



**Kenya Union of Domestic Hotels Educational Institutions and Hospital
Workers (Kudhehia Workers) v Westlands Primary School (Cause
1966 of 2016) [2023] KEELRC 2125 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2125 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1966 OF 2016
L NDOLO, J
SEPTEMBER 21, 2023**

**BETWEEN
KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS (KUDHEHIA WORKERS) CLAIMANT
AND
WESTLANDS PRIMARY SCHOOL RESPONDENT**

JUDGMENT

Introduction

1. By its Memorandum of Claim as amended on September 14, 2018, the Claimant Union brought a claim of unlawful and unfair termination of employment of its member, Patrick Taabu Echakara (the Grievant), who had been employed by the Respondent as a Cook. The Respondent filed a Reply on November 11, 2016.
2. At the trial, the Grievant testified on his own behalf and the Respondent School called its Headteacher, Fredrick Otieno Nyangla. Both parties also filed written submissions.

The Claimant's Case

3. The Claimant states that the Grievant was employed by the Respondent on January 3, 2002 as a Cook, at a starting consolidated salary of Kshs.6,000. The Claimant Union adds that the Grievant joined its membership on November 7, 2014 and that he served as interim chairperson of the Works Committee at the School.
4. The Claimant claims that upon receipt of checkoff forms from the Union, for deduction and remittance of union dues, the Headteacher began to victimise the Claimant's members on account of



- their union membership. The Claimant accuses the Respondent of coercing the union members to withdraw their membership.
5. On April 9, 2015, the Headteacher wrote to the Grievant alleging loss of drama material in the School. On May 7, 2015, the Grievant received a warning letter on allegations of absconding duty and on June 30, 2015, he received another letter alleging that he had failed to abide by school regulations.
 6. The Grievant was subsequently issued with a suspension letter dated June 20, 2015. The suspension was lifted by letter dated June 29, 2015. According to the Claimant, the Grievant received a short text message asking him to collect his terminal dues.
 7. The Claimant alludes to a failed attempt to have the Grievant arrested on October 28, 2015, while attending a parents' day at the School.
 8. The Claimant states that its attempts to engage the Respondent on the Grievant's case were unsuccessful. The dispute was not resolved at the conciliation stage, hence this claim.
 9. The Claimant seeks the following remedies on behalf of the Grievant:
 - a. All underpayments;
 - b. All pending salaries;
 - c. Leave days not taken;
 - d. Overtime;
 - e. Public holidays worked;
 - f. Maximum compensation for loss of employment;
 - g. Certificate of service;
 - h. Costs of the suit.

The Respondent's Case

10. In its Reply dated November 7, 2016 and filed in court on November 11, 2016, the Respondent admits having employed the Grievant as a Cook.
11. The Respondent states that the Grievant's employment was terminated pursuant to a decision by the management of the School to outsource catering services, which was deemed to be cheaper and more reliable.
12. The Respondent accuses the Grievant of numerous cases of gross misconduct for which he had been warned.
13. The Respondent alleges that on September 13, 2004, the Grievant was involved in a fight. He was issued with a show cause letter dated September 16, 2004, to which he responded on the same day, upon which he was issued with a warning letter dated September 23, 2004.
14. The Respondent avers that on May 21, 2015, the Grievant was involved in a confrontation with his colleagues, prompting the Headteacher to intervene. On June 30, 2015, the Grievant was issued with a warning letter and directed to obey all school rules and work ethics.



15. The Respondent admits that the Grievant was suspended by letter dated July 17, 2015, on the ground of desertion of duty. The Respondent further states that the suspension was subsequently lifted by letter dated July 29, 2015 but the Grievant did not report back to work.
16. The Respondent states that the Grievant's employment was terminated by letter dated July 31, 2015, upon which he was paid his terminal dues.
17. The Respondent maintains that the termination of the Grievant's employment was for good cause and in compliance with procedural requirements.

Findings and Determination

18. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Grievant's employment was lawful and fair;
 - b. Whether the Grievant is entitled to the remedies sought.

The Termination

19. The Respondent produced letter dated 31st July 2015 addressed to the Grievant as follows:

“RE: Termination Of Service

We refer to the relevant clause of your employment contract and wish to advise you that the same has been terminated due to the school preferring to outsource the catering services.

You will be paid the following less any statutory provisions:-

1. Salary for July 2015.
2. One month's salary in lieu of notice.

Attached herein please find our Cheque No. 903946 and 903955 for Shs. 2772/= and 10,349/= being payment of your above dues.

As concerns your contribution in the NSSF, please get in touch with the Trustee of the Fund.

We take this opportunity to thank you for the services you rendered to the school and wish you well in your future endeavors.

Yours faithfully

For: Westlands Primary School

(Signed)

Fredrick O. Nyangla

Headteacher/Executive Committee Secretary.”

20. The reason given in this letter for termination of the Claimant's employment is that the Respondent School had made a decision to outsource catering services. The Respondent confirmed this position in its final submissions. Its Headteacher, Fredrick Otieno Nyangla told the Court that all employees working in the kitchen were issued with termination letters.
21. However, in its pleadings and testimony before the Court, the Respondent attempted to push a case of gross misconduct against the Grievant. There are two things to say about the Respondent's line of



defence; first, the reason given in the termination letter was at variance with the one offered in the line of defence; and second, the Grievant was not allowed an opportunity to respond to the accusations of gross misconduct at the shop floor, as required by Section 41 of the *Employment Act*.

22. In light of the foregoing, the only conclusion to make is that the Respondent failed to establish a valid reason for terminating the Grievant's employment as set out in Section 43 of the *Act*.
23. In the result, I find and hold that the termination was substantively and procedurally unfair and the Grievant is entitled to compensation.

Remedies

24. Consequently, I award the Grievant eight (8) months' salary in compensation. In arriving at this award, I have considered the Respondent's failure to establish a valid reason for termination and the Grievant's long service moderated by his negative employment record.
25. The claims for underpayment, pending salary, leave pay, overtime and public holidays worked were not proved and are disallowed.
26. Finally, I enter judgment in favour of the Grievant in the sum of Kshs. 48,000 being eight (8) months' salary in compensation for unlawful and unfair termination of employment.
27. This amount will attract interest at court rates from the date of judgment until payment in full.
28. The Respondent is further directed to issue the Grievant with a Certificate of Service.
29. I award the Claimant reimbursement costs assessed at Kshs. 20,000.
30. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2023

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JUDGE

Appearance:

Mr. Kamuye (Union Representative) for the Claimant

Ms. Oyugi for the Respondent

