



**Mwangangi v Board of Governors, Huda Integrated School (Cause E613 of 2020) [2024] KEELRC 557 (KLR) (11 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 557 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E613 OF 2020**  
**JK GAKERI, J**  
**MARCH 11, 2024**

**BETWEEN**

**NANCY WIA MWANGANGI ..... CLAIMANT**

**AND**

**BOARD OF GOVERNORS, HUDA INTEGRATED SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant commenced this suit by a Statement of Claim filed on 5<sup>th</sup> October, 2020 alleging unfair/wrongful and malicious summary dismissal from employment.
2. The Claimant avers that she was employed by the Respondent on 1<sup>st</sup> January, 2016 under a 12 – 24 months contract at a consolidated salary of Kshs.67,000/=, which was subsequently renewed effective 1<sup>st</sup> January, 2019 for one (1) year and the gross salary was increased to Kshs.72,000/= per month.
3. The Claimant further avers that she was the Head teacher in charge of management of the kindergarten, lower primary and upper primary.
4. It is the Claimant's case that her problems began in January 2019 when Mr. Zafer Elen, the new Principal started intimidating her for refusing to honour his unprofessional demands in particular do his masters assignment or allocating his wife Sema Elen teaching duties yet she had no relevant qualifications.
5. That on 18<sup>th</sup> March, 2019, the Principal appointed one Ms Elmas Tazegul as upper primary co-ordinator and redeployed the Claimant to the lower primary as co-ordinator without notice.
6. The Claimant was issued with a notice to show cause on 22<sup>nd</sup> November, 2019 on various accusations including receiving kickbacks from the school transporter to maintain the contract lateness, intimidating teachers, engaging in private business in the school and soliciting money from



- prospective parents to admit their children, which according to the Claimant were unsubstantiated as no documentation was attached or availed after several requests.
7. That the Claimant was invited for a disciplinary hearing by letter dated 29<sup>th</sup> November, 2019 and attended the same on 6<sup>th</sup> December, 2019 where the members referred to documents not availed to the Claimant and new allegations were also raised.
  8. It is the Claimant's case that she was not accorded a fair trial and the process was unfair.
  9. That she was summarily dismissed from employment vide letter dated 20<sup>th</sup> December, 2019 for gross misconduct.
  10. The Claimant prays for;
    - i. A declaration that termination of employment by the Respondent was illegal, unlawful, unfair, malicious and inhuman.
    - ii. 12 months compensation for unfair termination of employment, Kshs.864,000.00.
    - iii. Compensation for use of the Claimant's name in its Registration from 2016 to date Kshs.1,264,000.00.
    - iv. Damages for unlawful termination.
    - v. Costs of this claim.
    - vi. Costs and interest to amounts referred to in (ii), (iii), (iv) and (v) above at court rates.
    - vii. Any other order that the court deems fit to grant.

### **Respondent's case**

11. In its amended statement of response, the Respondent admits that the Claimant was its employee as alleged, that it issued her with a notice to show cause but denies that she performed her duties strictly and religiously or had a salary increment.
12. It denies the allegations made against Mr. Zafer Elen among others and prays for dismissal of the suit with costs.
13. It is the Respondent's case that the Claimant attended the hearing alone by choice and was unable to rebut the charges and was accorded time to consult her advocate and revert but did not.
14. The Respondent denies having coerced the Claimant to sign the Deed of Release which barred her from making any claim against the Respondent and was thus estopped from doing so.

### **Claimant's evidence**

15. CWI confirmed that she worked for the Respondent for 4 years and was the Head Teacher and Manager of the school and had been approached for assistance to register the school as she had a TSC Number and had no problem with the certificate of registration of the school.
16. She testified that Miss Elmas was appointed to replace her but had no evidence to prove the allegation nor letter of the alleged demotion. The witness admitted that she was not party to the terms of engagement of Elmas.
17. It was her testimony that although she received the notice to show cause dated 29<sup>th</sup> November, 2019 which required a response, she did not respond.



18. That during a staff meeting held at the school on 21<sup>st</sup> November, 2019, she was absent without apology.
19. That during the disciplinary hearing, she cross-examined the witnesses and a transporter who had complained against her was called and the Claimant had no question or comment to the witness.
20. It was the Claimant's testimony that the allegations made against her did not constitute gross misconduct but admitted that once in a while the Principal mentioned about her lateness.
21. It was her case that she was coerced to sign the Deed of Release and did so on 28<sup>th</sup> December, 2019.
22. That she collected her final dues but the certificate of service was not issued.
23. On re-examination, the Claimant alleged that she was not paid for having been a Manager of the school and was incharge of the whole school and was not furnished with documents before the hearing and had only one warning.
24. CWII, Mr. Joshua Kinyua testified that he worked for the Respondent for 2 years as a Teacher and had not filed any document as evidence and had no knowledge of the Claimant's employment with the Respondent.

### **Respondent's evidence**

25. RWI, Zafer Elen confirmed that he started as the lower school coordinator. That the witness became the Principal on 1<sup>st</sup> April, 2018.
26. That the notice to show cause was received by the Claimant and the alleged bribe was sent via Mpesa.
27. It was his evidence that the school had received a complaint from a parent.
28. The witness testified that the Respondent had a good reason to terminate the Claimant's employment and complied with the procedural requirements.
29. RWII, Rophine Makanda confirmed that the Claimant's duties included admission of new students.
30. That the parent who had given the bribe was called and put on loud speaker at the hearing.
31. That the Respondent availed evidence to the Claimant and filed the documents in court.
32. It was her testimony that although the teachers were not mentioned by name, the committee made reference to their statements at the hearing.
33. The witness testified that the minutes of the hearing were authored by the school and reflected what transpired on that day.
34. That the Claimant was compensated as the school Manager.
35. That Chulki availed evidence of the bribe from the parent.
36. The witness confirmed that the Claimant signed the Deed of Release after she received the cheque.
37. On re-examination, the witness testified that the teachers recorded statements and Chulki was a witness at the hearing.

### **Claimant's submissions**

38. As to whether the Claimant's dismissal was fair, counsel submitted that it was unfair, unlawful and illegal for non-compliance with Section 45(2) of the [Employment Act](#), 2007 as the reasons relied upon



were invalid and unjustified contrary to the requirement of a substantive justification and procedural fairness.

39. Reliance was made on the sentiments of the court in *Ogama V Opera Pharma (K) Ltd (2023)* to urge that the Respondent relied on fabricated and false accusations unsupported by evidence such as receipt of Kshs.6,000/=. That the Claimant was not given the statement of one Shariff and did not cross-examine him and the alleged call was not verifiable and no documentary evidence was availed at the hearing.
40. Counsel submitted that transport was not part of the Claimant's duties as a Head teacher and bribery is an offence and no charges were preferred against the Claimant.
41. That the Mpesa message relied on is dated 31<sup>st</sup> July, 2019 and the claim was fabricated, malicious, false and unsubstantiated.
42. Counsel relied on the sentiments of the court in *Joshua Motari Mongare V Madison Insurance Co. Ltd & another (2022) eKLR* to reinforce the submission on prove of reason.
43. According to counsel, the allegation of reporting to work late was also malicious as the Claimant had only one warning letter.
44. That the allegation of intimidating teachers was not supported by particulars and was not addressed at the hearing.
45. Reliance was made on the decision in *Karichu V Tea Holdings Ltd (2022) KEELRC 1277* to buttress the submission and urge that the evidence of teachers Grace, Naomi and Claire be expunged from the record.
46. Counsel submitted that the claim of conducting private business within the school was unproven as was that of soliciting money from parents.
47. Counsel submitted that the Respondent infringed the Claimant's right to fair hearing as she was not supplied with any material or witness statements.
48. That the issue of assigning teachers tuition and warning letters arose at the hearing and no notice had been given for the Claimant's response, a basic element of fair hearing.
49. Counsel urged that the Claimant's employment was terminated unprocedurally.
50. Finally, counsel submitted that the Claimant was entitled to the reliefs prayed for and cited the sentiments of the court in *Kamande V Nation Group (2022) KEHC 16017* on the use of the Claimant's name to secure registration of the school.
51. On the Deed of discharge, counsel urged that the Claimant signed it under duress and it was unlawful and the right to file a suit is constitutionally guaranteed.

### **Respondent's submissions**

52. By 14<sup>th</sup> February, 2024 when the court retired to prepare this judgment, the Respondent had not filed submissions.

### **Findings and determination**

53. It is common ground that the Claimant was an employee of the Respondent from 1<sup>st</sup> January, 2016 till termination of employment by the Respondent vide letter dated 20<sup>th</sup> December, 2019.



54. It is also not in contest that the Claimant was serving as a teacher at the school and that her assistance was sought in the registration of the Respondent school and she acquiesced on account that she had a Teachers Service Commission (TSC) Number.
55. Finally, it is also not in dispute that the Claimant signed a Deed of Release, Discharge and Indemnity dated 28<sup>th</sup> December, 2019.
56. The issues for determination are;
- i. Whether the Claimant waived her right to pursue further claims against the Respondent.
  - ii. Whether termination of the Claimant's employment was unfair or unlawful.
  - iii. Whether the Claimant is entitled to the reliefs sought.
57. As to whether the Deed of release, discharge and indemnity bars the Claimant from pursuing further claims against the Respondent, counsel for the Claimant argued that the right to lodge claims before any court is constitutional and cannot be abrogated or restricted by the Respondent but cited no authority on how courts have dealt with deeds of release or discharge vouchers or settlement agreements.
58. The principles that govern deeds of release or discharge vouchers or settlements agreements are well settled.
59. In *Coastal Bottlers Ltd V Kimathi Mithika* (2018) eKLR, the Court of Appeal stated as follows;
- “Whether or not, a settlement agreement or a discharge voucher bars a party thereto from making further claims depends on the circumstances of each case. A court faced with such an issue, in our view, should address its mind firstly, on the import of such a discharge/ agreement; and secondly, whether the same was voluntarily executed by the concerned parties.”
60. Similarly, in *Thomas De La Rue (K) Ltd V David Opondo Omutelema* (2013) eKLR, the Court of Appeal stated as follows;
- “We would agree with the trial court that a discharge voucher per se cannot absolve an employer from statutory obligations and that it cannot preclude the Industrial Court from enquiring into the fairness of a termination. That is however, as far as we are prepared to go. The court has in every case, to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed when the employee was seized of all the relevant information and knowledge.”
61. The court is in agreement with these sentiments.
62. In the instant case, the Claimant confirmed on cross-examination that she signed the deed of release and discharge on 28<sup>th</sup> December, 2019 and received the letter of summary dismissal on 20<sup>th</sup> December, 2019.
63. Puzzlingly, the Claimant testified that she was coerced to sign the Deed of Release and discharge, that she was told to either sign the same or she would be demoted.



64. The Deed of Release, Discharge and Indemnity stated inter alia;

“This Deed witnesseth that, I Nancy Mwangangi holder of Kenya National Identification Card Number 8469779 and of Post Office Box Number 10999-00100 Nairobi . . . do hereby release, indemnify and discharge HUDA INTEGRATED SCHOOL of Post Office Box 26775-00504 NAIROBI . . . from all manner of actions, claims or demands which I have against the Employer for or by reason of or in any way connected with my employment with the employer or the determination thereof.

Payment details;

Notice fee Kshs.61,703

Service payment Kshs.120,000

20 days salary Kshs.61,520

Total payment = Kshs.243,323

Lost computer deduction – Kshs.39,000

After deduction payment – Kshs.204,323

In consideration of which the Employer has, as at the date of executing this deed, already paid me the Former Employee the sum of Kshs.204,323 . . . and I agree and confirm that I have been paid the above sum in full and final settlement of any claim or demands of whatsoever kind and nature which I may have against the Employer . . . and I further confirm that I will not be entitled to make any further claims against the Employer in any manner or form whatsoever, in any way connected with my employment with the Employer or the determination thereof . . .”

65. The Claimant executed the deed on 28<sup>th</sup> December, 2019 in the presence of a witness who signed on the same day.
66. On the allegation of duress, the Claimant adduced no supportive evidence as to whom, when and how the coercion was made, but more significantly, it is unclear to the court how a threat to demote a person whose employment has already been dismissed could amount to duress.
67. At common law, for a threat to amount to duress, the party alleging to have been threatened must demonstrate that threat was capable of being actualized.
68. Having been dismissed on 20<sup>th</sup> December, 2019, the question of demotion was to all intents and purposes irrelevant.
69. Having failed to establish that she signed the deed of release and discharge under duress, it is the finding of the court that the parties executed the same voluntarily while seized of the relevant information and knowledge and the same was binding on them and the Respondent was discharged from any action or claim by the Claimant based on the employment contract and its termination as held in *Trinity Prime Investment Ltd V Lion of Kenya Insurance Co. Ltd* (2015) eKLR, where the Court of Appeal expressed itself as follows;

“The execution of the discharge voucher, we agree with the learned judge constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant



accepted it because he wanted payment quickly and execution of the voucher was free off misrepresentation, fraud or other. The appellant was thus fully discharged.”

70. Similarly, in *Coastal Bottlers Ltd V Kimathi Mithika* (Supra), the Court of Appeal stated inter alia;
- “In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the respondent’s termination . . . As it stood, the agreement was a binding contract between the parties . . .”
71. The foregoing sentiments apply on all fours to the facts of the instant suit.
72. Evidently, the Claimant waived her right to pursue further claims or actions of any nature against the Respondent and cannot be heard to argue that she had further claim against the Respondent.
73. The foregoing is consistent with the doctrine of promissory or equitable estoppel, as aptly captured by Lord Denning L J in *Combe V Combe* (1951) 2 KB 215 as follows;
- “Where one party has by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and be acted on accordingly, then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him. He must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration but only by his word.”
74. The Claimant made a promise or assurance to the Respondent, intended to be relied upon by the Respondent and the Respondent acted on it and altered its legal position. The Claimant is estopped from alleging otherwise.
75. (See also *Central London Property Trust Ltd V High Trees House Ltd* (1947) KB 130).
76. As to whether termination of the Claimant’s employment was unfair or unlawful, the law as correctly stated by the Claimant’s counsel is clear that for a termination of employment to pass muster, it must be proved that the employer had a substantive justification to terminate the employment and conducted the termination in accordance with a fair procedure as elaborated by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR.
77. Sections 43, 45(2) and 47(5) of the *Employment Act*, 2007 sets out the elements of substantive justification while Section 41 sets out the procedural requirements.

### **Reason for termination**

78. The notice to show cause dated 22<sup>nd</sup> November, 2019 accused the Claimant of having received Kshs.6,000/= via Mpesa on 31<sup>st</sup> July, 2019 from the school transporter as a token to ensure that the transporter remained on contract, lateness, intimidation of teachers, engagement in private business and soliciting money from prospective parents so as to admit their children to the Respondent’s school.
79. The Claimant admitted having received the notice to show cause and did not respond on the ground that she got confused when she received the letter.



80. The dismissal letter on the other hand stated that the Claimant was summarily dismissed for gross misconduct pursuant to the provisions of Section 44(4)(c) and (g) of the Employment Act, 2007 namely;
- “an employee wilfully neglects to perform any work which it was his duty to perform or if he has carelessly and improperly performs any work which from its nature it was his duty, under his contract to have performed carefully and properly” and “an employee commits, or on reasonable and sufficient grounds is suspected of having committed a criminal offence against or to the substantial detriment of his employer or his property”.
81. As regards lateness, evidence on record reveal that the Claimant was issued with a warning letter dated 8<sup>th</sup> March, 2019 and an Attendant Violation Notice dated 11<sup>th</sup> October, 2019 signed by Zafer Elen and witnessed by one Phanice Khalayi which shows that on that day, the Claimant reported on duty 15 minutes late.
82. Finally, in minutes of a staff meeting held on 21<sup>st</sup> November, 2019, chaired by the Principal whose agenda was to introduce one Raphine Mukanda and reward teachers, the Claimant is listed as absent without apology.
83. The Claimant admitted having received one warning letter.
84. As regards the charge of intimidating teachers, the Claimant admitted at the disciplinary hearing that she had been issuing warning letters to teachers without authority of the Principal.
85. The alleged complaints by teachers were not filed.
86. On the accusation of having received the sum of Kshs.6,000/= by Mpesa on 31<sup>st</sup> July, 2019, the charge was considered at the hearing and minutes show that Mr. Sharriff was called on the phone and put on loud speaker for all to hear.
87. When asked to respond to the statement by the transporter (the giver of the token) the Claimant stated as follows;
- “ Am not commenting on that”.
88. A copy of the Mpesa message was availed as evidence to show that the sum of Kshs.6,000/= was indeed sent to the Claimant’s phone number on 31<sup>st</sup> July, 2019 at 3.42 pm.
89. The Claimant did not deny that her cell phone number is 0722268964 the number to which Kshs.6000/= was sent ton that day.
90. Contrary to the Claimant’s counsel’s contention that the Respondent did not avail a written statement from Mr. Shariff together with a certified Mpesa statement, minutes reveal that Mr. Shariff gave oral testimony at the hearing and was ready for cross-examination by the Claimant who did not ask any question or comment.
91. Relatedly, the Claimant did not deny that Mr. Shariff was not called and gave evidence on phone and did not allege the number bearing the Mpesa message was not hers.
92. In the court’s view, the charge of having received the sum of Kshs.6,000/= from a transporter on 31<sup>st</sup> July, 2019 was supported by relevant evidence.



93. Finally, the charge of having solicited monies from new parents to admit their children to the school was supported by evidence from Chulki the receptionist/secretary who explains how the admission process took place and how the Claimant used her in the alleged scheme.
94. The witness provided names of specific pupils who were allegedly admitted after payment of sums of monies ranging from Kshs.5,000/= to Kshs.15,000/=.
95. The receptionist had been advised not to share details of the scheme with anyone or she would be “disowned”.
96. Chulki’s evidence appears credible owing to her work station and proximity with the Claimant.
97. The Claimant declined to comment on the statement by the receptionist/secretary.
98. The charge of conducting private business in the Respondent’s compound was in the court’s view not clearly demonstrated.
99. Section 43(2) of the *Employment Act*, 2007 provides that;  

“The reason or reasons for termination of a contract are the matters that the employer at the time of the termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”
100. This provision requires the employer to evidentiary establish that it had reasonable grounds to genuinely believe that there was a case for termination of the employee’s employment.
101. Such grounds must be demonstrable as held in *Galgalo Jarso Jillo V Agricultural Finance Corporation* (2021) eKLR and as held by the Court of Appeal in *Kenya Revenue Authority V Reuwel Waitthaka Gitahi & 2 others* (2019) eKLR, the test under Section 43(2) of the Act is “partly subjective”.
102. This test comports with the range or band of reasonableness test in *British Leyland UK Ltd V Swift* (1981) I.R.L.R 91, which is based on a reasonable employer.
103. Flowing from the foregoing analysis, it is the finding of the court that the Respondent has proved on a preponderance of probabilities that it had a valid and fair reason to terminate the Claimant’s employment.

## **Procedure**

104. Although documentary evidence on record show that the Claimant was aware of the charges levelled against her and was invited for the disciplinary hearing scheduled for 6<sup>th</sup> December, 2019, was informed of the right to be accompanied by a colleague and attended and participated in the hearing on 6<sup>th</sup> December, 2019, she did not sign the minutes even after having been accorded time to consult and do so as evidenced by the letter dated 10<sup>th</sup> December, 2019 which the Claimant did not respond to.
105. The Claimant faulted the process of termination because she was not given the materials the Respondent used to determine her culpability and eventual dismissal to enable her prepare for the hearing.
106. The statements of the Principal, Chulki and the teachers, including the alleged fliers and the Mpesa message ought to have been forwarded to the Claimant before the hearing.



107. It is a precept of fair hearing that the person charged must not only be informed of the particular charges but must also be furnished with the evidence the other party intends to rely on at the hearing to even the ground.
108. Proceedings otherwise renders the trial irregular as held by the Court of Appeal in *Postal Corporation of Kenya V Andrew K. Tanui* (2019) eKLR.
109. For the foregoing reasons, it is the finding of the court that termination of the Claimant's employment by the Respondent was unfair for want of procedural propriety.
110. However, having found that the Claimant waived her right to pursue further claims against the Respondent and discharged it accordingly, the finding that the termination was unfair procedurally is of no consequence at this stage.
111. As decipherable from the foregoing, the Claimant's suit against the Respondent is for dismissal and it is accordingly dismissed.
112. In the circumstances, it is only fair that parties bear their own costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 11<sup>TH</sup> DAY OF MARCH 2024**

**DR. JACOB GAKERI**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

