



**Mimba v Teachers Service Commission (Cause 762 of 2018)
[2023] KEELRC 2645 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2645 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 762 OF 2018
MN NDUMA, J
OCTOBER 19, 2023**

BETWEEN

AMUORO FREDRICK MIMBA CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The claimant filed suit against Teachers Services Commissions (TSC) on 21/5/2018 seeking the following reliefs:-
 - a. A declaration that Claimant's constructive dismissal from the Respondent's employment was unprocedural, unfair and unlawful and unconstitutional.
 - b. Payment of 12 month's salary in compensation for unfair termination
 - c. One month's salary in lieu of notice.
 - d. Salary arrears due to the Claimant from April – May, 2018.
 - e. Payment of Annual increments accrued to the Claimant
 - f. Payment of the Claimant's Pension.
 - g. Costs of this suit.
 - h. Certificate of Service.
 - i. Any other relief that the Court may deem appropriate to grant.
2. The claimant's case is that he was constructively dismissed from his employment by the respondent as a teacher. That the respondent employed him on 31/7/1982 as a teacher on permanent basis and



- registered him as No. 192519. That the employment followed an application and appointment process that included interviews and scrutiny of his Certificates of competence.
3. That since he was employed, he offered teaching services dutifully without fail in different schools where he was transferred from time to time. That he had no disciplinary issues.
 4. The claimant testified that he received a letter from the respondent dated 16/4/2009 and produced before Court requiring the claimant to write to the Kenya National Examination Council (KNEC) to confirm the results in the certificates in the possession of KNEC being:-
 - (a) KCE Certificate No. K9403/001,
 - (b) CPE (No. number of 1974) and
 - (c) Certificate No. 73294/001.
 5. The claimant was notified in the said letter that his salary would be stopped with effect from April, 2001 until the claimant complied with the directive.
 6. C.W.1 testified that on 11/5/2009, he wrote a letter to Kenya National Examination Council (KNEC) as requested forwarding the said certificate for confirmation by TSC and copied the letter to TSC.
 7. The respondent did not reinstate his salary despite having written to KNEC as directed.
 8. C.W.1 gave his CPE Certificate No. as 71210045 of 1974. P.T.E No. 73294/001 of 1997 and KCE Certificate No. K9408/001 of 1980.
 9. C.W.1 told the Court that he suffered financial embarrassment for the entire period TSC did not remit his salary being the bread winner of his family. C.W.1 stated that he decided to visit TSC office at Nairobi to follow up the matter. That he was kept at the reception for a long time and was not attended to.
 10. That he returned back home and wrote a letter to TSC dated 23/9/2009 to enquire about the matter. That no confirmation came from KNEC nor from TSC until he visited TSC office at Nairobi again in November, 2010. C.W.1 said that at all material times he continued to teach despite immense financial difficulties encountered including begging for fare to Nairobi from colleagues. That in November, 2010 he received permission from his Head Teacher of Pap Ndege Primary School where he was based to travel to Nairobi. C.W.1 said again he was kept waiting at the reception for a whole day and nobody attended to him. That C.W.1 continued to teach and got no salary for the entire 2011. On 24/1/2012, C.W.1 said he returned to TSC to enquire about the matter and he was given a form to fill which he did and was told they could communicate to him later. C.W.1 stated that he continued to work in the year 2012 expecting to receive communication from TSC but none came. That he was commuting for 10 kilometers on foot as he could not afford fare. C.W.1 said he attended all his classes without fail.
 11. C.W.1 stated that on 22/5/2013, the Head Teacher informed him that TSC had posted another teacher to replace him.
 12. C.W.1 stated that he went back to TSC at the sub-County where he met the District Staffing Officer who confirmed to him that TSC had long received the confirmation of CW1's results from KNEC and wondered why C.W.1 was not receiving his salary.
 13. C.W.1 testified that the District Staffing Officer wrote to TSC pleading with them to resolve the issue. C.W.1 testified that even on his visit on 8/1/2010, he had carried with him a letter of the same date



written by Mr. Joseph O. Arombe of Pap Ndege Primary School through the DEO, Nyakach District requesting TSC to assist C.W.1 on the pending issue.

14. C.W.1 told the Court that when he returned to school from DEO's office, the Head Teacher was hostile to him and castigated him for escalating the issue and the Head Teacher told him that TSC did not want to see him at the school and he had taken away his classes. C.W.1 stated that he fainted and had to be carried away to his home.
15. C.W.1 stated that he continued to report at the school but every time he arrived, he was not allowed into the staffroom or to get into any class. That he sat within the compound and was considered as persona non grata as no teacher or pupil was allowed to speak to him.
16. C.W.1 said he was removed from the list of teachers at the school yet he reported daily at the school. That at all material times, C.W.1 said he was registered by TSC as teacher No. 192519 and the registration was not revoked nor was C.W.1 dismissed from employment by TSC in terms of Regulation 66.
17. C.W.1 said he was never subjected to any disciplinary hearing and he continued to report to the school though no work was given to him until the 23rd May, 2018 when he realized that neither the staff at the school nor TSC wanted him then he tendered his resignation.
18. C.W.1 produced several letters written to TSC regarding his matter including one dated 13/2/2012 requesting TSC to give him feed-back on the matter of his certificates and reinstate his salary and teaching classes; a visit pass to TSC dated 24/1/2012 captioned "Missing salary – Removal from Performance" letter from Mr. GIF Owuor – Okuon, Nyakach sub-County District, Staffing Officer dated 21/5/2013 requesting TSC to assist C.W.1 on the matter of his Certificates and the letter titled "Constructive dismissal from employment." dated 3/5/2018 written to TSC and copied to Mr. Amuoro Fredrick Mimba (TSC No. 192519), being the Head Teacher of Pap Ndege Primary School and copied.
19. In the letter, C.W.1 stated that he had continued to report to the school, was not assigned any work and TSC did not pay his salary since 7th April, 2009 and so he had now considered himself as having been constructively dismissed.
20. C.W.1 produced his payslip from TSC for the period he was being paid and a demand letter from Ogembo and Associates Advocates.
21. C.W.1 testified that TSC never got back to him on the matter of his certificates to-date and that he still remained a registered teacher and he received no letter of dismissal from TSC to-date.
22. R.W.1 George Otieno Onyango testified that he was a teacher at Pap Ndege Primary School from the year 2006 and was aware of the issues before Court. R.W.1 said he found the claimant at the school and he uses two different names, namely Fred Amuoro and Caleb Amuoro interchangeably. R.W.1 said he was not aware if a casualty form was filled in respect of the claimant. R.W.1 stated that the claimant stopped teaching in the year 2013. That he was teaching between the year 2006 up to the year 2012. R.W.1 said he did not know why the claimant stopped teaching.
23. R.W.2 Joseph Obala Odhiambo testified that he was also a teacher at Pap Ndege Primary School from the year 2014. R.W.2 said he knew the claimant personally as a village mate. That the claimant stopped teaching. R.W.2 said he knew the claimant as Mr. Amuoro. R.W.2 stated that if a teacher deserts school, a casualty form is supposed to be filled. R.W.2 said he did not find the claimant teaching when he joined Pap Ndege Primary School in the year 2014. R.W.2 said he saw the claimant at the school going to the head teacher's office and left after some minutes. R.W.2 could not recall the date when that happened. R.W.2 said he did not know why the claimant visited the school.



24. R.W.3 Willis Otieno Aduda testified that he was a head teacher of Luanda Primary School. That before he taught at Pap Ndege Primary School between March, 2019 and October, 2020, the claimant was no longer a teacher at the school. R.W.3 stated that he signed the clearance certificate of the claimant upon filling the same. R.W.3 said he had enquired why there was delays in signing the clearance certificate for the claimant for a period of more than five (5) years. R.W.2 said the claimant had approached him to fill the clearance form and he had gone through the claimant's records. R.W.3 said he only saw a letter from the claimant to TSC asking TSC to sort out his salary stoppage. Records show the claimant was not teaching at Pap Ndege Primary School after the year 2012.
25. R.W.3 said there was no casualty form in respect of the claimant. That in terms of procedure, if a teacher deserts school for more than 14 days, the head teacher is supposed to fill in a casualty form for the teacher indicating desertion of work. R.W.3 stated that he relied on information given to him by the claimant to fill up and sign his clearance certificate.
26. R.W.4 Sylvester Odunga, testified that he is a head teacher at Pap Ndege Primary School. That he joined the school on 28/10/2020. R.W.4 testified that he handed in the records of Pap Ndege Primary School before Court. That records show that the claimant was not one of the teachers at the school in the years 2016 and 2017. That the claimant was one of the teachers in the year 20-12 from the records. That in terms one (1) of the year 2013, the records do not show that the claimant was still teaching at the school. R.W.4 said he received casualty books which show entry and exit of teachers. R.W.4 said he never found any casualty records for the claimant at the school.
27. R.W.5 Elija Katolo adopted a witness statement dated 18/7/2022 as his evidence in Chief. R.W. 5 told the Court he was an employee of TSC as a Principal Internal Auditor. R.W.5 told the Court that he was familiar with the matter before Court. That C.W.1 was employed by TSC as an untrained teacher in 1982 based on an East Africa Certificate of Education certificate he presented to TSC. That the said certificate indicated that C.W.1 had qualified with a Division II. Thereafter, C.W.1 was appointed as a P2 teacher on permanent and pensionable terms of service with effect from January, 2000 after qualifying from Asumbi Teachers Training College. He was posted to Pap Ndege Primary School.
28. That while filling the respondent's employment forms, the claimant indicated that he attended Naki Primary School where he sat his Certificate of Primary Education (CPE) in 1974 and proceeded to modern secondary school where he sat his EACE in 1978.
29. That on various dates, in December, 2008, and February, 2009, TSC received a series of allegations against C.W.1 to the effect that he was incompetent and had used fake certificates in seeking employment with TSC.
30. That prior to the allegations TSC had on two occasions personally invited C.W.1 to present all his original academic and professional certificates. However, C.W.1 had failed to honour any of the invitations.
31. R.W.5 stated that upon receiving the complaint, TSC commenced preliminary investigations into the allegations and it was apparent that the EACE Certificate presented by C.W.1 had several alterations and anomalies.
32. The investigations further revealed that:-
 - (i) C.W.1 trained as a P2 teacher despite the fact that he had obtained Division II in EACE in 1978.



- (ii) A further certificate submitted by C.W.1 indicates that he sat for Kenya Certificate of Education (KCE) in 1980 and obtained a Division – IV). That this contradicted the EACE Division II Certificate of 1978 which C.W.1 used to secure employment.
 - (iii) C.W.1 had submitted a Certificate of Primary Education (CPE) bearing the name ‘Caleb Juma.’
 - (v) In all his correspondence to TSC, C.W.1 never appended his signature.
33. R.W.5 testified that TSC advised C.W.1 to write to KNEC for confirmation of his results. TSC informed C.W.1 that pending compliance and verification on the authenticity of his certificates, his salary will be stopped.
34. That in April, 2011, TSC once more invited C.W.1 to appear before TSC and present his academic and professional Certificates relevant to his employment, however he failed to appear.
35. That TSC further wrote to the Uganda National Examination Board requesting them to verify the authenticity of the EACE Certificate submitted by C.W.1 to TSC while seeking his employment.
36. R.W.5 stated that C.W.1’s whereabouts have remained unknown to TSC since being served with the letter dated 4/7/2011 inviting him to present his certificates.
37. R.W.5 was subjected to lengthy cross-examination by Mr. Ogembo, Advocate for the claimant in which he denied that TSC received correspondence from C.W.1 and said TSC could not reinstate C.W.1’s salary without confirmation of his result. R.W.5 stated that TSC got confirmation of the results submitted by C.W.1 by KNEC but did not receive a response from Uganda. R.W.5 stated that TSC did not write to KNEC directly but requested C.W.1 to write to them. R.W.5 confirmed that C.W.1 worked up to December, 2012 after his salary was stopped in April, 2009 but got no pay for that 4 ½ years. R.W.5 confirmed that C.W.1 attended classes until that time. R.W.5 stated that TSC did not interdict C.W.1 from work as per TSC Code of Regulation – 66(3). R.W.5 said they received C.W.1’s results from KNEC but R.W.1 confirmed that C.W.1 visited TSC on 24/1/2012 as per the visitors’ form presented by C.W.1. R.W.5 stated that TSC did not respond to the demand letter dated 3/5/2018.
38. R.W.5 confirmed that the District Staffing Officer wrote to TSC confirming that C.W.1 was still attending classes. The letter is dated 21st May, 2013 and is before Court.

Determination

39. The parties filed written submissions which the Court has carefully considered together with the evidence adduced by C.W.1 and R.W.1 to R.W.5. The issues for determination are:-
- (a) Whether the claimant was constructively dismissed from work by the respondent and if so from what date?
 - (b) Whether the claimant is entitled to unpaid salary for work done and if so up to which date?
 - (c) Whether the claimant is entitled to other reliefs sought?
40. It is common cause that the claimant was first employed as an untrained Teacher (U.T) by a letter dated 31/7/1982 and was posted to Kisumu District.



41. It is not in dispute that the claimant taught at pap Ndege Primary School at all material times and various letters were produced by the claimant before Court. The Head teacher of Pap Ndege Primary school wrote a letter dated 2/9/2009 giving the claimant permission to visit TSC headquarters to sort out issues of his missing salary. A further letter was written by the Head teacher on 8/11/2010 to TSC to introduce the claimant as their teacher who had matters of salary to resolve at the TSC. It is not in dispute that TSC stopped paying claimant's salary in the year 2009 and the salary of the claimant was not reinstated until when the claimant tendered his resignation for alleged constructive dismissal in the year 2018.
42. It is the case of the respondent that sometimes in December, 2008, the respondent received complaints alleging incompetence of the claimant as a teacher and forgery of his professional and academic certificates.
- 43 The respondent's case is that preliminary investigations established there were discrepancies in the certificates submitted by the claimant at the time he sought employment with TSC. That the claimant was advised by TSC to seek confirmation of his certificates with Kenya National Examination Council (KNEC).
44. That information received from KNEC confirmed that the certificates relied upon by the claimant to get employed had different names in that:-
- (a) C.P.E Certificate for examination undertaking was by one Fredrick Amuoro in 1975.
 - (b) K.C.E. Certificate for Fredrick Amuoro was undertaken in 1980.
45. However, at the time of applying for the Teaching job, the claimant had submitted:-
- (a) A C.P.E. Certificate for examination undertaken by one Caleb Juma in 1974 and
 - (b) b) An E.A.C.E certificate for examination undertaken by one Fredrick Amuoro in 1978.
46. That the claimant was then invited to appear and present his original certificates at the TSC Headquarters to enable TSC to rectify and confirm his qualifications which were relevant to his employment. TSC states that the claimant failed to appear and present the requested documents.
47. TSC stated that the claimant continued teaching until December, 2012. That in January, 2013, he did not report for duty as expected and since then his whereabouts remained unknown to the respondent until the filing of the suit.
48. Testimony by the teachers from Pap Ndege Primary School indicate that the claimant was a teacher at the school up to December, 2012 but from that time the claimant was not their colleague and he did not teach at the school.
49. The claimant on the other hand testified that he continued teaching at Pap Ndege Primary School until when he tendered his letter of resignation in the year 2018.
50. The testimony by the claimant indicate that his salary was stopped in April, 2009. That TSC on 11/5/2009 wrote to the claimant to forward his certificates to KNEC for verification. That he complied with the directive and visited TSC Headquarters severally to confirm if KNEC had written to TSC about the certificates. The claimant said that his visits to TSC were not helpful. That meanwhile he



suffered immensely as he continued to teach without a salary but got no communication from TSC on his fate despite the visits he made which visits were evidenced by letters written to TSC by his head teachers requesting TSC to attend to the claimant on the matter of his missing salary. That he was the breadwinner of his family and his wife and children suffered immensely due to the salary stoppage. That the claimant had fully complied with the directive by TSC and the ball was in TSC's court to finalise the matter.

51. It is clear that TSC did not institute any disciplinary action against the claimant upto the time of filing this suit. TSC stopped the salary of the claimant for many years without commencing any due process to justify the stoppage of the claimant's salary. The visits to TSC by the claimant to follow the matter are well documented on 2/9/2009 and 24/1/2012. The claimant told the Court that he taught at Pap Ndege Primary School between the years 2009 and 22nd May, 2013, when the Head teacher of Pap Ndege Primary School informed him TSC had posted another teacher to replace the claimant.
52. The Court saw correspondence from the District Staffing Officer to TSC in which he pleaded with them to resolve the salary issue of the claimant since he had continued to teach without a salary.
53. The claimant stated that after TSC posted another teacher to replace him, all other staff members including the Head teacher were hostile to him and did not allocate work to him again. Claimant said however, he continued to report to the school until when he resigned in the year 2018.
54. It is the Court's finding that the respondent having not instituted any disciplinary action against the respondent stopped his salary unprocedurally and unlawfully. The action by the respondent not to pay the salary of the claimant while he worked between April, 2009 to 22nd May, 2013 when TSC posted his replacement to the school was unjust, callous and inhuman. The respondent did not prove that it had any valid reason to stop the salary of the claimant having failed to conduct any due process to get to the bottom of the matter of his certificates.
55. The Court finds that the claimant is entitled to payment of his full salary for the period which he clearly offered his services, between April, 2009 to 22nd May, 2013. The Court grants that prayer for payment of arrear salary due and owing to the claimant from 1st April, 2009 to 23rd May, 2013.
56. The claimant has not proved that he offered any services during the period 23rd May, 2013 upto May, 2018 when he allegedly rendered his resignation.
57. The Court finds that from the date the respondent sent another teacher to replace the claimant on 22nd May, 2013, the respondent had effectively, constructively terminated the employment of the claimant. The respondent had unprocedurally breached the contract of service between TSC and the claimant and had effectively constructively dismissed the claimant from employment without notice, notice to show cause or any hearing accorded to him.
58. The respondent accordingly violated Section 36, 41, 43 and 45 of the *Employment Act*. TSC had also violated its own statute; disciplinary procedure and code of conduct. The dismissal of the claimant was unlawful and unfair and the claimant is entitled to compensation in terms of Section 49(1) (c) and 4 of the Act.
59. In this respect, the claimant had served the respondent from the year 1982 until the year 2013, a period of over 31 years. The respondent treated the claimant in a most inhuman manner by denying him a salary without just cause between the year 2009 and the year 2013.
60. The respondent did not terminate the employment of the claimant hence he tendered his resignation in the year 2018 before filing the suit. The Court finds that though the claimant legitimately considered himself a TSC teacher duly registered, which he remains to date, the Court does not offer him any



salary from the period 2013 to 2018 because he was denied opportunity to offer the respondent any service during that period. The claimant suffered loss and damage for reasons not of his own making. His teaching career was destroyed without any valid reason proved by the respondent. The Court has considered similar case of Francis Kigalu -vs- the Headteacher, Musasa Primary School, & Another [2019] e KLR- Cause No 25 of 2016 and Hudson Kidaha Kisigwa -vs- Romagego Kenya Ltd - Cause No 2149 of 2012 and the totality of the evidence before Court to award the claimant maximum compensation of the equivalent of 12 months' salary in compensation for the unlawful and unfair dismissal. The Court also awards the claimant one month salary in lieu of notice. The respondent is also to provide the claimant with a Certificate of Service up to May, 2018 when he formally tendered his resignation.

61. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-
- (a) Payment of 12 months' salary in compensation for the unlawful and unfair termination calculated at the rate the claimant would have been earning as at 22nd May, 2013.
 - (b) Salary arrears due to the claimant from the month of April, 2009 to 22nd May, 2013.
 - (c) One month salary in lieu of notice.
 - (d) Payment of Annual Increments accrued to the claimant for the period April, 2009 to 22nd May, 2013.
 - (e) Payment of the claimant's Pension in terms of the Pension Laws and Regulations applicable to the claimant at the time of his resignation in May, 2018.
 - (f) Provision of Certificate of Service within 30 days of this judgment.
 - (g) Computation of the award to be done and filed by the respondent within 60 days of this judgment.
 - (h) Interest at Court rates from April, 2009 till payment in full in respect of arrear salary not paid and in respect of the notice pay and compensation from date of judgment till payment in full.
 - j. Costs of the suit.

DATED AND DELIVERED AT NAIROBI(VIRTUALLY)THIS 19TH DAY OF OCTOBER, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Ogembo for the claimant

M/s Manyasa for the Respondent

Ekale: Court Assistant

