



**Onsoti v Valley Crest School (Cause 551 of 2018)  
[2024] KEELRC 361 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 361 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 551 OF 2018  
MN NDUMA, J  
FEBRUARY 15, 2024**

**BETWEEN**

**ALTON MARUBE ONSOTI ..... CLAIMANT**

**AND**

**VALLEY CREST SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed suit on 17<sup>th</sup> April 2018 against the respondent seeking damages for constructive dismissal and payment of terminal benefits including arrear salary of Ksh. 25,000; in lieu of notice Ksh. 25,000; Unpaid leave days Ksh. 100,961.5 and service pay Ksh. 96,153.8; interest and cost.
2. The claimant adopted a witness statement dated 16<sup>th</sup> April 2018 as his evidence in chief. He stated that he was employed by the respondent as a teacher from February 2013 to 20<sup>th</sup> December 2017 at a monthly salary of Ksh.25,000/=.
3. The witness said that she worked diligently until the 20<sup>th</sup> December 2017 when the Principal Mr. Joseph Muchiri Kairu telephoned him and told him that he had not reached his targets and he was to be laid off forthwith. This was the first time for the claimant to be told about failure to achieve targets and had no warning prior.
4. The claimant testified that the dismissal was unlawful and unfair as he was never given a hearing prior and had no warning letter on his performance.
5. The claimant prays that the suit be allowed as prayed.
6. Under cross examination, the claimant said he had no TSC number and had worked as a teacher for a period of 14 years from 2004 to 2014. That he was paid in cash. He said he was dismissed by telephone. The claimant denied he had deserted duty as alleged by the respondent.



7. The claimant said he was a Deputy Head Teacher. That he was not given leave days. That NSSF and NHIF was paid by the respondent. The claimant further said in the year 2012 he had stopped working for the respondent due to a salary dispute. That he resumed in 2013 after a salary increase. The claimant said that he was recalled in 2013 because he was a good performer.
8. Rw1 Joseph Muchiri Kairu adopted a witness statement dated 5<sup>th</sup> March 2019 as his evidence in chief. He said that the claimant was employed by the respondent and earned Ksh. 16,000 in 2013. That the salary was increased to 18,000 in 2018. That it is not true that he was paid Ksh. 25, 000 salary as alleged.
9. RW1 said that the claimant was not dismissed from work but failed to return in January 2018 after December holidays. That the claimant went home during school holidays and so did not require separate annual leave. That he was enrolled with NSSF and NHIF and so is not entitled to gratuity as claimed.
10. Under cross examination, Rw1 said that the claimant had no administrative duties but was a teacher from 2004. That he had a break for greener pastures in 2011 and came back in 2013. He said that the claimant was a good teacher and so they could not terminate his services.
11. RW1 added that the claimant took four months leave in a year during holidays and so the school did not owe him in lieu of leave days. The respondent prays the suit be dismissed with costs.
12. The parties filed written submissions which the court has carefully considered together with the evidence adduced by the parties. The issues for determination are whether the claimant was dismissed from work or he absconded and whether he is entitled to the reliefs sought.

### **Determination**

13. The claimant served the respondent for a period of 14 years. He was not a TSC registered teacher and so had no luxury of hoping from one school to another on a permanent and pensionable basis. The claimant and the respondent are agreed that the claimant was a good teacher and had no adverse record for the long period he had served the respondent. It therefore boggles the mind why the claimant upon getting a salary raise from the year 2013 would pack his bags and desert his employment.
14. The court finds the narrative by the claimant that he was called by Rw1 on telephone and sent home for alleged failure to meet work targets a much more credible fashion of what took place on 20<sup>th</sup> December 2017. The claimant instructed his advocates to write a letter of demand to the respondent to pay terminal benefits to the claimant which was not heeded hence the suit.
15. The claimant has proved on a balance of probability in terms of section 47(5) of the *Employment Act 2007*, that the summary dismissal was without notice, notice to show cause and without a hearing. The respondent violated sections 36, 41, 43, and 45 of the Act since the dismissal was not for a valid reason and the respondent did not follow a fair procedure in taking the action.
16. Accordingly, the claimant is entitled to compensation in terms of section 49(1) c and (4) of the Act. In this regard the claimant had served the respondent faithfully for about 14 years. The claimant was underpaid as a teacher most of the time. The claimant was not compensated for the lost job and did not receive any terminal benefits upon dismissal without notice. The claimant suffered loss and damage.
17. The court finds that the claimant was paid Ks. 25,000 at the time of his dismissal. The respondent failed to counteract this evidence by providing a record of salaries paid to the claimant as the employer is obliged to keep the records by the *Employment Act 2007*.



18. The court awards the claimant the equivalent of 10 months' salary in compensation in the sum of Ksh. 250,000
19. The claimant was a member of NSSF and dues were duly paid by the respondent. The claimant is therefore not entitled to payment of gratuity. The claim for payment in lieu of leave days not taken has no merit the claimant having taken leave during every school holiday.
20. The claimant is not entitled to payment of salary for the month of January 2018 having left employment on 20<sup>th</sup> December 2017.
21. In the final analysis Judgment is entered in favour of the claimant against the respondent in the sum of Ksh. 250,000. Interest at court rates from date of Judgment till payment in full and costs of the suit.

**DATED AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024**

**MATHEWS NDERI NDUMA**

**JUDGE**

**Appearance:**

Mr. Ochalo for claimant

Mr. Cheruiyot for respondent

Mr. Ekale Court assistant

