



**LBC v Teachers Service Commission (Cause E042 of 2023)
[2024] KEELRC 13400 (KLR) (10 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13400 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E042 OF 2023
NZIOKI WA MAKAU, J
DECEMBER 10, 2024**

BETWEEN

LBC CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent alleging unfair termination and breach of his constitutional rights. He sought for damages, reinstatement, and restoration of his name in the register of teachers. In defence, the Respondent filed a reply to the memorandum of claim, asserting that the dismissal was both procedurally and substantively fair.
2. The case proceeded to hearing, with the Claimant testifying on his own behalf, while three witnesses testified on behalf of the Respondent. The Claimant asserted that he had been dismissed on grounds of sodomy of a pupil and desertion of duty. He stated that he did not know of the sodomy and that he did not sodomise the pupil. He also stated that he did not desert work between 10th September 2021 and 2nd December 2021 as he was unwell. The Claimant asserts he was readmitted to hospital after the discharge on 30th September 2021 and that he reported to the Sub County Director of Education. He testified that he had been banned from going to the School by the Court in Migori for interference with witnesses. He stated the Sub County Director made him go back home. The Claimant stated that before his dismissal he was a head teacher for about 8 years. He stated he was aware the CORT barred teachers from having sex with pupils. He admitted that he lived with the pupil X (this is used in place of the initial for the student as he was a minor at the time) for about 4 months and that the house had 2 rooms. He testified that he was not at the School during investigations. He said he had seen the investigation report and that he appeared before the panel prior to his interdiction. He stated that he gave a statement in response to the allegations and that he appeared before the panel and cross-examined the witnesses. He stated that he was not allowed to bring a witness and that he was allowed



- to review the proceedings. He stated in re-examination that he had not been investigated in respect of any misconduct with any pupil other than X. He stated no other pupils were called during the hearing.
3. The Respondent's first witness testified that she was a teacher at the school and that the Claimant was her neighbour. She stated the Claimant lived with the pupil X and that one day, X came to the office with the Claimant and that he remained in the office and that he was crying. She stated that he said the Claimant had sodomised him. She stated only the pupil X stated he had been sodomised. In cross examination she testified that the pupil X had been brought to the office by a teacher alongside another pupil, a girl and that the students should have been in class. She conceded the two should have been in class not outside class chatting. She stated that she gave a statement to the Sub County Director of Education. She said when she spoke to X he started sobbing and said the Claimant had molested him.
 4. The Respondent's second witness was the Sub County Director of Education and he testified that the Claimant was accused of the sodomy and was interdicted after the complaints were made. He stated the COURT decries the conduct the Claimant was accused of and that a report was made after investigations were undertaken. He stated X later withdrew the sodomy complaints against the Claimant. He stated that there was a medical report issued.
 5. The Respondent's third witness testified that she was an Assistant Director, Discipline at the Respondent. She stated that she participated in the hearings where the Claimant faced the accusations levelled and that X complained of several instances of sodomy. She testified that the panel returned a verdict of guilty against the Claimant and he was therefore terminated. She said she saw the letter withdrawing the complaint by X.
 6. On 2nd October 2024 Mr. Langat representing the Respondent sought for an additional seven days to file the written submissions. As of the date of penning this Judgment, no submissions on behalf of the Respondent have been filed.

Claimant's submissions

7. The Claimant isolates the following as the issues that fall for determination:
 - a. Whether the Respondent met the threshold of the standard of proof required in disciplinary proceedings when it found the Claimant guilty of sodomy.
 - b. Whether the Respondent met the threshold of the standard of proof required in disciplinary proceedings when it found the Claimant guilty of desertion of duty.
 - c. Whether the Claimant's dismissal was unfair.
 - d. If the dismissal was unfair, what remedial orders should this Honourable Court make?
 - e. Who should pay the costs of this suit?
8. On the first issue the Claimant submits that the law presumes a teacher innocent until proven guilty. He asserts that while the disciplinary committee is not bound by the strict rules of procedure, it must still meet a standard of proof beyond reasonable doubt, or at the very least, above a balance of probabilities, given the criminal nature of the charges against him. To support this, the Claimant cites Regulation 139(1)(d) of the Code of Regulations for Teachers, which states that the Commission is not bound by strict rules of evidence akin to those used in a court of law. He also references the case of Stanley Maira Kaguongo v Isaac Kibiru Kahutia [2022] eKLR, which outlines the burden of proof as the legal standard a party must meet to prove their case. Further, the Claimant submits that the Teachers Service Commission should not have relied on hearsay evidence, especially if it does not meet the standard of a balance of probabilities required for such a serious charge. He asserts that the



Respondent based its decision to dismiss him on unreliable and unverified hearsay, highlighting the absence of a medical examination report, and noting that the boy's initial silence about the alleged sodomy casted doubt on the validity of the accusation.

9. The Claimant drew the Court's attention to the fact that the victim only decided to speak out about the alleged sodomy after being caught talking to a girl; the contradictory nature of the Respondent's witnesses as well as the failure to call other accusers or the Chairman of the Board to testify. Additionally, the Claimant affirms that no medical evidence was presented to prove the claim, and both the alleged victim, and his father wrote letters exonerating the Claimant and accusing the BOM Chairman of framing him. On this aspect, he refers to the minor's letter in which the minor claims he was influenced by the BOM Chairman to make the sodomy allegations as well as the father's letter supporting the minor's statement.
10. Relating to the second issue the Claimant submits that the allegations of desertion are unfounded and were made in bad faith. He explains that from 10th September 2021 until the date of the charge, he was ill and hospitalized—first at St. Lawrence Hospital in Homa Bay from 14th to 16th September 2021, and then at Karungu Sub-County Hospital from 16th to 30th September 2021. In support of these assertions, the Claimant drew the attention of the Court to the discharge summaries and the sick leave application produced in evidence. He also emphasizes that the sick leave application was submitted within seven days of falling ill, in accordance with Regulation 112(2) of the Code of Regulations for Teachers. In the absence of a challenge to the validity of these documents the Claimant submits that desertion has not been proven.
11. Concerning the fairness of his dismissal, the Claimant submits that the process was flawed. He references the absence of a formal written complaint, as required by Regulation 145(1) of the Code of Conduct as well as the lack of a formal report from the Deputy Headteacher. He argues that proceeding with disciplinary action without a formal complaint was fundamentally unfair. He also submits that there was the fact that the complainant did not testify at the disciplinary hearing and even retracted the allegations of sexual impropriety.
12. The Claimant submits that proceeding with the disciplinary action despite the minor's retraction, coupled with the County Director's failure to conduct investigations in conjunction with the glaring deficiencies in gathering evidence point to the dismissal process being legally and factually flawed. In conclusion the Claimant urges the court to declare his dismissal unfair and to order for his reinstatement. On the issue of costs, the Claimant submits that his dismissal was manifestly unjust treatment in the hands of the Respondent that warrants an award of costs in his favour.
13. The Court has considered the evidence adduced as well as the pleadings of parties as well as the law in coming to this decision. The Claimant was accused of sodomising a pupil code named X. The Claimant was living with the pupil for 4 months in the same house. The pupil later withdrew the complaints against the Claimant. Instructive is that the Claimant had been barred from going to the School for alleged interference with witnesses. That infers the Claimant was not forthright as he attempted to affect the testimony to be adduced against him. In fact, the withdrawal of the complaint was perhaps the result of a successful attempt to interfere with a witness X. In my considered view, the teacher did not handle himself as required by the CORT. He had a duty to ensure the safety of learners under his care and he failed. The allegations under the CORT do not have to be proved to the same standard as a criminal trial and as such, the Claimant having been found guilty by the Panel investigating the matter had been declared to have breached the CORT. In my considered view, the panel did not err, the Claimant was accorded all the necessary space to prepare and present a defence. The teacher who interacted with X indicates the young man was sobbing when he declared he had been sodomised by the Claimant. As such, the teacher made a report and ultimately the Head Teacher was dismissed after



being interdicted, heard and found guilty. The Court finds there was basis for the Teachers Service Commission, the Respondent herein to dismiss the Claimant. As such the suit has to face the inevitable consequence of dismissal. However, each party will bear their own costs. Suit dismissed with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 10TH DAY OF DECEMBER 2024

NZIOKI WA MAKAU, MCIARB.

JUDGE

