



**Mweu v Misyani Girls Secondary School (Cause 609 of 2014)  
[2024] KEELRC 1009 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1009 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 609 OF 2014  
MA ONYANGO, J  
APRIL 12, 2024**

**BETWEEN**

**MARY MWEU ..... CLAIMANT**

**AND**

**MISYANI GIRLS SECONDARY SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The Claim herein was instituted by the Claimant through her plaint dated 6<sup>th</sup> May 2008 filed at the Chief Magistrates Court Machakos. The Claim was amended on 15<sup>th</sup> July 2009. It was transferred to this Court in 2014.
2. In the Amended Plaint the Claimant seeks the following reliefs against the Respondent:
  - i. General damages for unlawful dismissal
  - ii. Payment of the terminal dues
  - iii. Costs and Interests of this suit
  - iv. Any other or further relief that this court deems fit and just to grant.
3. The Claimant avers that she was employed by the Respondent vide a letter of appointment dated 15<sup>th</sup> May 1998 as a house mother at a monthly salary of Kshs. 2,345 which salary was reviewed periodically and her last salary was Kshs. 5,155.
4. The Claimant avers that she was summarily dismissed from employment on 13<sup>th</sup> April, 2007, which dismissal the Claimant avers was unlawful, irregular and unprocedural for the following reasons:
  - i. Failing to give sufficient reason for the dismissal
  - ii. Failing to pay terminal benefits to the Claimant



- iii. Failing to pay the Claimant one month's salary in lieu of notice
  - iv. Assigning the Claimant outside the scope of her employment
  - v. Forcing the Claimant to work for long unpaid hours.
5. The Claimant prayed for general damages for unlawful termination, payment of terminal dues, costs and interest which the Claimant tabulated as severance and terminal benefits at the rate of one month's salary for every year worked at Kshs. 46,035 and one month's salary in lieu of notice in the sum of Kshs. 5,155 all amounting to Kshs 51,190.
  6. The Respondent filed a defence on 8<sup>th</sup> February 2022 denying that it unlawfully and unprocedurally dismissed the Claimant from employment. According to the Respondent, the Claimant's dismissal was founded on her gross incompetence, inefficiency, inability to discharge her duties and absolute poor performance as evidenced by the various warning letters addressed to her by the school management.
  7. It is the Respondent's case that the Claimant appeared for a disciplinary hearing on 27<sup>th</sup> March 2007 to answer to charges of poor performance, incompetence and failure to report a planned students' strike despite being aware of the same. That the Claimant was interdicted on 29<sup>th</sup> March 2007. That a further hearing was held on 13<sup>th</sup> April 2007 after which the Claimant was dismissed from employment.
  8. The Respondent pleaded that the Claimant is not entitled to any of the reliefs she seeks as her employment was lawfully and procedurally terminated.

### **The Evidence**

9. The Claimant testified on 9<sup>th</sup> February 2022 as CW1 and adopted her witness statement recorded on 14<sup>th</sup> March 2018 as her evidence in chief. She also adopted and relied on her bundle of documents filed in support of her case.
10. On cross examination, the Claimant admitted that she was issued with several warning letters by the Principal of the Respondent regarding the performance of her duties. She however denied that she was invited for a disciplinary hearing.
11. On re-examination the Claimant stated that the issues raised in the warning letters were not part of her job description and that she was unable to do her work properly because she had been allocated additional duties.
12. RW1 Lucia Katem Mutua, introduced herself as the current Principal of the Respondent. She adopted her witness statement recorded on 25<sup>th</sup> January 2022 as her evidence in chief and relied on the Respondent's bundle of documents dated 25<sup>th</sup> January 2022.
13. On cross examination, RW1 stated that the school records indicated that the Claimant's employment was terminated on grounds of misconduct after being taken through a disciplinary hearing.
14. After the close of hearing both parties filed written submissions which I have duly considered. The Claimant's submissions are dated 24<sup>th</sup> February 2022 while the Respondent's submissions are dated 10<sup>th</sup> March 2022.

### **Analysis and Determination**

15. From the pleadings on record, the evidence of the parties and the submissions filed, only two issues arise for my determination. These are: -



- i. Whether the Claimant's employment was terminated lawfully and procedurally
  - ii. Whether the Claimant is entitled to the reliefs she is seeking.
16. It is material to note that the Claimant was dismissed from service on 13<sup>th</sup> April, 2007. The [Employment Act, 2007](#) which the Claimant has anchored her claim on came into force on 2<sup>nd</sup> June, 2008 and is thus not applicable to the Claimant. The claim is therefore to be determined on the basis of the repealed [Employment Act, 1976](#). The Act provided for grounds of summary dismissal under section 17 which is a replica of the current section 44(4) of the [Employment Act, 2007](#). There was no requirement under the Act for an employer to give an employee reasons for termination or dismissal. There was also no requirement in the Act for a hearing before the termination of employment.
  17. From the pleadings and evidence on record and particularly the documents forming part of the Respondent's bundle of documents, it is not in doubt that the Claimant had been issued with several warnings. In the letters dated 8<sup>th</sup> November 2006 and 27<sup>th</sup> November 2006 the Claimant was warned for negligence in the performance of her duties. The report to the Ministry of Education dated 7<sup>th</sup> February 2008, narrates a history of gross misconduct during the course of the Claimant's employment including insubordination, negligence and poor performance.
  18. It is however also apparent from the same bundle of documents of the Respondent that the Claimant had complained severally about being overworked. It is on record that although the Claimant applied for employment for the position of matron and was employed as a house mother of the School, she was later made to clean the teachers' staff room and toilets, man the school gate and clean the compound. She also worked long hours without compensation.
  19. In the Respondent's letter dated 1<sup>st</sup> November, 2004 the Claimant was informed that her reporting time would 5 pm when she would go to relieve the day gate-keeper and man the gate until she handed over to the night watchman at 6.00pm. After that she would take up her job of house mother until morning. She was in addition supposed to supervise cleaning of dorms and sanitation areas.
  20. By letter dated 30<sup>th</sup> August, 1999 the Claimant was deployed as a cook as a punishment.
  21. In her appeal against interdiction the Claimant lamented as follows:
 

Mary Mweu Misyani  
 Catholic Church,  
 BOX 1012  
 Kangundo.  
 3/04/07  
 The Headmistress  
 Misyani Girls Seco. School  
 BOX 1249 Kangundo.  
 Re: Appeal Of My Interdiction.

Your letter dated 27<sup>th</sup> November 2006 interdicting me from work WEF from 29<sup>th</sup> March 2007 refers.  
 I wish to appeal for my interdiction from duty as here under.

    1. The quoted dates on 13/3/007, I reported the matter to the deputy principal and she talked to them and cooled down. Even the deputy wrote the names of the students who said they should



watch the T.V. About the Maumau word, I could not report it to you before investigating it deeply to know what it meant-

2. Part (b) of your letter you have quoted about in efficiency in performing my duties. I wish to quote to you that, when I applied for this job, I applied as a matron, and I was offered the job through an appointment letter as a matron. Later I was surprised to note that I am doing almost every work in the school.
  - i. I work as a watchman during daytime
  - ii. I work as a matron during night time
  - iii. I also work as a ground man by cleaning the staffroom and burning of rubbishes in the school so I feel so much over worked and I am not given any day off to go and rest.
3. About students watching T.V. is not true not only the times I am at home so please can you specify what odd hours because lights go off at 11.00 p.m. and it is during this time 10.30 p.m. — 11.00 p.m. when I take the roll call.

Yours faithfully

signed

Mrs. Mary Mweu

matron

22. From the foregoing, I find that the Claimant was given too much work which made it impossible for her to be efficient in the performance of her work. She also worked long hours without overtime or special duty allowance. It is therefore the Respondent who caused the circumstances leading to the summary dismissal of the Claimant, by assigning her extra duties, making it difficult for her to perform her duties efficiently.

#### **Whether the Claimant is entitled to the reliefs sought**

23. Having found that the Respondent was responsible for the circumstances that led to the dismissal of the Claimant, I reduce the dismissal of the Claimant to normal termination with full benefits.
24. The Claimant's letter of appointment states that her appointment was subject to the terms of the agreement between the Ministry of Education and the Domestic and Hotel Workers Union on terms and conditions of service of persons employed by Board or Governors established under the Education (Board of Governors) Order, or any other order establishing any other board of governing body of any institution established under Education Act (Cap 2011).
25. Having reduced the dismissal to normal termination the Claimant is entitled to pay in lieu of notice. The Memorandum of Agreement between the Ministry of Education, Science and Technology and KUDHEIHA Workers provided for termination notice at clause 6 as follows:
  - a. In the normal circumstances, it shall be a condition that employment shall be terminated by either party by giving written notice or pay in lieu of such notices as follows;
    - i. For any employee who has completed his period of probation but with less than five years, two months' notice or two months' pay in lieu of notice.
    - ii. For any employee who has completed five years continuous service or more, three months' notice or three month's pay in lieu of notice.



I therefore award the Claimant 3 months salary in lieu of notice as she worked for more than 5 years.

26. The CBA between the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) further provided for gratuity at the rate of one twelfth for each completed month of service based on the last salary. The Claimant having worked for a total of 107 months is entitled to  $(1/12 \times 5155 \times 107) = 45,966$  which I award the Claimant.
27. Consequently, I award the Claimant the following:
- i. 3 months salary in lieu of notice.....Kshs 15,465
  - ii. Gratuity .....Kshs 46,966.
  - iii. The Claimant shall have the costs of this suit.
  - iv. Interest shall accrue from date of judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 12<sup>TH</sup> DAY OF APRIL 2024**

**MAUREEN ONYANGO**

**JUDGE**

