



**Shigoli v Riara Group of Schools Limited (Cause E433 of 2022)
[2023] KEELRC 2017 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2017 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E433 OF 2022
B ONGAYA, J
AUGUST 4, 2023**

BETWEEN

VICTORIA ANNE NJERI SHIGOLI CLAIMANT

AND

RIARA GROUP OF SCHOOLS LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the Memorandum of claim dated June 22, 2022 through Kembi-Gitura & Company Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the claimant was entitled to receive bonus pay-out
 - b. A declaration that respondent's actions not to pay the claimant a bonus pay out was discriminatory
 - c. A bonus pay-out of Kenya shillings nine hundred thirty-three thousand one hundred only (Kshs 933,100.00) equivalent to two month's salary plus interest thereon until settled.
 - d. Costs of this claim
 - e. Any such other appropriate relief as the court may deem fit.
2. The Memorandum of response dated 05.10.22 was filed through Njoroge Regeru and Company Advocates. The respondent prayed that the suit be dismissed with costs.
3. The claimant's case was that she was an employee of the respondent employed as the group human resources manager from 01.07.2013 to 16.06.2014 and again from 25.07.2016 up to 31.12.2021 when the claimant resigned.



4. At the time of the claimant’s resignation she was earning a monthly gross salary of Kenya Shillings four hundred sixty-six thousand five hundred and fifty. On 25.11.2021, prior to the claimant’s resignation taking effect, the respondent issued an internal memo, which read:

“Greetings all.

The year 2020 was an exceptionally challenging period for all institutions and businesses due to the Covid19 impact. In addition, the regulator (MoE) mandated a four term calendar in 2021 to enable schools recover from the terms lost during the Covid19 closure in 2020.

In order to appreciate your resilience, fortitude and personal sacrifice in sustaining The Riara group of schools at the height of the Covid19 pandemic in 2020, and the extra fourth term in 2021, the RGS board approved an award to appreciate all staff who have continued to stand committed to ensuring the continued delivery of a holistic education experience to all our learners and parents.

We are therefore pleased to inform you that the RGS board has decided to effect two months’ basic salary in addition to the normal salary to be paid out to RGS staff in the months of November and December 2021. This in effect means that there will be a ‘bonus’ salary in each month.

The criteria for the extra payments is as follows:

Group 1

Staff who were employed in RGS in 2020 during the Covid 19 period and suffered pay cuts and unpaid leave and are in the payroll as of November 2021 will receive an extra payment in November 2021.

Group 2

Staff who joined RGS in January and February 2021 will receive a one payment November 2021 for the increased workloads as a result of four terms in 2021.

Group 3

staff who have resigned as of November 2021 will not qualify for the pay-out. They will be subjected to a different process that will be determined by management.”

5. The claimant’s case is that though the claimant was in employment with the respondent in 2020 during the Covid19 pandemic and throughout the year 2021 where a fourth term was effected, the said memo denied the claimant an equal entitlement to a bonus pay-out. That no “different process” was applied to her nor was any explained to her by the respondent.
6. It is the claimant’s case that the actions of the respondent denying the claimant a bonus pay-out for the period worked in 2020 and 2021 were discriminatory and in disregard of the rules of natural justice. That section 5 of the *Employment Act, 2007* speaks against discrimination in employment. The claimant maintains that she is entitled to a two-month bonus pay-out for the sum of Kenya shillings nine hundred thirty-three thousand one hundred, equivalent to two (2) month’s salary.
7. It was the respondent’s case that the claimant issued a three (3) months resignation notice on September 28, 2021, and the notice took effect from 01.10.2021 and was served until 31.12.2021. Thus, the claimant fell into group 3 of the memo aforesaid.
8. That the claimant’s demand for bonus was unmerited for reasons;



- a. The bonus was on the onset intended to be and was discretionary and not a term of the contract which the respondent was obligated to discharge by paying out.
 - b. Further, the bonus had a forward-looking objective, to appreciate the respondent's staff whose service was expected to continue post payment.
 - c. The respondent contemplated the manner of treatment of staff whose services would abate as falling under group 3 and they were subject to a different process.
 - d. The claimant was indeed subjected to the different process which entitled an explanation that she did not qualify for the bonus payment.
 - e. The claimant at the time understood this stipulation and consented to the fact that her only pending dues were as computed in the summary of dues dated 06.01.2022 where after, her clearance was successfully processed by the respondent.
9. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
10. The Court considers that the case is straightforward. The last day of the claimant at work was on December 31, 2021, the effective date of the resignation. The bonus was paid to appreciate service during Covid 19 and the claimant had rendered such service. She had as well suffered the pay cut during Covid 19 situation. As urged for the claimant, it was discriminatory not to pay her the bonus per Group 1 employees. The suit will succeed and the respondent to pay the costs of the suit.

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

1. The respondent to pay the claimant a sum of Kshs 933,100.00 by October 1, 2023 failing, interest to be payable thereon at court rates from January 1, 2022 till full payment.
2. The respondent to pay the claimant's costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 04TH AUGUST, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

