



REPUBLIC OF KENYA



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**Trustees of Premier Academy Charitable Trust t/a Premier Academy v Muoki
(Cause E178 of 2022) [2024] KEELRC 556 (KLR) (11 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 556 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E178 OF 2022
JK GAKERI, J
MARCH 11, 2024**

BETWEEN

**TRUSTEES OF PREMIER ACADEMY CHARITABLE TRUST T/A PREMIER
ACADEMY CLAIMANT**

AND

CYPRIAN MUOKI RESPONDENT

JUDGMENT

1. The Claimant commenced the instant suit vide a Statement of Claim dated 11th March, 2022 alleging breach of contract by the Respondent.
2. The Claimant prays for;
 - i. Kshs.270,000/=.
 - ii. Costs of this suit.
 - iii. Interest on (i) and (ii) above at court rates from date of filing till payment in full.
 - iv. Any other or further relief that this Honourable Court may deem fit and just to grant.

The Claimant's case is pleaded as follows;

3. That by a contract dated 11th June, 2020 executed by the Respondent on 16th June, 2020, the Claimant employed the Respondent as a secondary school teacher and it was a term of the contract that either party could terminate the contract of service by a 3 months' notice to the other expiring at the end of the relevant school term or pay 3 months' salary in lieu of notice, particulars within the Respondent's knowledge.



4. It is the Claimant's case that in breach of his contractual obligation, and without lawful cause, the Respondent purported to terminate his contract of employment on 30th August, 2021 during the school term without the requisite notice.
5. That the Respondent's resignation was not in accord with his contract of service in terms of the timing and the notice period was less than 3 months and the Claimant advised him accordingly.
6. That the Respondent quit employment on 30th August 2021 and failed to pay the requisite 3 months' salary in lieu of notice, Kshs.270,000/= as his basic salary was Kshs.90,000/=.
7. That attempts by the Claimant to resolve the matter amicably fell through and the Respondent did not collect his certificate of service.

Respondent's case

8. The Respondent did not file any response to the claim or deny it.

Claimant's evidence

9. Documentary evidence on record reveal that the Respondent signed a written contract with the Claimant on 16th June, 2020 in the presence of Doreen M. Lander as a witness.
10. Clause 18 (iii) of the Contract of Employment dated 11th June, 2020 provided for termination of employment by either party giving the other 3 months' notice or 3 months basic salary in lieu of notice.
11. Records further reveal that the Respondent resigned by letter dated 30th August, 2021 and the resignation was immediate allegedly on sudden failing health and the Respondent responded by letter dated 1st September, 2021.
12. In her oral testimony, Tabitha Kimani testified that the Respondent joined the Claimant on 2nd September, 2019 as a Spanish teacher in the secondary school and resigned on the grounds of ill-health by sending an email to the school at the beginning of the academic year and attempts to reach him were unsuccessful as the Respondent did not respond.
13. The Respondent did not participate in the proceedings.

Claimant's submissions

14. Counsel isolated four issues for determination on validity of the contract between the parties, breach by the Respondent, entitlement to the sum of Kshs.270,000/= and costs.
15. As to whether there was a valid contract between the Claimant and the Respondent, counsel urged that there was as the two had a 2 year written contract of service dated 11th June, 2020 which the Respondent signed on 16th June, 2020 and the contract provided for termination by either party.
16. Reliance was made on *Fredrick Kariuki Kamau V Bank of India* (2015) eKLR on the employee's liberty to resign by notice.
17. Similarly, the decision in *Martin Vindija Nyambuku V Mbukoni Logistics Ltd* (2016) eKLR was cited to illustrate a case where the employee resigned without notifying the employer and was held liable to pay the employer salary in lieu of notice.
18. As to whether the Respondent breached the contract, counsel submitted that as the resignation on 30th August, 2021 was expressed as immediate during the school term and no notice had been given



and being cognizant of the termination clause, the Respondent breached the terms of the contract of service.

19. Counsel cited *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR on the test of fairness in termination of employment.
20. As to whether the Claimant is entitled to the Kshs.270,000/=, counsel submitted that since the Respondent gave an invalid resignation notice, the Claimant was entitled to 3 months' salary in lieu of notice and cited the sentiments of Odunga J. (as he was) in court in *Gideon Mutiso Mutua V Mega Health International Ltd* (2012) eKLR on damages for breach of contract and urged that notwithstanding the Respondent's refusal to honour his contract, the Claimant took steps to have him clear by way of forwarding to him clearance formalities and exit clearance form and his benefits were processed and paid as evidenced by the payslip for August 2021.
21. On costs, counsel relied on Section 27 of the *Civil Procedure Act* as well as the sentiments of the court in *Republic V Rosemary Wairimu Munene Ex parte Applicant Vs Ihururo Dairy Farmers Society Ltd* (2015) eKLR to urge that the court should exercise its discretion and award costs as they follow the event.
22. The Respondent did not file submissions.

Findings and Determination

23. The issues for determination are;
 - i. Whether the Respondent was an employee of the Claimant.
 - ii. Whether the Respondent breached the contract of service.
 - iii. Whether the Claimant is entitled to the reliefs sought, Kshs.270,000/=.
24. As regards the existence of a contract of service between the parties, the Claimant's uncontroverted evidence is clear that the parties entered into a contract of employment dated 1st April, 2020 under which the Claimant engaged the Respondent as a secondary school teacher at an all-inclusive salary of Kshs.90,000/= per month under a 2 year contract scheduled to lapse on 31st July, 2022.
25. Clause 18.0 (iii) of the Contract of Employment provided for termination of the contract by either party giving the other a 3 months written notice or 3 months basic salary in lieu of notice.
26. The Claimant was entitled to 24 days annual leave every calendar year.
27. Significantly, clause 8.0 provided for cases of illness of the employee and salary was payable for up to 45 days provided the incapacity was certified.
28. The resignation letter dated 30th August, 2021 leaves no doubt that the Respondent was an employee of the Claimant.
29. The evidence before the court demonstrates beyond peradventure that the Respondent was an employee of the Claimant.
30. As to whether the Respondent breached the contract of service, the Claimant's counsel submitted that he did.
31. As adverted to elsewhere in this judgment, clause 18(iii) of the contract of employment provided for termination by either party giving the other a 3 months written notice on the 1st day of the term or 3 months basic salary in lieu of notice.



32. Documentary evidence on record show that by letter dated 30th August, 2021, the Respondent tendered his immediate resignation from his position as a teacher allegedly due to sudden failing health and had been advised by the doctor to take a break so as to focus on regaining his health.
33. Paragraph four (4) of the letter underlines the Respondent awareness of the requirement for notice and his decision to ignore it.
34. Strangely, the Respondent did not seek a waiver of the 3 months' notice requirement on the ground of ill-health and did not attach the alleged doctor's advise or diagnosis, if any.
35. The letter was received on 31st August, 2021.
36. By letter dated 1st September, 2021, the Claimant acknowledged receipt of the Respondent's letter and implored upon him the requirement of notice and its doubt on the reason given and insisted that he pays the 3 months' salary in lieu of notice.
37. The Claimant also requested the Respondent supportive medical evidence by a qualified doctor.
38. Finally, the Claimant requested the Respondent to clear by handing over school property in his possession and a clearance form was attached to be completed and returned by 15th September, 2021.
39. An Exit Interview Form was also attached and certificate of service would issue upon successful clearance.
40. Clearly, the Claimant did not buy the Respondent's palpably untrue story on the "sudden failing health".
41. Intriguingly, the Respondent did not reply to the Claimant's letter to explain his illness and forward the information requested by the Claimant.
42. Evidently, as the Respondent did not comply with the requirements on resignation of employment and thus breached the contract of employment.
43. As regards the sum of Kshs.270,000/=, it is clear that the Respondent gave a resignation notice as opposed to a termination notice under Clause 18(iii) of the Contract of Employment which required a 3 months' notice or pay in lieu of notice.
44. The Respondent's resignation notice was expressed to take effect immediately which triggered clause 18(iii) of the Contract of Employment as the Respondent made no attempt to comply with the terms of the contract.
45. Under clause 18(iii), the Respondent was obligated to pay the Claimant 3 month's basic salary in order to be compliant.
46. Granted that the Respondent did not respond to the Claimant's letter, the sum of Kshs.270,000/= remained outstanding.
47. Relatedly, the Respondent blatantly refused to respond not only to the Claimant's letter but that its counsel's letters dated 6th October, 2021 and 4th November, 2021 respectively.
48. Flowing from the foregoing, it is evident that the court is persuaded that the Claimant has demonstrated its entitlement to Kshs.270,000/= being the 3 months basic salary the Respondent refused, failed and/or neglected to pay in lieu of notice on 30th August, 2021.
49. In the conclusion, judgment is entered in favour of the Claimant against the Respondent in the following terms;



- a. Sum of Kshs.270,000.00.
- b. Costs of this suit.
- c. Interest at court rates from date hereof till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 11TH 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 15th March 2020 and subsequent directions of 21st 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

