



Wandere v Board of Management Ngara Girls High School & another (Cause 1800 of 2016) [2023] KEELRC 1823 (KLR) (25 July 2023) (Judgment)

Neutral citation: [2023] KEELRC 1823 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1800 OF 2016
AN MWAURE, J
JULY 25, 2023**

BETWEEN

ROSE NJERI WANDERE CLAIMANT

AND

**BOARD OF MANAGEMENT NGARA GIRLS HIGH SCHOOL 1ST
RESPONDENT**

PRINCIPAL NGARA GIRLS HIGH SCHOOL 2ND RESPONDENT

JUDGMENT

1. The claimant filed the amended statement of claim dated the 8th day of November 2021 on the 12th November 2021. She is claiming that she was employed by the 1st Respondent as a Matron as from 1st April, 2017 until she was unfairly terminated on the 13th February, 2020 by the Respondents.
2. The claimant says she was given a phone by the Respondents for use by the students to enable them communicate with their parents or guardians and also in cases of emergency for instance sickness, riot, strike or fire since claimant was always alone with the students at night.
3. She says that on the 13th June, 2016 the claimant was unfairly suspended from duty vide the letter dated 13th June, 2016 by the 2nd Respondent alleging that the claimant allowed students to make calls outside the stipulated time whereas there was no circular, official memo or guidelines by the Respondents on how students should make calls, however, the norm had been that students call between 9.00 pm and 10.00 pm on Sundays only in cases of emergency.
4. The claimant says that on the 29th June, she received a letter from the 2nd Respondent extending the claimant's suspension by one week and with the same false allegations similar to the earlier letter of 13th June, 2016.



5. On the 11th July, 2016 the claimant appeared before the Respondent's Disciplinary Committee and defended herself against the accusations and was advised to go and wait for the response.
6. The claimant says that on the 12th July, 2016 she reported to the 2nd Respondent's office for feedback on the disciplinary case and the 2nd Respondent promised to call the claimant on Thursday 14th July, 2016 but never called and when the claimant called the 2nd Respondent did not pick the call and she was denied permission to pick up her personal effects.
7. On the 15th of July 2016, at 8.00 am the claimant reported to the 2nd Respondent's Office and was kept at the reception until 10.00 am when the 2nd Respondent informed the claimant verbally that the claimant should report back to work without issuing a letter lifting the suspension and for resumption of duty.
8. On the 22nd July, 2016 the claimant reported at the 2nd Respondent's office at about 8.00 am and was kept at the reception upto 10.00 am when the claimant was given a letter of a 'final warning' dated 19th July, 2016 but did not indicate whether the claimant's suspension had been lifted. At 4.23 p.m. on the same day claimant received short message service (sms) on the claimant's mobile phone from the 2nd Respondent's secretary asking the claimant to report to school on Monday 25th July, 2016.
9. The claimant resumed duties at the school on Monday 25th July, 2016 at 9.00 pm but come 4th August, 2016 it turned out to be the worst day when the claimant received three letters in a row, Notice to Show Cause, Disciplinary Hearing and Suspension from Duty all signed by the 2nd Respondent.
10. She says that after a gruelling experience in a Kangaroo Disciplinary Process by the Respondents and after receiving the last letter of the day, the claimant was ordered to vacate the school residence immediately and three police officers dispatched by the Respondents to the claimant's residence and arrested and dragged the claimant to a waiting Police vehicle leaving the claimant's child alone and traumatized and this was in the full glare of the child, neighbours, workmates and students and was very embarrassing and humiliating as the claimant was treated as a common criminal.
11. The claimant was taken to Pangani Police Station and locked up at the cells and was denied cash bail by the OCS on the instructions of the Respondents and arraigned at the Makadara Law Courts on trumped up charge of assault.
12. She says that upon being released on a cash bail of ksh 10,000 the 2nd Respondent instructed the School Security Guards at the gate not to allow the claimant entry to the school compound to access her residence and her child who was alone and unattended.
13. The claimant remained at the gate hungry, tired, dirty after spending the night in the smelly and filthy police cells and in need of a shower and change of clothes despite the intervention of the area chief and a copy of court order in cause number 1667 of 2011, the 2nd Respondent remained adamant and arrogant and even refused to release the claimant's child.
14. The claimant says that she was later acquitted of the criminal charges after the complainant and witnesses confessed of having been coerced by the school administration to give false information. The respondent working conditions became worse than they were previously when the claimant first filed this suit on 5th September, 2016. The respondent through state counsel made an oral application before the honourable court to be granted time to resolve the issues in this claim amicably with the claimant but for a period of three years the Respondents failed and/ or neglected to act on that commitment. On the 10th February, 2019 the claimant received a show cause letter signed by the 2nd Respondent



raising several accusations that were not correct of which the claimant responded to vide letter dated 15th February, 2019.

15. The claimant says she received a myriad of letters all raising all manner of false accusations from the Respondent culminating into the letter of suspension dated the 23rd July, 2019. The Respondent had failed to address the issues raised by the claimant in regard to the working conditions but had resorted to witch-hunt in order to find a reason to terminate the claimant's employment.
16. The claimant says she was forced to work for 24 hours without rest and forced to live in timber house that was condemned by the City County of Nairobi and of which the claimant was being deducted ksh 3,500/= by the Respondents. The claimant was not paid half basic salary for the months of August, September, October, November and December 2019 during the suspension. The 2nd Respondent instructed Stima Sacco Limited, where the claimant's salary account is hosted, to freeze the claimant's salary account and not allow claimant access the salary. The claimant received termination of services letter dated the 13th February, 2020 on the same date at 12.16 pm and without the Respondents adducing any proper reasons for the termination.
17. The claimant is a party to another matter with the Respondents before the honourable court but a different cause of action with no connection to this one being cause number 1667 of 2011.
18. The claimant prays for the following:
 - a. Payment of gratuity (Service)
 - b. Payment in lieu of Notice 372, 619/=
 - c. Payment of half basic salary for six months ksh 59,139/=
 - d. Payment in lieu of leave for six years 2007, 2008, 2009, 2010, and 2013 ksh 171,978/=
 - e. Payment of overtime worked during off duty days, Saturdays, Sundays and Public Holidays as from the year 2007- 2013 ksh 619,099.20.
 - f. Compensation for unfair termination of Employment $28,663 \times 12 = 343, 956/=$
 - g. Compensation for remainder of period of service of eight (8) years 229,304
 - h. Deducted and not remitted amount to NSSF, NHIF and Stima Sacco for the period of seven (7) months before termination
 - i. NSSF Ksh $400 \times 7 = \text{ksh } 2,800/=$
 - ii. NHIF Ksh $850 \times 7 = \text{ksh } 5950/=$
 - iii. Stima Sacco Ltd ksh $5000 \times 7 \text{ Ksh } 35,000/=$
 - i. The claimant be compensated for the household goods detained and/ or lost by the Respondents per the inventory produced before this honourable court being ksh 1,948, 132 /=-
 - j. Respondent to issue certificate of service to the claimant
 - k. Costs of this suit and interests at court rates
 - l. Any other further orders that this honourable court may deem fit and just to grant in the premises



Claimant's case

19. The Respondent says that the claimant was employed as a matron/ house keeper with effect from 1st April 2007. The Respondent states that the claimant was lawfully terminated on 13th February 2020 for valid reasons and after being given numerous warning letters and due process having been followed.
20. The Respondent state that as per clause 14 of the Boarding Department Staff guidelines, one of the School Matron's responsibilities was to make phone calls for students who need to communicate with their parents/guardians on Sundays only between 2 pm and 5.30 pm as per the call schedule. That the claimant was issued with several warning letters for negligence of duty including warning letters.
21. The claimant was lawfully suspended from duty on 13th June for allowing students whose intention was to go home and procure an abortion to make phone call on the 9/06/2016 at 9.00 pm. The suspension letter required the claimant to appear before the BOM Disciplinary Committee on the 29/6/2016 for a disciplinary hearing.
22. The Respondent further says that they issued a Notice to Show Cause to the claimant dated 4th August 2016 for gross misconduct following the commission of a criminal offence, where the claimant had been reported to have administered corporal punishment to one of the students in the dormitories which letter was received by the claimant on the same day at 10 am.
23. The claimant was given an opportunity to defend herself during the disciplinary hearing held on the 4th August 2016 and was accompanied by a representative of her choice. It is stated that the claimant failed to appear before the Board to defend herself on several occasions including on 13th February 2020 and therefore the claimant was terminated for insubordination amongst other misdoings.

Claimant's evidence

24. CW1 Rose Njeru Wanderi gave sworn testimony and testified that she is the claimant in this matter. She adopted the witness statement dated the 3/9/2016 as her evidence in chief as well as the further witness statement dated the 8/11/2021. She also adopted the documents in the list dated the 8/11/2021 as her exhibits nos 1-37.
25. She testified that she was a matron at Ngara Girls and was employed when school had only 700 students and when she was terminated the girls were 1400. She was promised two days off but was told to be going for one day and one day she would be compensated but was not compensated and was not even given any day off or even leave. She says that sometimes they would get visitors who would stay in the school and would be paid. She would be given ksh 1500/= . She testified that the problems arose when she asked for leave pay. She said that the students would also stay for tuition and so she would work during school holidays. She was to be paid severance pay but has not been paid. The suspension was for 6 months but she was not paid.
26. At the hearing the claimant says she went with her colleague Ida and Labour person in the boardroom. She was told that she had taken a stranger to school. She says she was not asked about her case and was told to pick a termination letter. The claimant said she was accused of taking a stranger to the school and in 2016 she filed a suit because of schedule of work and was told to work for 24 hours.
27. In cross examination she said the principal used to give her warning letters and would complain of cleanliness of the dormitory and they also complained about absenteeism. She was accused of beating a girl and was taken for disciplinary hearing. A principal by the name Mrs Ndiga came in January 2019 and issued her with a show cause for absenteeism in February 2019. She says in July she was issued with



a show cause letter and was to appear before the board on the 23/7/2019 but did not appear on the 23/7/2019 as the meeting ‘conceded’ with her off day.

28. Claimant further said that she was suspended for 6 months and was invited for a hearing on the 13/2/2020 which hearing she attended with Miss Ayuma. She went with Miss Ayuma on two days that is the 13/2/2019 and 8/8/2019. She said that she received her termination letter on the 13/2/2020 and it is stated in the letter that she was given a chance to appear before the board and she did not appear. She said she did not clear with the school. She did not pick her belongings as she has a pending case.
29. The claimant started she did not know where her belonging were as she was not allowed to go to pick them.

Respondent’s evidence

30. RW 1 Beatrice Ndiga gave sworn testimony and said that she is the Principal of Ngara Girls High School. She said she joined the school on the 8th January 2019 and adopted her witness statement as her evidence in chief and produced exhibits in court contained in the bundle of documents dated the 5/4/2022 from page 1-59 as exhibits in the case.
31. She says that on the 13/2/2020 they had a board meeting and she had invited the claimant for a disciplinary meeting. The claimant did not attend and did not explain why she did not attend. The board then proceeded with the meeting in her absence. The Secretary tried to call her severally and this was the second time she had failed to turn up. The board then lifted her suspension and terminated her service and she did not appeal against her termination. The board had agreed to give her gratuity if she clears with the school and in the letter of termination, she is entitled to gratuity whose formular is the same as severance pay.
32. She further said that the claimant received communication several times and she failed to turn up. The claimant was served the letter through her registered number but not school registered numbers. She says the claimant used to get a day off.

Submissions

33. The court considered the claimant’s submissions dated 20th January 2023.
34. The court also considered the respondents submissions dated 3rd February 2023.

Analysis and determination

35. The claimant and her employer the respondent had age old running battles for many years. She was employed in 2007 April. As early as the year 2008 the claimant began to receive warning letters in relation to her work. She continued to receive warning letters up to the time of her termination of her employment on 13th February 2020.
36. The claimant and her employer the respondent had age old running battles for many years. She was employed in 2007 April. As early as the year 2008 the claimant began to receive warning letters in relation to her work. She continued to receive warning letters up to the time of her termination on 13th February 2020.
37. In the process she was arraigned in a criminal court apparently for assaulting a student. However this was withdrawn with court ordering the parties to settle the case amicably. This was as per criminal case No 2035 of 2016 which ended up being withdrawn. She says her witnesses claimed they were coerced to testify against her and they did not want to do so.



38. The claimant also filed a civil suit 1/67 of 2011 where court gave an order that the respondent must cease to intimidate the claimant. And in this case there was another application where Justice Nduma Nderi ordered the parties to attempt to settle the matter amicably. This was not done despite the claimant writing to the respondent severally requesting for a meeting to attempt to settle the dispute.
39. The claimant was suspended for six months without any justification for the months of August, September, October, November and December 2019 and she claims her salary was withheld for those six months.
40. The claimant was to have a disciplinary hearing on 22nd January 2020 but claimant apparently was unreachable. It is not evident if the claimant received the letter inviting her for disciplinary hearing. The respondent says their secretary attempted to call her but she did not get through to her. It is not clear if the claimant got the message inviting her to the disciplinary hearing.
41. In the end the board held the disciplinary hearing on 13th February 2020 in the absence of the claimant. They decided she was guilty of insubordination for failing to turn up for the disciplinary hearing and yet it is not clear if she really got the communication from the respondent.
42. She finally got the termination letter on 13th February 2020. As per the termination letter she was accused of failing to turn up for the disciplinary meeting. There is no evidence that the claimant was made aware of the said disciplinary meeting and so the court would regard the requirement for a valid reason for termination to be wanting. In other words there was just a very toxic relationship between the claimant and the respondent and it seemed inevitable the respondent wanted the claimant out of the employment whichever way.
43. All in all and in considering the respondent's submissions the claimant seemed to have had issues with her employer but then the respondent did not handle the disciplinary procedure in accordance to fair labour practice contrary to article 41 of *the constitution* which provides that every person has a right to fair labour practice.
44. The employment law is now sacrosanct that an employer who is considering terminating the employment of an employee must provide a valid reason as provided in section 45(1) of the *employment act*. The employer must also follow the right procedure. This is as provided in section 41(1) of the *employment act 2007*.
45. Myriad of authorities have provided that if termination of an employee does not satisfy the substantial justification in giving a valid reason and procedural fairness then such termination must be regarded as unlawful as well as unprocedural. In the case of *Walter Ogul Anuro Vs Teachers Service Commission* case 955/2011 court held:

“For termination to pass the fairness test it ought to be shown that there was not only substantive justification for the termination but also procedural fairness.”
46. Flowing from the pleadings herein and the evidence adduced as well as the submissions the court is convinced the respondent failed to satisfy the requirements provided in employment law which include substantial justification and procedural fairness.
47. The court finds the claimant was therefore unlawfully and unprocedurally terminated and so judgment is entered in her favour against the 1st respondent but 2nd respondent was just an employee of the 1st respondent and was not the claimant's employer. Claimant is entitled to the aforesaid remedies.
 - a. Gratuity being prayer 4(a) is not proved and is not justified and so is declined.



- b. Payment in lieu of notice Kshs 28,663/-
- c. Payment for half basic salary for August, September, October, November & December 2019 Kshs 59,139/-
- d. Leave days is not proved and prayer is declined.
- e. Overtime worked is also basically in abstract and so is declined
- f. Compensation for unfair termination is awarded 12 months in view of the period of service and in provisions of sections 49(1) of the employment act at kshs 343,956/-
- g. Compensation of remainder of period of service is not supported by law and so is declined.
- h. Moneys deducted but not released to the claimant. No proof and so is declined.
- i. Compensation for goods withheld, this is a special damage claim and yet there is no proof of the same and so is declined.
- j. Costs follow the event and so court awards costs to the claimant and interest at court rates from date of judgment till full payment. Total award is kshs 431,758/-

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 25TH DAY OF JULY, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

