



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Wafula v Board of Management, Masimba High School & another (Cause E066 of 2023) [2023] KEELRC 2590 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2590 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**  
**CAUSE E066 OF 2023**  
**S RADIDO, J**  
**OCTOBER 25, 2023**

**BETWEEN**

**STEPHEN WANJALA WAFULA ..... CLAIMANT**

**AND**

**BOARD OF MANAGEMENT, MASIMBA HIGH SCHOOL .... 1<sup>ST</sup> RESPONDENT**

**MASIMBA HIGH SCHOOL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Stephen Wanjala Wafula (the applicant) was appointed as Bursar by the Board of Management, Masimba High School (the respondent) in 2015.
2. On 31 August 2023, the applicant moved the court under a certificate of urgency seeking orders:
  - i. ...
  - ii. Pending the hearing and determination of the instant application inter-partes, the Honourable Court be pleased to issue a temporary order of injunction against the Respondent herein, its employees, agents, representatives, assigns and or any other person acting under its direction from withholding the Claimant's salaries, benefits and allowances in contravention of *the Constitution*, the *Employment Act*, the terms and conditions of the Applicant's employment or in any other way interfering with the Claimant's employment and means of livelihood.
  - iii. Pending the hearing and determination of the instant application inter partes, the Honourable Court be pleased to issue a mandatory order of injunction against the Respondents herein, its employees, agents, representatives, assigns and or any other person acting under its direction compelling them to effect payment of the Claimant's full salary, benefits and allowances effective the month of February 2023.



- iv. Pending the hearing and determination of the instant application inter-partes, the Honourable Court be pleased to issue a temporary order of injunction against the Respondents herein, its employees, agents, representatives, assigns or any other person acting under its instructions restraining them from terminating, dismissing and or interfering with the Claimant's employment without following and or complying with the Law and the terms and conditions of their employment.
3. The grounds in support of the application were briefly that the respondents had not paid the applicant's salary from February 2023, the Principal of the School had verbally ordered the applicant to leave and changed the door locks to his office despite there being no disciplinary action pending nor termination of employment.
4. The Principal and Secretary of the Board filed a replying affidavit in opposition to the Motion on 14 September 2023, asserting that the applicant had deserted work on 5 April 2023 and that he was issued with a show-cause on 12 April 2023 but he did not bother to respond.
5. The Secretary also averred that the applicant had declined to accept his salary on the basis that it was little, had processed salaries for June 2023 as well as arrears for 2022, and that his salary had not been withheld.
6. The Respondents filed a further affidavit on 21 September 2023, deponing therein that the applicant had kept all chequebooks and keys to the stores as well as issued falsified fee receipts to parents and failed to remit statutory deductions.
7. The further affidavit prompted the applicant to file a further affidavit on 28 September 2023. In the affidavit, the applicant denied having been served with a show-cause letter.
8. The applicant also filed submissions on the same day.
9. The Respondents filed their submissions on 5 October 2023.
10. The Court has given due consideration to the application.
11. The Respondents asserted that the applicant had deserted duty on 5 April 2023 and that he was issued with a show-cause. A copy of the show-cause was not placed before the Court.
12. The Principal and Secretary of the Board also deponed in his affidavit that the applicant had processed the salaries in June 2023. If indeed it is true that the applicant had deserted and had not gone back to work, it is inconceivable that he was allowed to process the salaries in June 2023.
13. Further, the Principal and Secretary to the Board asserted that the applicant had declined to accept his salary. This leads to the suggestion that the applicant was being paid in cash rather than through the bank.
14. This assertion needs further interrogation.
15. The applicant needed to demonstrate a prima facie case in order to succeed. There is no evidence at this stage that the applicant was undergoing a disciplinary process and that the salary or part of the salary of an employee under disciplinary process could be withheld.
16. The court, at this interlocutory stage finds merit in arguments by the applicant that there is no lawful or contractual foundation for withholding his salaries.



## **Orders**

17. In light of the above, the court orders:

- i. The respondents to pay the applicant all accrued salaries from February 2023 to date.
- ii. The respondents to allow the applicant back to work unless and until lawfully suspended.

18. Costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 25<sup>TH</sup> DAY OF OCTOBER 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

