



**Samoei v Board of Management Kerotet Girls High School (Cause  
174 of 2017) [2023] KEELRC 382 (KLR) (3 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 382 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 174 OF 2017  
NJ ABUODHA, J  
FEBRUARY 3, 2023**

**BETWEEN**

**PERIZ SAMOEI ..... CLAIMANT**

**AND**

**BOARD OF MANAGEMENT KEROTET GIRLS HIGH  
SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The claimant herein alleged that she was at all material times herein employed by the respondent is a Laboratory Technician and worked for the respondent from March 1, 2015 to October 26, 2016 when the respondent unlawfully terminated his service and refused to pay her dues.
2. The claimant contended that the termination was unlawful because her union was never informed of the intention to terminate her service and further that she was not afforded an opportunity to be heard. The respondent further did not pay her in lieu of leave and notice. She was also not paid severance pay. The claimant therefore claimed the sum of Ksh 183,560/= on account of unpaid house allowance and compensation for unfair termination.
3. The respondent filed a response to the claim on April 6, 2017 and alleged among others that the claimant was never employed by them as Laboratory Technician as alleged. The respondent further denied employing the claimant from March 1, 2015 to October 26, 2016 as alleged.
4. According to the respondent, the claimant was engaged as Laboratory Assistant on casual basis with effect from September 1, 2015 when the school's Laboratory Assistant Mr Ezekiel Choge was engaged to the teach in the school having trained as a teacher.
5. According to the respondent, the claimant while being a casual breached the respondent's trust when she acted negligently by refusing to close/lock the school laboratory after the day's learning sessions



- and when the claimant was summoned by the head of department to close the doors she denied and became made and abusive.
6. According to the respondent, the claimant was verbally summoned by the Principal and Secretary to show cause why she did not act on the instructions from the head of department and neglect of duties and responsibilities and she complied in writing. The respondent found her explanation not satisfactory and suspended her and later relieved her of her duties on December 30, 2016 on account of insubordination and negligence.
  7. The respondent further averred that during the period the claimant worked, she was paid her wages which was inclusive of house allowance. The claimant was additionally paid in lieu of notice upon termination.
  8. The respondent further averred that the claimant was paid her wages promptly and that there was no overtime the claimant was entitled to.
  9. At the hearing, the claimant stated that she recorded her statement on February 13, 2017 which she relied on as her evidence in chief. It was her evidence that she was employed on 1<sup>st</sup> March, 2015 as a lab technician and worked until October 26, 2016. According to her she was called at night and told she did not lock the laboratory but according to her, she had locked it. The next day the Secretary called her and told her to see the Principal. When she met the Principal, she was asked why she did not lock the laboratory but she denied not locking the same. She was further accused of reporting late for work. The Principal asked her to write a letter and then told her to go home and wait to be called.
  10. It was the claimant's evidence that she was later called to the Board of Management meeting but was subsequently told that there was no need for her to attend the meeting. According to her, she was not issued with a dismissal letter.
  11. In cross-examination she stated that she was never issued with a letter of appointment although she used to ask for one. It was her evidence that she knew a Mr Chege. He was the Lab Technician and that she succeeded him when he left to teach. She confirmed that she was called at night and told the lab was not locked but according to her, she had locked it. She admitted writing the letter dated June 26, 2016. She asked for forgiveness in the letter but said she wrote the letter because she needed to save her job. She denied she was a casual worker and maintained she was a permanent employee. She however stated she had no letter showing she was a permanent employer.
  12. The respondent's witness Joan Too informed the court that she was the Principal of the respondent. She recorded a statement on April 4, 2017 and adopted the same as her evidence in chief. She further adopted the documents filed with the claim.
  13. According to her, the claimant was employed as a casual in the lab. On the material day she left the lab unlocked and when called back to lock it, she became rude. The Head of Department summoned her but she did not cooperate. She consequently summoned the claimant and she apologized. The executive board thereafter summoned her and was asked to show cause why she should not be disciplined for negligence and insubordination. The meeting thereafter resolved to dismiss her. It was further her evidence that the claimant was paid all her dues upon dismissal.
  14. In cross-examination she stated that the claimant was a casual employee in the lab. She was issued with an appointment letter, thought the same was not before the court. Further, the claimant was summoned for a disciplinary hearing before the Board by a letter. The letter was not before the court. The communication was verbal.



15. Ms Too further stated that the letter dated October 26, 2016 was prompted by a show cause letter she issued to the claimant.
16. The court having reviewed and considered the pleadings, evidence and submission by counsel notes that it was common ground that the claimant was an employee of the respondent and was working as a laboratory technician. Although the respondent asserts that she was on casual status, the fact remains that she was the respondent's employee working in the laboratory.
17. The court further noted that on the material day the claimant was accused of failing to lock the lab before leaving the home. The claimant was consequently called at night to come and lock the lab but according to the respondent, did not come back to do so. The claimant however while claiming she had locked the lab before leaving the home, subsequently wrote an apology letter on October 26, 2016 stating that on being informed the lab was unlocked she could not come back to lock it but instead asked his colleague, one Titus to assist in locking the lab. The claimant further in the said letter apologized for lateness to work.
18. The respondent in a meeting held on December 30, 2016 deliberated among other items, the issue of workers' discipline and resolved among others to dismiss the claimant since she left the lab open for the second time after being issued with a verbal warning by HOD QASO for the same mistake and reporting to work late. It should be noted that the claimant was not invited to the meeting where this resolution was arrived at.
19. The claimant having apologized over the incident may have reclined to a comfort zone that her infractions had been pardoned hence if the respondent was not satisfied with her apology and wanted to escalate the issue further, the claimant could have been summoned to the meeting of December 30, 2016 where her issue was deliberated upon and a resolution passed to dismiss her. This is a clear requirement of section 41 of the *Employment Act*. Failure to observe this requirement leads to the conclusion that the dismissal was unfair even if there were justifiable reasons to do so.
20. The respondent alleges that the claimant had been previously warned about failing to lock the lab while leaving for home after work however the respondent never produced any such warning letter. The claimant stated in her apology letter that she tried to reach one of her colleagues, Titus to help lock the lab since she was already far and it was at night. What was not clear to the court whether the claimant used to go home with the keys to the lab or they were deposited in the school and she was the only one with the keys. Form the minutes of December 30, 2016, it would seem the claimant was not the only one with the lab keys since another lab assistant was called on the material night to lock the lab.
21. The reason for dismissal or termination of employment is entirely at the discretion of the employer and the court is always reluctant to question that. However, the test usually has been whether a reasonable employer put in the same situation would consider dismissal or termination as the most proportionate disciplinary measure in the circumstances. To err is human and not every infraction in the arena of employment should attract a termination.
22. The court has considered the nature of the claimant's infraction and the fact that she admitted her mistake and apologized and is not persuaded that it was of the magnitude that would attract termination as the most proportionate disciplinary measure. To this extent the court is of the view that the reasons for the claimant's dismissal did not meet the threshold set under section 43 of the *Employment Act*. Dismissal was an excessive and disproportionate measure in the circumstances. The court for the above reasons finds the termination unfair.
23. The claimant stated that she worked for the respondent from March 1, 2015 to October 26, 2016. This was approximately one year and seven months. She did not produce any credentials to show she



was trained for the job she was doing. Further she admitted her mistake of not locking the lab. In the circumstances an award of three months' salary as compensation for unfair termination would be reasonable in the circumstances.

24. In conclusion the court awards the claimant as follows:

- a) One month's salary in lieu of notice Kshs 10,400
- b) House allowance Kshs 29,640
- c) Three months' salary as compensation for unfair termination Kshs 31,200
- d) Costs of the suit.

Items (a) (b) and (c) to attract taxes and statutory deductions.

25. It is so ordered

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

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

