



**Chepkorir v Secretary, Board of Amangement Nasokol Mixed Day and Boarding Primary School (Cause E004 of 2022) [2023] KEELRC 1409 (KLR) (9 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1409 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE**  
**CAUSE E004 OF 2022**  
**NJ ABUODHA, J**  
**JUNE 9, 2023**

**BETWEEN**

**ANNA CHEPKORIR ..... CLAIMANT**

**AND**

**THE SECRETARY, BOARD OF AMANGMENT NASOKOL MIXED DAY AND BOARDING PRIMARY SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The claimant pleaded that:
  - i. At all material times giving rise to this claim; that is in the year 1992 the Claimant herein started to work as a Receptionist with the Respondent which is under the Administration of the Board of Management appointed by the Government.
  - ii. That in the year 1996 January the claimant was employed and elevated by the School as accounts clerk at a monthly salary of Ksh.3,000/-
  - iii. That the claimants salary was increasing in every year and that as at the year 2018 the claimants salary was Ksh.20,140 which continued up to April 2020.
  - iv. The Claimant states that between the Months of May 2020 to December 2020 (8 Months) she was never paid salary.
  - v. The Claimant states that in the Month of March 2021 her Salary reduced from Ksh.20,140 to Ksh.14,000/- and that she continued to get Salary of Ksh.14,000/- up to JANUARY 2022 and that the Respondent retained Ksh.6,140/- between March 2021 and January, 2022. ;
  - vi. That in the month of February 2022 the Claimant was verbally ordered by the Secretary BOM to hand over all school belongings and to go home until further Notice.



- vii. Subsequently when the claimant sensed that the BOM Secretary's actions amounted to wrongful dismissal, she went to Labour Office and lodged her complaint.
- viii. That on the 22<sup>nd</sup> day of March, 2022 the labour Office West Pokot County wrote to the Secretary BOM Nasokol Primary and boarding School and asked her to explain in writing about the claimant's employment status within 7 days.
- ix. That instead of responding to the letter of the Labour Officer West Pokot County, the Secretary BOM Nasokol Primary and Boarding school, made a Notice to the Claimant requiring her to appear before the School's BOM on 13th day of APRIL 2022 at 10.00 am for the School to deliberate on her discipline issues. She was required to appear with her appointment letter.
- x. That on the 13<sup>th</sup> April, 2022 when the Claimant appeared before the School's BOM as required, wild disciplinary issues were leveled against her and that on the 17<sup>th</sup> May, 2022 the Claimant received a letter dismissing her for Gross misconduct.
- xi. The Claimant contends that the allegations drummed up against her in the dismissal letter are foreign to her and calculated to wrongfully terminate her services.
- xii. The Claimant's claim against the Respondent is for a Declaration that the termination of her services were illegal, arbitrary, unlawful, sinister and armed with ill motives.  
Particulars Of Illegality, Unlawful And Unfair Termination Of The Claimant's Service
- xiii. The Verbal Orders of the Secretary BOM towards the claimant to hand over the school/ property and to go home until she is called back.
- xiv. Failure to respond to the letter of the Labour Officer West Pokot County and the Demand Notice from the Claimant's Advocates.
- xv. Commencing disciplinary case against the Claimant after receiving a letter from the Labour Office West Pokt County.
- xvi. Failing to take into account that the. responsibility of remitting the employees deduction to N.S.S.F is not for the Claimant herein but it is the employer who is supposed to-remit the deduction.
- xvii. Dismissing the Claimant on. unsubstantiated Criminal allegations which have not been heard and determined by the competent court of Law.
- xviii. Acting in utmost bad faith in dismissing the Claimant.
- xix. That due to the illegal and wrongful dismissal, the Claimant has suffered loss and damage ' of which she claims General and exemplary damages as hereunder:-
  - a. 2 Month's salary in Lieu of Notice that is  $\text{Ksh.}20,140 \times 2 = \text{Ksh.}40,280/-$ .
  - b. Unpaid Salary for the year 2020 between the Month of May, June, July, August, September, October, November and December at  $\text{Ksh. } 20,140/-$  per a month that is  $20,140 \times 8 = \text{Ksh. } 161,120/-$ .
  - c. Unpaid salary/salary arrears/between March 2021 January 2021
  - d. Salary Arrears from March to January 2022 at  $\text{Ksh. } 6,140/- \times 11 = \text{Ksh. } 67,540/-$



- e. Unpaid Salary between March 2022 to December 2022 at Ksh. 20,140 x 11 months = Ksh. 221,540/-
- f. Unpaid Leave allowance since the year 1996 based on the last Monthly Salary payable for the claimant. In every one complete year worked by the complainant, she is entitled to one month's Paid Leave. The 26 years worked by the Claimant translates to salary for 26 months that is Ksh.20,140 X 26 =Ksh.523,640/=
- g. Severance pay for the 26 years worked for every complete year worked, The claimant is entitled is entitled to salary pay for 21 days that is 959 per day X 21 days X 26 = Ksh. 523,614/-

Grand Total = Ksh. 1,537,734/-

2. The Respondent filed a statement of response in which it averred among others that:

- i. In reply to Paragraph 4 and 5: The Respondent denies the averments made by the Claimant. In any event if such employment contract exist which is hereby denied, the creation of it is invalid, null and void for lack of approval by School Board of Management.
- ii. In reply to Paragraph 6 and 7: The Respondent states that the salary increment claimed by the Claimant is invalid, null and void for lack of approval by School Board of Management.
- iii. In reply to Paragraph 8: The Respondent claims that on 25<sup>th</sup> February, 2022 the Claimant was invited by the School Board of Management meeting to respond to gross misconduct levelled against her. After the meeting the Claimant was ordered to go home after the school Board of management was informed that she was threatening to kill the School Head Teacher. It was necessary to do so to secure her safety.
- iv. Further to Paragraph 8, it was necessary for the claimant to stay at home so as to facilitate investigations because there was also misappropriation of school funds.
- v. In reply to Paragraph 9: The Respondent avers that it was the Claimant own suspicion that made her to lodge her complaint at Labour office before School Board of Management deliberate on her matter.
- vi. In reply to Paragraph 11: The Respondent avers that the Agenda of the meeting was the claimant gross misconduct and it was NOT the first time the matter was being discussed by School Board of Management.
- vii. The Respondent further contends that during the meeting that was held on 13<sup>th</sup> April, 2022 it came out clearly that the claimant; -
  - a. failed to remit statutory deductions of the workers namely N.S.S.F as a result the school ended paying Ksh.9,000/= penalty.
  - b. threatened to kill the school head teacher and her children.
  - c. was to avail her credentials for verification.
  - d. misconduct and for her own safety it was prudent for her to leave the school premises until such time the Board of Management deliberate on her fate so as to facilitate investigations.



- viii. The Respondent further avers that during the meeting that was held on 13<sup>th</sup> April, 2022 the claimant became rude, moody and arrogant before the Board of Management. As a result of her gross misconduct her services were terminated and it was agreed that dismissal letter be written.
  - ix. Further the Respondent states that the Claimant was duly informed of the outcome and accorded an opportunity to defend herself.
  - x. It is the Respondent case that the Claimant was the School Accountant whose duties includes remitting employees' statutory deductions as directed by the school head teacher. Failure by the Claimant to remit such deductions not only illustrate disobedience but wilful act to withhold such funds for personal gain to the detriment of her fellow employees.
3. At the hearing, the Claimant testified among others that he was employed by the Respondent in 1993 and that she recorded a statement on 27<sup>th</sup> July, 2022 which she relied on as her evidence in chief. In 1996, she was working as an accounts clerk and worked as such until 2022, February. The monthly salary was Kshs.20,140/= by the time of termination.
  4. According to the Claimant, she was terminated without reason but later received a letter accusing her attempting to kill the Principal. She was called to the Board and told she had been terminated and ordered to handover and move out of the Respondent's housing.
  5. The Claimant reported the same to the Labour Office and they wrote to the Respondent but they never responded. She later on received a letter to appear before the Board of Management. According to the Claimant, she heard about the accusations against her for the first time when she appeared before the Board of Management. According to her, remitting NSSF was the responsibility of the Principal. She denied planning to kill the Head Teacher. She further stated that she used to be given salaries together with NSSF but at some point the Principal stopped giving her salaries including NSSF.
  6. The Claimant further stated that she had no prior warning before the dismissal and that she never attended the meeting where her conduct was discussed.
  7. The Claimant further stated that the Respondent never paid her salary from May to December 2020. This was during COVID 19 period. She was told once things normalize she would be paid. Further that her salary was reduced by 6,140/- and was thin earning Kshs.114,000/-. She was told this was because of COVID 19.
  8. In cross examination she stated that she was employed as a receptionist in 1992 and late in 1996 she got hired as an accountant. She however had no document to show she was hired as a receptionist and that she was not trained as a receptionist. Her duties were as indicated in her appointment letter as an accountant. She used to remit salaries to her colleagues.
  9. According to the Claimant, she was called to Board of Management meeting on 12<sup>th</sup> February but was not told she would be dismissed. She never defended herself and that the charges were read other and she denied them. She further stated that she wrote an apology but it was not about the claim that she threatened to kill the Head Teacher.
  10. It was further her evidence that her duty was not to deduct statutory dues. Hers was to pay salaries and that she was given salaries without NSSF and that she was not given directions to deduct NSSF from salaries.



11. The Claimant further denied that she threatened to kill her Head Teacher and acknowledged that threat to kill was criminal offence. However she was not aware that the issue had been resorted to the police and pending under investigation.
12. The Claimant further acknowledged that from May to December she was not paid salary because it was during COVID 19 period and schools were closed and no fees was being paid. She further stated that her fees was paid out of fees collected.
13. The Respondent's witness Ms. Cecily Mwihaki Ngige stated that she was the Respondent's Principal and that she had been head Teacher for twenty years. She knew the Claimant and that she used to work for the Respondent as an accountant. She recorded a witness statement on 25<sup>th</sup> November, 2022 which she sought to rely on as her evidence in chief.
14. According to Ms. Ngige, the Claimant was afforded a chance before dismissal. According to her the Claimant used to receive school fees, pay salaries and NSSF but never used to submit reports.
15. It was further her evidence that the Claimant threatened her and that she forwarded her name and those of her kids and pictures to people out of the county who started sending her threats to kill her on behalf of the Claimant because she reduced her salary.
16. She reported the issue to DCIO and the Claimant was called and they were asked to discuss the issue with the Board. They discussed and the Claimant apologized. She never followed thereafter.
17. Shown the minutes dated 27<sup>th</sup> October, 2022 she stated that they discussed the Claimant's conduct. The Claimant appeared not to have respected her as her superior.
18. Regarding the threat issue, the Claimant was sent one leave but instead reported the issue to the Labour Office. She was subsequently summoned to the school. The Board of Management met on 5<sup>th</sup> May 2022 and the agenda was to consider the Claimant's dismissal but before the discussion it was resolved to ask the Claimant to produce documents showing she was the School accountant. She further said when she joined the school, there were no records and that the Claimant never produced any records.
19. Concerning NSSF, it was her evidence that the Respondent paid arrears and penalties and that the Claimant paid employees salaries without NSSF deductions. Further, in May, 2020 most employees were not paid salary due to COVID 19. She asked for the payroll when she reported and noticed the Claimant's salary was over Kshs.20,140/- which was way above similar schools and other workers. There were no records to show how the Claimant's salary was arrived at. This was the opinion of the Board of Management and not just hers. The Claimant was the custodian of all records and that she had no records concerning the Claimant.
20. In cross examination, she stated that she joined the Respondent's school in 2018. The school was a public school and had an account. All collections were deposited and but she was one of the signatories and the Claimant was not one of the signatories but initially the Claimant was in control of all the finances of the school. When she joined, she started to streamline the schools' finances.
21. Further, the Claimant's credentials were not available. The Claimant produced for the first time a photocopy of her appointment letter when she was summoned to Board of Management, the letter was not available in the school records. NSSF visited the school in 22<sup>nd</sup> May, 2021. They made a report thereafter and it was found that the Claimant paid workers without deducting NSSF including hers.
22. The Respondent's second witness Mr. Benson Chombus stated that he was the Chairman of the Board of Management and that he had been a chair since 2019. He knew the Claimant. She used to work for



the Respondent as an accountant and that he recorded a statement on 25<sup>th</sup> November, 2022 and that he adopted the same as his evidence in chief.

23. The minutes 1 to 5 in his statement were deliberations by the Board of Management and that they concerned the Claimant. The Claimant was invited to the meeting and never appeared. The Claimant never remitted NSSF for eight months and the school was penalized. It was further his evidence that he was in the meeting where it was resolved to dismiss the Claimant. The Claimant was requested for her credentials but never produced any. He had never seen the Claimant's appointment letter.
24. On a claim for termination of employment, the burden of showing that an unfair termination took place is on the employee while the burden of proving the reason for termination is on the employer. Further, the reasons for termination ought to be facts as they existed and that the employer genuinely believed them to reach a decision to dismiss.
25. The Claimant herein was accused of among others, failure to remit NSSF dues, threatening the head Teacher with death and failure to produce her credentials to justify her employments and the salary she was earning.
26. According to the Claimant, she did not remit the NSSF dues because she was given the staff salaries without the NSSF dues and further that there were no salaries paid between May to December, 2020 because this was during COVID 19 and the schools were closed and no fees was collected.
27. Regarding the threat to the Head Teacher and her family, although it was alleged that the Claimant admitted and apologized in writing. The Court has perused the said apology letter dated 28<sup>th</sup> February, 2022 and attached to the Respondent's bundle of documents and noted that the alleged hiring of foreign killers to whom the Claimant was alleged to have forwarded the Head Teachers and her children's photos were according to the Claimant, preachers in Nigeria whom she had allegedly asked to pray for her and the Head Teacher so that she could restore her salary. To this extent, the Claimant admitted sharing the Head Teacher's photos but with a different motive, which was prayer.
28. It is objectionable to share someone's photos for whatever reason, with strangers and without their consent regardless of the motive. The Claimant was therefore guilty of misconduct in that respect.
29. Regarding remitting NSSF, the Respondent produced evidence to show that the school was fined Kshs.9,000/- for failure to remit NSSF. The Claimant was the school's accountant hence it was her responsibility to ensure these remittances were done. Nowhere in her pleadings or evidence did the Claimant allege or show that she raised the issue of remitting salaries without NSSF with the Head Teacher or Respondent's management and got no response.
30. The Claimant was called for an executive Board of Management meeting on 28<sup>th</sup> February, 2022 where the issue of the threat to the Head Teacher was discussed and she was sent on leave immediately for security reasons.
31. The Claimant was further called for another meeting on 13<sup>th</sup> 0April, 2022 at which the issue of failure to remit the 0NSSF dues were discussed. It was at this meeting where it was resolved to terminate the 0Claimant's service.
32. This Court does not reanalyze or reason out why an employer decides to terminate an employee's service. The concern of the Court is usually on whether a reasonable employer confronted with similar reasons or circumstances would dismiss. If the answer be in the affirmative the Court will not interfere. As observed earlier, sharing a person photographs with strangers whether for prayer or other reason without their consent had and obtained is objectionable. Further causing an employer to default on statutory deductions until the employer is penalized is an act of negligence.



33. The Court therefore finds and holds that there existed valid reason for the termination of the Claimant's service and that the termination was arrived at using a fair procedure. The claim is therefore found without merit and is hereby dismissed with costs.

34. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 9<sup>TH</sup> DAY OF JUNE, 2023**

**ABUODHA J. N.**

**JUDGE**

In The Presence Of:-

Kaosa for the Claimant

Lowasikou for the Respondent

