



**Mutua v oard of Management Barazani Girls High School (Employment and Labour Relations Cause 896 of 2017) [2024] KEELRC 184 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 184 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 896 OF 2017**

**MN NDUMA, J  
FEBRUARY 8, 2024**

**BETWEEN**

**HELLEN K. MUTUA ..... CLAIMANT**

**AND**

**BOARD OF MANAGEMENT BARAZANI GIRLS HIGH  
SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed suit on 27/5/2017 against the respondent seeking maximum compensation for alleged unlawful and unfair termination of employment and payment of terminal benefits including:-
  - a. 3 months' salary *in lieu* of notice Kshs. 54,102/=.
  - b. Payment *in lieu* of leave Kshs. 72,910/=.
  - c. Arrear salary from January 2012 to December 2016 Kshs. 881,940/=.
  - d. Commuter allowance Kshs. 20,000/= and
  - e. House allowance from January 2012 to November 2014 Kshs. 48,888/= and December 2014 to December 2016 Kshs. 61,392/=.
2. The claimant (CW1) adopted a witness statement dated 12/5/2017 as her evidence in chief. She testified that she was employed as an Accountant – in January 2012 and oversaw the finances of the school.
3. That he worked continuously until 2<sup>nd</sup> December 2016 when upon reporting to work as usual, she was called to the Principal's office and issued with a letter of suspension. The respondent alleged that the claimant had compromised public relations with the school stakeholders. The letter advised the claimant to proceed on compulsory leave as from 2<sup>nd</sup> December 2016 until 29<sup>th</sup> December 2016 upon



- which the claimant was to appear before the Board of Management for a disciplinary hearing. The hearing did not proceed on 2/12/2016 due to lack of quorum. The respondent however verbally terminated the employment of the claimant on 18/1/2017. The termination was without justification. The claimant was issued with a letter of recommendation.
4. The claimant reported the matter to the union but the Principal informed the claimant that the school had not recognized any union.
  5. The advocate for the claimant wrote a demand letter to the respondent dated 6/3/2017 regarding the unfair termination. The respondent tacitly admitted having unlawfully terminated the employment of the claimant in their response dated 6/3/2017 in which the respondent invited the claimant to appear before the Board for a hearing on 11/3/2017. The claimant could not attend a hearing after termination.
  6. The claimant filed the suit therefore and prays for the reliefs sought.
  7. The claimant was cross-examined by Mr. Munene for the respondent. The claimant said that he did not receive any letter of termination but was verbally sent home. That she was accused of inciting students and accusing fellow teachers and students of having HIV & Aids. That she had usurped the powers of the principal.
  8. CW1 denied having written a letter of apology stating that she saw the letter for the first time before court. CW1 said that when she appeared at the Board meeting she found only two members. CW1 denied having requested to be heard by a full Board. CW1 denied that the Board fixed another hearing date stating that she was verbally sent home. She prayed to be awarded as prayed.
  9. CW1 said that when she left the respondent, her basic salary was Kshs. 15,219/= and a house allowance of Kshs. 1,642/=. That she received Kshs. 993 for medical and Kshs. 200 NSSF contribution making a gross payment of Kshs. 18,054/=. CW1 said that the house allowance was under paid and not in terms of the scheme of service for Board of Management employees and terms of service for Accountants. CW1 said no disciplinary hearing took place as it was postponed indefinitely.
  10. RW1 Annah Wambui adopted a witness statement dated 23/2/2022 as her evidence in chief. She testified that she was the secretary of the respondent's Board of Management during the period 2012-2016. That she was conversant with the facts of this case. That the services of CW1 were never terminated but she had deserted her work. That various stakeholders of the school had made complaints about the claimant including that she was inciting students against the administration. That she directly attacked members of staff hence killing morale and team work. That she had accused staff before students of having diseases such as HIV/Aids. That she had usurped the powers of the Principal and spread unfounded rumours and gossip about staff to the students.
  11. The students communicated these complaints to the school management by a letter written in 2016.
  12. The Principal wrote a letter to the claimant dated 2/12/2016 sending her on compulsory leave and invited the claimant to appear before the Board on 29/12/2016.
  13. That the claimant wrote a letter dated 17/12/2016 to the Principal admitting that she had compromised public relations with the school's stakeholders and that she was remorseful and promised to change in future.
  14. That on 29/12/2016 a sub-committee of the Board on Discipline Ethics and Integrity held a meeting to deliberate the matter. That the claimant attended the meeting and the allegations were read out to her. That the claimant admitted the allegation and pleaded for forgiveness.



15. The committee resolved that the issues were weighty and should be escalated to the full Board. The claimant also sought to be heard by the full Board vide a letter received by the school Principal on 29/12/2016 the date of the hearing by the committee.
16. The respondent extended the claimant's compulsory leave to 29/1/2017 vide letter dated 29/12/2016 to allow a full Board to be convened. The claimant was informed that she would be paid full December 2016 salary.
17. By a letter dated 6/3/2017 the claimant was notified of a full Board meeting to be held on 11/3/2017 in which the claimant was required to defend herself.
18. On 11/3/2017, at the start of the meeting at 11:00 a.m. the claimant had not arrived for the meeting as directed by the letter of 6/3/2017 that the meeting would take place at 10:00 a.m.
19. The Board resolved that the Principal do write a letter to the claimant, seeking an explanation for her non-attendance of the meeting. The Board resolved that the claimant would be treated as a deserter should she fail to respond to the letter.
20. The Principal wrote to the claimant a letter dated 3/4/2017 as directed but the claimant did not respond to the same. RW1 said that the employment of the claimant was not terminated but she had deserted work. That the claimant took leave every school holiday and those days were more sufficient annual leave. That the claimant had not applied for any extra leave over and above the holidays at the end of every school term. That she took leave therefore in April, August and December, every year.
21. That the claimant was paid according to the terms of service agreed between her and the Board. She is therefore not entitled to any further payment as claimed or at all. That the claimant received annual salary increment of Kshs. 1,201/= per year. That the contract did not provide for commuter allowance. That the salary allowance was paid as per the contract of employment. That no outstanding dues were unpaid to the claimant. That the suit lacks merit and it be dismissed with costs.

**Determination:**

22. The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. The court is of the considered finding that the testimony by RW1 was truthful, credible and supported by documentary evidence placed before court. The court was not satisfied with the evidence adduced by the claimant and she did not come forth as a truthful witness.
21. Accordingly, the court finds that, the claimant had misconducted herself according to the charges preferred against her. That the claimant attended a hearing before a committee of the Board in which she admitted the charges laid against her and sought to be forgiven.
22. That the committee referred the matter before a full Board to give the claimant a further hearing on the matter. That the claimant did not attend the scheduled hearing without any reasonable explanation for her absence.
23. That indeed the claimant deserted her work upon failure to attend the meeting of the full Board and proceeded to sue the respondent for alleged unlawful and unfair termination of employment.
24. That the court is satisfied that the respondent did not terminate the employment of the claimant. That the suit lacks merit in this regard and the claim for unlawful and unfair termination is dismissed for lack of merit.
25. With regard to the claims for payment of terminal benefits set out in the statement of claim, having found that the respondent did not terminate the employment of the claimant unlawfully and unfairly,



the prayer to award compensation to the claimant in terms of section 49 of the Employment Act, 2007 is dismissed.

Notice pay:

a. The claimant deserted work and is not entitled to pay in lieu of three months' notice as claimed.

b. Leave pay:

The court is satisfied that the claimant took leave in the month of April, August and December whenever the school term ended. The allegation that the claimant is owed in lieu of leave days not taken for the period worked has no merit and is dismissed.

c. Salary arrears:

The court is equally satisfied that the terms and conditions of service were initially agreed between the client and the respondent. The claimant has not showed that the respondent under paid her as alleged or at all. This claim is dismissed for lack of merit.

d. Commuter allowance:

Commuter allowance was not provided for in the contract of service between the claimant and the respondent. The claimant failed to prove that she was entitled to this benefit as alleged or at all. The same is dismissed for lack of merit.

e. House allowance:

The claimant admitted that she was paid house allowance but alleged that she was also under paid in this respect. The claimant did not prove this claim also on a balance of probability. The same is dismissed for want of proof.

26. In the final analysis, the claimant has failed to prove the particulars of claim and the reliefs sought in this matter in terms of section 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya.

27. The suit has therefore failed in its entirety and is dismissed.

28. The court deem this an appropriate case for each party to meet their costs of the suit in view of the service rendered to the respondent, a public entity, by the claimant for a reasonable period of time.

29. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2024**

**MATHEWS N. NDUMA**

**JUDGE**

Appearances

Mr. Were for claimant

Mr. Munene for Respondent

Ekale: Court Assistant

