



**Inoiri v Board of Management Matisi Friends High School (Cause 14 of 2022) [2023] KEELRC 344 (KLR) (3 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 344 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE  
CAUSE 14 OF 2022  
NJ ABUODHA, J  
FEBRUARY 3, 2023**

**BETWEEN**

**EMILY OKONJI INOIRI ..... CLAIMANT**

**AND**

**THE BOARD OF MANAGEMENT MATISI FRIENDS HIGH SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The claimant averred that she was employed by the respondent as a cleaner in 2007. She was issued with a letter dated November 14, 2007.
2. According to the claimant, she worked until July 15, 2016 when she was unlawfully suspended from duty and later dismissed through a letter dated March 27, 2017. At the time of dismissal the claimant was earning monthly salary of Kshs 6,350/=. The claimant stated she was suspended on suspicion of theft of remedial money at the Deputy Principal's office but was neither investigated nor arraigned in Court. According to the claimant, she was not on duty on the day the money was allegedly stolen as she had been given an off.
3. The claimant further stated that despite being informed that investigations were going on, she was never called to attend any meeting for investigation and or hearing and was never given a chance to be heard or defend herself before her service was terminated. Upon termination the claimant was never issued with certificate of service.
4. The respondent filed a memorandum of response on October 2, 2017 stating among others that the claimant was in respondent's employment until July 15, 2016 when she was suspended and her service later terminated on March 27, 2017. The respondent denied the termination was unlawful and malicious.



5. The respondent averred that the termination was lawful because the claimant was paid three months' salary in lieu of notice as per the CBA between the respondent and her union. She was further paid salary for the six months she was on suspension and further paid service gratuity.
6. The respondent further averred that investigations were carried out and it was revealed that sometimes immediately upon the loss of the remedial money from the Deputy Principal's office, the claimant acquired new electronics and undertook financial obligations not within her earning capacity. The claimant was on duty when the sum of Kshs 89,250 got lost from the Deputy Principal's office.
7. The respondent further averred that during the investigations the claimant was involved and was given an opportunity to be heard and from the results of the investigations the respondent had sufficient grounds to suspect the claimant of having committed a criminal offence of theft against her employer which justified summary dismissal. The reasons for termination were explained to the claimant in the presence of the union's school shop steward and a representative of the union.
8. The matter proceeded by way of written submissions and judgment was to be delivered on October 30, 2019 by my predecessor Honourable Justice Marete. This however did not happen.
9. The same was thereafter transferred to Kitale for oral hearing and disposal. On September 26, 2022 Mr Mukamo appeared for Mr Teti for the claimant while Mr Ingotsi appeared for the respondent. The Court on that day directed that the matter would proceed by oral hearing on November 28, 2022.
10. On November 28, 2022, only the claimant's Counsel appeared. There was no appearance for the respondent. The claimant gave evidence reiterating the averments in the statement of claim and asked the Court to grant her the prayers in the claim.
11. The matter having proceeded *ex parte*, the Court did not have an opportunity to hear the respondent. In that regard the averments by the claimant remained uncontroverted hence the Court will pronounce the termination of the claimant as unfair.
12. On the remedies sought, the Court will decline to grant the sum of Kshs 1,073,150 sought being salary for 169 months the claimant could have worked until 60 years for the reason that the employment could have terminated by any other reason including the demise of the claimant.
13. The claimant had worked for approximately eight years. She had no special skills which could have made it possible to obtain work elsewhere. No loss of occupation or trade occurred by virtue of her termination. Being a general worker she could obtain work elsewhere even on temporary basis.
14. In the circumstances an award of six months' salary as compensation for unfair termination would suffice. To that extent the court awards the claimant the sum of Kshs 38,100/=. The claimant shall also have costs of the suit.
15. The respondent is further ordered to issue the claimant with a certificate of service.
16. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2023**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

