya Ports Authority -vs- Edward Otieno, Civil Appeal No. 120 of 1997 drawing support from the case of Addis -vs- Gramophone Company [1909] AC 458 emphatically stated that there can be no general damages in respect of suits based on termination of employment contract since the relation of the parties to such contract is contractual and thus terminable only under the terms of the same contract.”
23. We have considered the record and the judgment by the learned Judge, the grounds of each appeal and the rival submissions. We acknowledge that the 1st respondent was clothed with the constitutional and statutory powers to deal with, and discipline, an errant teacher. We are called upon to determine whether, given the facts of this case, the investigations and disciplinary process that the appellant was taken through was in accordance with the law and laid down procedure. The second question is whether the awards by the learned Judge were based on the pleadings and/or evidence tendered.
24. The record shows that following the strike at the school, on 25th July 2016 a team of sub-county directors and other officials of TSC (1st respondent) came to the school. They had been directed by the TSC County Director to come and investigate what was happening in the school. The officials included Fredrick Mwanika Muthuka (Muranga South TSC Sub-County Director), Grace Mwangi (TSC Sub-County Director for Kahuro), Joseph Kariuki (TSC Sub-County Director for Mathioya), Jackline Kariui (Sub-County Human Resource Officer for Mathioya) and Richard Wakiria (Sub-County Officer for Kahuro). These officials came because the County Director of TSC Murang’a had received anonymous information that the appellant was sexually harassing the girls in the school. This was a mixed school. The information had names of the girls that the appellant had allegedly sexually harassed. The officials had the girls called out and each given foolscaps to go and write a statement about what they knew regarding the allegations against the appellant.
25. Further statements were obtained from other students and from Guidance and Counselling teachers Catherine Njambi and Nahashon Robert Maina. Lastly, statements were taken from the appellant and his deputy Grace Njeri Mwangi (2nd interested party). The appellant, in his written statement, denied the allegations that he had been sexually harassing the girls. The girls had written that they would, each separately, be called to the appellant’s office where he would touch them, including touching their breasts, and saying that he wanted to sleep with them. The officials wrote a report in which they concluded that the appellant was professionally misconducting himself, and recommended disciplinary action. The report was handed over to the County Director who formed a team to go back to the school on 2nd August 2016 for further investigations.



26. The team of investigators included the above officials, and others who included Martha Mbugua (Deputy County Director), Virginia Munene (Sub County Human Resource Officer Muranga South) and Virginia Kariuki (Quality Assurance Standards Officer). The Chair was the County Director, Jane Njagi. Investigations were conducted which entailed the evaluation of the evidence. A report was generated on 2nd August 2016 that recommended the interdiction of the appellant for immoral behaviour. The appellant was interdicted and the school handed over to the 2nd interested party to take over as the Principal.
27. Following the interdiction, a TSC panel was constituted under Commissioner Twahiri. The panel convened on 15th March 2017 at Murang'a. Witnesses testified, as did the appellant. At the conclusion of the hearing, the appellant was suspended for six (6) months without a salary. According to Fredrick Mwanika Muthuka, the appellant was posted to Gaichanjiri Secondary School in Kandara after the suspension. He was expected to go to the office of the 1st respondent to pick the letter of posting, but that he did not.
28. According to the 1st respondent, the appellant was taken through a regular and lawful process that accorded with the Act and Regulations. The appellant, on the other hand, took issue with the entire process. First, that the evidence of the witnesses called by the 1st respondent was unclear about how the County Director for Murang'a had received the sexual harassment report. The witnesses talked about "an anonymous letter received at the County Office", "an anonymous note sent by post mail", "leaflets which were posted by stakeholders", "found many leaflets written against the principal" and "anonymous report which was handwritten."
29. Certainly, these witnesses were not talking about the same thing regarding the way information reached the County Office. Whatever was the case, the appellant was not served with a copy of the literature as required under Regulation 146(6) of the CORT. Further the letters or leaflets were not produced in evidence in court. The second complaint by the appellant was that the girls had been coerced into recording a complaint of sexual harassment against him. Some of the girls recanted the statements they made to the officials. The third complaint was in regard to the manner the investigations were conducted.
30. The evidence of the appellant was that, on 2nd August 2016, he got a letter at 9.40 am asking him to appear before the investigating team at 10.00 am. He appeared as demanded, but stated that under Regulation 146(6)(c) of the CORT he was entitled to at least seven (7) days to prepare to appear before the investigating team. He was not accorded that right. Then, under Regulation 146(3)(a) of the CORT, the County Director was to institute investigations in liaison with the Board of Management. According to the appellant, the Board was not involved in the investigations. Charles Kaguga Thatu gave evidence for the appellant. He was the Chairman of the Board. He stated that the Board was not involved in the investigations. According to him, the appellant was of unquestionable character; that, following the events, he summoned the Board and interrogated the students who had complained against the appellant. The students claimed to have been made to complain against the appellant. According to him, the reports of sexual harassment were malicious and not true. He stated that the Board was not consulted by the investigating team or the tribunal set up by the 1st respondent to inquire into the complaints. The Board was not involved in the interdiction or suspension, other than him having been involved as a witness.
31. Fredrick Mwanika Muthuka had been involved in the initial investigations of 25th July 2016. It was evident that he sat, again, as a member of the County Discipline Committee meeting of 2nd August 2016. It was admitted that the CORT in Regulation 146(12) did not permit him to sit in both events.



32. The COURT provided that –

“ A teacher on interdiction shall be invited in writing in the manner set out in the thirty fifth

(35) schedule COURT for the hearing of the discipline case at least one month before the date of hearing.....”

The appellant stated, and it was not disputed, that he received the notice on 27th February 2017 requiring his attendance for hearing which was on 15th March 2017. That meant that the appellant was given about 15 days which went against the period that the COURT had provided him. His complaint that he did not receive adequate time to prepare his defence was legitimate.

33. Based on the above, therefore, we agree with the learned Judge that the 1st respondent failed to adhere to its own provisions under the COURT when it conducted investigations and when it interdicted and suspended the appellant. The 1st respondent conducted a flawed and illegal process that did not accord the appellant a fair hearing. We agree with the appellant that, the interdiction and suspension were a nullity. Where a disciplinary process contravenes the tenets of fair play as provided in the statute put in place to manage the process, the court has to intervene and call out those who managed the process.

34. If the process leading to the interdiction and suspension were a nullity, then the learned Judge fell into error when he stated, and found, that the sentence –

“ meted out was in terms of the law and COURT.....”

The sentence was a nullity.

35. The interdiction letter of 8th August 2016 stopped the payment of the appellant’s salary and dues. That stoppage was illegal. The appellant was entitled to be paid his salary, allowance and dues as principal up to the time he completed the suspension and received a letter redeploying him to Gaichanjiri Secondary School as a teacher. The dues and allowance include phone allowance and leave allowance. He could not be returned to the school as principal as he had since been redeployed and the school had new management.

36. Regarding general damages, we agree with the 1st respondent that such damages are not recoverable in cases of alleged breach of contract (Kenya Tourist Development Corporation -vs- Sundowner Lodge Limited (above)). However, the issue of reinstatement was pleaded and evidence received on both sides regarding his redeployment to the new school.

37. It follows that the award of Kshs.1,600,080.00 in general damages was done in error, and is set aside. The rest of the award remains undisturbed.

38. For the avoidance of doubt, the 1st respondent’s claim that the appellant was taken through a lawful and fair process is dismissed, given the findings above.

39. The result is that the appellant’s appeal has partly succeeded and the appeal by the 1st respondent and the 2nd interested party has partly succeeded. We make the order that each party bears its own costs of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF OCTOBER 2024.

W. KARANJA

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JUDGE OF APPEAL



L. KIMARU

.....

JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.

SIGNED

DEPUTY REGISTRAR

