



**Sugutt v Board of Management AIC Leseru Girls School (Employment and Labour Relations Cause 135 of 2018) [2023] KEELRC 25 (KLR) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 25 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 135 OF 2018**

**NJ ABUODHA, J  
JANUARY 20, 2023**

**BETWEEN**

**JOHNSON SUGUTT ..... CLAIMANT**

**AND**

**BOARD OF MANAGEMENT AIC LESERU GIRLS SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant in this case filed his Statement of Claim dated 16<sup>th</sup> February 2018 seeking for the following orders:
  - a. A declaration that the Claimant was unprocedurally and unfairly dismissed
  - b. Payment of Kshs 492,400
  - c. Cost and interest of the suit
2. The Claimant averred that he was a school bursar and was engaged by the Respondent as such with effect from 19<sup>th</sup> January 2012 and assigned to handle financial matters concerning the Respondent at a monthly salary of Kshs 8,000.
3. He stated that he diligently and dutifully discharged his services in accordance to the rules, regulations, terms and conditions of service as directed by the Respondent.
4. According to the Claimant, during his employment relationship with the Respondent, he was never served with any first, second or third verbal or written warning letters as prescribed by the terms and conditions of service of the Respondent.
5. He maintained that the Respondent proceeded to dismiss him from employment on 25<sup>th</sup> January 2018 without following the due process.



6. The Respondent filed its Response to the Memorandum of Claim on 23<sup>rd</sup> May 2018 denying the claim and averred that the claimant was employed by Leseru Secondary School from 2014 -2017 whereupon he was requested alongside others to assist the newly established AIC Leseru Girls Secondary School with effect from late 2017 and on which he reported on 3<sup>rd</sup> January 2018.
7. It was averred that from an executive meeting held by the Respondent on 23<sup>rd</sup> January 2018 a resolution was passed that the school streamlines the workers documents by ensuring all employees go through formal interviews for their current positions.
8. According to the Respondent, the Claimant was informed of the Boards resolution and to comply with the interview requirements which were made available to him but he elected not to participate in the interview process. He instead elected to issue a demand notice.
9. The Respondent contended that the claimant's refusal to participate in the interview process which was a condition precedent for his continued employment with the Respondent entailed his self-termination.
10. It was averred that because of the nature of engagement with the respondent his wages which would be all inclusive and commensurate to the nature of engagement he was not eligible for any payments on and until the conclusion of the interviews and thus his claim was impractical and frivolous.
11. The Claimant, CW1 testified on 25<sup>th</sup> April 2022. He adopted his witness statement recorded on 16<sup>th</sup> February 2018 and relied on his documents on record as his evidence in chief.
12. He stated that he was employed on 19<sup>th</sup> January 2012 and sometimes in January 2018, the school principal went to his office and told him to go home and wait for an interview.
13. He maintained that he was not issued with a show cause letter or notice. He also stated that he was never invited for a disciplinary hearing.
14. According to the claimant, he never went on leave during the six years he worked for the Respondent.
15. On cross examination by Counsel Odeyo, CW1 maintained that he was not aware on the BOM meeting of 23<sup>rd</sup> January 2018, that he was never invited for an interview.
16. On further cross examination, he conceded that the vacancy was advertised and that he did not apply as he did not see the need to apply for the same job that he had worked for 6 years and as such, he did not attend any job interviews.
17. CW1 on re-examination stated that he did not leave employment on his own and that someone else was brought to take up the job.
18. The Respondent called one Grace Baraza who testified as RW1 on 10<sup>th</sup> June 2022. RW1 introduced herself as the principal of the Respondent. She adopted her witness statement recorded on 28<sup>th</sup> April 2022 and also relied on her documents on record as her evidence in chief.
19. RW1 averred that the school was originally a mixed school until March 2016 when the school was separated; that the girls school was registered in March 2015 and that it was run by one principal until 2018 when the Girls school was given a principal and the Board of Management was formed.
20. She further contended that the new Board of Management decided to streamline the system and the position of accounts clerk was advertised where the claimant was asked to apply but he declined. It was averred that the interviews were conducted and the position was filled.



21. On cross examination by Counsel Onkangi, RW1 averred that the position of accounts clerk was advertised but the claimant did not apply.
22. In re-examination, RW1 was categorical that Leseru Girls and Leseru Secondary School were different and that the claimant was employed by the later.
23. RW1 maintained that the claimant was never employed by Leseru Girls and that the offer to employ him at Leseru Girls was an act of goodwill.
24. After both parties had closed their case, the court directed parties to file written submissions which submissions had been filed way back in 2019. The Respondent filed its submissions on 25<sup>th</sup> February 2019 whereas the Claimant filed his submissions on 4<sup>th</sup> March 2019.
25. I have considered the pleadings, the evidence on record and the submissions of the parties therein including the cited authorities. In my view, the issues for determination are:-
  - i. Whether the Respondent was properly sued
  - ii. Whether the Claimant was an employee of the Respondent
  - iii. Whether the termination was unfair
  - iv. Whether the Claimant is entitled to the reliefs sought in the Claim.

#### **Whether the Respondent was properly sued**

26. The Claimant sued the Board of Management, Leseru Girls Secondary school alleging unfair termination. In his testimony, CW1 stated that he was an employee of AIC Leseru Secondary School from 2014 to 2017 and was only assisting AIC Leseru Girls Secondary School and that when AIC Leseru Girls School was established all the staff and employees were meant to continue working as the said school fell under the same management.
27. The Respondent on the other hand has maintained that from a reading of the certificate of registration for basic education institutions, the Respondent was registered in 2015 and therefore could not have employed the claimant as alleged.
28. I have carefully analysed the evidence on record. It is evident that the Claimant was employed as a school bursar by Leseru Secondary School way back in 2012 where he worked until 2018 when AIC Leseru Girls School was established for girls students, and he was requested to assist in running the affairs of the newly established school.
29. It was while working at AIC Leseru Girls School that the said management decided to streamline the operations of the new school by requiring the support staff to undergo interviews for their positions as testified by RW1.
30. That being the case, as at the time the post of bursar vacancy was announced, the Claimant was working for the Respondent and it therefore follows that the Respondent was properly sued.
31. RW1 in her evidence stated that the Claimant was requested to assist the newly established Leseru Girls school. It was not explained how this agreement worked but taking judicial notice of how schools run, it would appear that the claimant herein was required to work at AIC Leseru Girls upon its establishment which he did and was not denied. He worked there until he was required to attend an interview for his position which he declined to.



32. The Claimant averred that he was unfairly terminated after the Principal of the Respondent walked to his office, and demanded for the office keys. He stated that in the subsequent dates, he learned that his duties had been taken over by a new employee.
33. This allegation was vehemently denied by the Respondent witness who maintained that the Claimant refused to attend the proposed interview and as such he automatically terminated his employment.
34. While being cross examined by State Counsel Odeyo, the Claimant conceded that the vacancy was advertised and that he did not apply as he did not see the need to apply for the same job that he had performed for 6 years and as such, he did not attend any job interviews.
35. It is the management discretion to streamline and rationlaise staff to improve service delivery. The respondent being a new school was not obliged to retain staff seconded from the previous school without evaluating them to find out if they are suitable for the positions they held. The refusal by the claimant to attend suitability interview was his own undoing and he cannot now be heard to claim her was unfairly terminated. This claim is therefore rejected.
36. The claimant put forward a claim for salary underpayment. His case was that he was paid a salary of Kshs. 8,000 monthly as demonstrated by the bank statements produced in court. The claimant alleged that he was a trained accountant however he did not produce any academic certificates to show that he indeed held diploma in accounting as alleged to enable. The is therefore unable to make any finding in this respect.
37. Concerning house allowance, the respondent did not sufficiently show that it paid the claimant a house allowance or provided him with a house. He is therefore entitled to this prayer for the period he worked for the respondent. The claimant started to work for the respondent in March, 2015 and left in January, 2018. He therefore worked for the respondent for approximately 32 months. House allowance is constitutes one third of and employees salary. The Court therefore awards the claimant  $(8000 * 1/3 * 32) = 85,000$ . The respondent shall therefore pay the claimant Kshs. 85,000/- on account of house allowance.
38. The claimant being partially successful, each party shall bear their own costs.
39. It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 20<sup>TH</sup> DAY OF JANUARY, 2023.**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

