



**Maina & another v Naisula Holding Limited t/a Naisula School (Cause 693 & 694 of 2018 (Consolidated)) [2023] KEELRC 1450 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1450 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 693 & 694 OF 2018 (CONSOLIDATED)**

**B ONGAYA, J**

**JUNE 16, 2023**

**BETWEEN**

**SARAH ANNE WANGUI MAINA ..... 1<sup>ST</sup> CLAIMANT**

**MAXWELL ENGENDA ONGONYO ..... 2<sup>ND</sup> CLAIMANT**

**AND**

**NAISULA HOLDING LIMITED T/A NAISULA SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The claimants filed their respective memorandum of claims on 06.07.2015 through Mwangi Kinyanjui Advocates.
2. The respondent employed the 1<sup>st</sup> claimant on 10.11.2011 as a Laboratory Technician. The 1<sup>st</sup> claimant pleads as follows. On 08.05.2015 she was at work in the Laboratory when Mr. George Jagongo entered and informed her that the respondent's Executive Director wanted her in one of the classrooms. The claimant proceeded and met Mrs. Muchemi in one of the classrooms. Mrs. Muchemi in a hostile manner asked the 1<sup>st</sup> claimant where she got information that she would be dismissed. Before replying she was told she had been fired. She was asked to pick the dismissal letter from the secretary on her way out. Students and staff witnessed the spectacle and the claimant says she was seriously humiliated. She picked the dismissal letter from the secretary. It was a letter of summary dismissal dated 08.05.2015 terminating her employment effective 08.05.2015 for gross misconduct whose particulars were not stated at all. It is her case that she was a diligent worker and with a clean record. She worked from 6.30am to 7.00pm and was not paid overtime. Her salary was Kshs. 42, 500.00 per month. She claimed and prayed for judgment against the respondent for:
  - a. 3-months' notice payment Kshs. 127, 500.00.
  - b. 12-months compensation 42, 500 x 12 =Kshs. 510,000.00.



- c. Overtime 5hours per week x168 weeks x Kshs.319 =Kshs.267, 960.00.
  - d. Damages for violation of the claimant’s fundamental rights against inhuman and degrading treatment by the Respondent,
  - e. Costs to the claimant.
3. The respondent filed on 20.04.2018 a memorandum of response to the 1<sup>st</sup> claimant’s memorandum of claim through Ogola Okello & Company Advocates. The respondent pleaded to the following effect:
- a. It is admitted the respondent employed the 1<sup>st</sup> claimant as pleaded for the 1<sup>st</sup> claimant as a Lab Technician.
  - b. The claimant engaged in spreading wrong or false information to other staff members about the respondent’s management staff and other staff members The claimant disobeyed the respondent’s verbal warnings to stop disobeying orders from persons in authority as well as carrying out work improperly.
  - c. The 1<sup>st</sup> claimant was dismissed on account of breach of trust.
  - d. The claimant was accorded an opportunity to be heard.
  - e. While letter of appointment provided for 3-months’ termination notice, the respondent could terminate without notice on account summary dismissal per section 44 of the Employment Act, 2007.
  - f. The claimant’s conduct was a serious threat to peace and continued good operations at the respondent’s enterprise as she did not work diligently.
4. The 2<sup>nd</sup> claimant’s case was based upon memorandum of claim dated 03.07.2015 filed through Mwangi Kinyanjui Advocates. The 2<sup>nd</sup> claimant pleaded as follows. He was by the respondent on 04.09.2014 as an ICT Teacher and IT Administrator at Kshs. 77,000.00 per month. On 08.05.2015 the claimant was called from an on-going lesson with year 10 ICT students by Madam Cecilia Muchemi, the Executive Director of the respondent. He was summoned to a classroom and Madam Cecilia Muchemi turned to him and started shouting at him saying that he was incompetent to teach at their school. On 15.05.2015 while working at around 9.00am the School Accountant one Rafael and Head of Academics Gearge Jagongo walked into the office and handed the 2<sup>nd</sup> claimant a letter of summary dismissal dated 15.05.2015 and conveying that the 2<sup>nd</sup> claimant had been summarily dismissed from employment as an ICT Teacher and IT Administrator effective 15.05.2015. The letter stated that the unexplained anomalies and inconsistencies in the 2<sup>nd</sup> claimant’s employment records raised serious concerns about the claimant’s qualifications and integrity. He was to be paid for days worked in May 2015. The claimant’s case is that the alleged anomalies were not investigated at all. There was no chance for the 2<sup>nd</sup> claimant to defend himself. He worked 6.00am to 7.00pm with no payment of overtime. He states summary dismissal was unfair in procedure and substance. His freedom from torture and cruel, inhuman or degrading treatment or punishment per Article 25 of the Constitution was violated. He claimed and prayed for judgment against the respondent for:
- a. 3-months’ notice payment 77, 000 x3 =Kshs. 231, 000.00.
  - b. 12-months compensation for unfair termination Kshs. 77,000 x 12 = Kshs. 924, 000.00.
  - c. Damages for the violation of the freedom from inhuman and degrading treatment by the respondent.



- d. Costs of the suit to the 2<sup>nd</sup> claimant.
5. The respondent filed on 20.04.2018 a memorandum of response to the claimant's suit. Is admitted the respondent employed him effective 04.09.2014 per the appointment letter and relevant laws. The respondent had developed a school teaching handbook on principles of working which was drawn from the objectives of the school with the aim of enhancing teaching and learning of students and other stakeholders. The respondent further states that on 09.05.2015 the claimant was called for a hearing after being served with a notice to show cause discovered during a staff audit and it was disclosed that his academic certificates had been forged. On 11.05.2015 the claimant wrote an email to the respondent to apologise the anomalies as had been discovered on 09.05.2015 and requested to be given a chance to rectify his performance to satisfactory standards. The respondent states that the claimant was therefore dismissed for breach of trust to the detriment of the respondent's interests. In particular, he was dismissed on account of forging academic papers amounting to dishonesty on the part of his service as Head of Department. He in that case breached policies and procedures in the respondent's Teaching Staff Handbook -2014 and respondent's circulars.
  6. The respondent denied the 2<sup>nd</sup> claimant's claims and prayed that the suit be dismissed with costs.
  7. The claimants testified to support their respective cases as CW1 and CW2 respectively. The respondent's witness (RW) was George Jagongo.
  8. RW testified that he admitted that the claimants' dismissals occurred on the stated dates per claimants' testimony and pleadings. He also admitted that the claimants were employed by the respondent per their respective cases. RW testified that there existed disciplinary committee hearing but no minutes had been filed. Further no terminal dues had been paid to the claimants.
  9. The Court has considered the evidence and returns that the claimants were dismissed without due process of a notice and a hearing as required under section 41 of the Employment Act. RW in his evidence failed to shade light upon the reasons of the termination. It cannot be returned that as at termination the reasons for the termination had been established. The particulars of the 1<sup>st</sup> claimant's reasons for termination were never stated even in the termination letter or letter of the summary dismissal. There court finds that the respondent has failed to show that the reasons for termination of the 1<sup>st</sup> respondent were valid as per sections 43 and 45 of the Act. For 2<sup>nd</sup> claimant, the reasons remained ambiguous as expressed in the letter of summary dismissal and the particulars remain unknown as envisaged in sections 43 and 45 of the Act.
  10. The terminations have been found to have been abrupt and unfair in substance and procedure. The claimants are entitled to the contractual 3 months' payment in lieu of termination notice. The 1<sup>st</sup> claimant is awarded Kshs.127, 500.00 and the 2<sup>nd</sup> claimant Kshs. 231, 000.00.
  11. The Court has considered the factors in section 49 of the Act for award of compensation. The Court has considered the manner in which the claimants were abruptly terminated with humiliation. The claimants were harassed by being summoned from their respective work stations and the proceedings were in full presence of students and other staff. That was a serious aggravating factor. The Court awards the 1<sup>st</sup> claimant the maximum 12 months making Kshs. 510,000.00. For the 2<sup>nd</sup> claimant he admitted writing the apology letter dated 09.05.2015 about receiving unconfirmed information from a workmate. He also wrote another apology of 15.05.2015 about his teaching style. In consideration, such are mitigating factors in favour of the respondent and showing the 2<sup>nd</sup> claimant significantly contributed to his termination on account of the poor performance and misconduct subject of his apology letters. He is awarded 2- months' salaries for the unfair summary dismissal making Kshs. 154, 000.00.



12. The Court returns that the claimants' prayers for overtime payment was baseless as was unjustified. The working hours were agreed in the terms and conditions of service to be determined by the school activities and events from Monday to Sunday for the 2<sup>nd</sup> claimant being governed by a duty rota. For both claimants the Court returns that the alleged extra working hours have not been established by evidence and are mere afterthought as it is not alleged and shown that they had such grievances throughout the periods of employment. The claim is declined.
13. The claimants have substantially succeeded in their respective cases. The respondent will pay their costs of the suit.
14. The claim for damages for breach of the freedom from inhuman and degrading treatment on account of humiliation at termination time is declined as it has been considered as an aggravating factor in awards made for compensation for the unfair termination. The awards as made are found just and adequate in the circumstances of the suits.

In conclusion judgment is hereby entered for the claimants against the respondent for:

- a. The respondent to pay the 1<sup>st</sup> claimant Kshs. 637,000.00 and the 2<sup>nd</sup> claimant Kshs. 385,000.00 (less due PAYE) by 01.09.2023 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- b. The respondent to pay the claimants, each, respective costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 16<sup>TH</sup> JUNE, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

