



REPUBLIC OF KENYA



**Kogo & another v Chairman Board of Management Tuiyo Secondary School
(Cause 70 of 2017) [2022] KEELRC 45 (KLR) (9 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 45 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 70 OF 2017
NJ ABUODHA, J
MAY 9, 2022**

BETWEEN

JOYCE JEROP KOGO 1ST CLAIMANT

WILFRED KIPKORIR MAIYO 2ND CLAIMANT

AND

**CHAIRMAN BOARD OF MANAGEMENT TUIYO SECONDARY
SCHOOL DEFENDANT**

JUDGMENT

1. The 1st claimant herein (Joyce Jerop Kogo) averred that she was employed by the respondent as school's accountant and worked until February, 2017 when she claimed she was unfairly and unlawfully terminated.
2. According to the claimant, she was never issued with a notice to show cause prior to termination.
3. The claimant further averred that upon termination, she was never paid her terminal dues which she claimed from the court. The claimant further claimed underpayments for period she worked.
4. The second claimant (Wilfred Kipkorir Maiyo) stated that he was employed by the respondent as a driver on contract basis and worked until February 3, 2017 when he claimed he was unfairly and unlawfully terminated. According to him, he was not issued with any show cause letter before termination. The claimant further averred that upon termination he was not paid his terminal dues which he claimed to be awarded. The claimant further alleged he was underpaid.
5. The respondent, with regard to the 1st claimant denied she was unlawfully dismissed and that she was relieved of her duties on valid and proper ground and proper procedure was followed. The respondent further denied the claimant was entitled to the compensation sought and alleged it was an attempt



- to extort money from the respondents. The respondent offered a similar defence concerning the 2nd claimant.
6. At the oral hearing the 1st claimant stated that she was employed in 2000 as an accountant. Her monthly salary was Ksh. 3000/= which was later raised to Ksh. 17,000/= by the time she left employment.
 7. It was her evidence that in 2017 she was asked to reapply for her job. According to her, she was not given any reason and that she did not reapply. She continued working until the day for interviewing of the applicants. She was thereafter called to the panel and terminated. Upon termination, she was paid Ksh. 123,000/= but was not told how the figure was arrived at.
 8. The 1st claimant further stated that as an accountant, she was doubling as a bursar.
 9. In cross-examination she stated she was employed in 2001 and at that time she was doubling as a secretary. She further stated that she had a personal file with the respondent and that the file had her appointment letter and other personal information. She further stated that she would be called to work during school holidays and that she was initially not housed by the school. But a year before her termination she got a house at the school. She further stated she was registered with NSSF.
 10. The 2nd claimant on her part stated that he was employed by the respondent as a driver in 2012 May at a salary of Ksh. 9,000/= per month. In his view he felt the salary was below what a driver should be paid.
 11. It was his evidence that in February, 2017 they were called for an urgent Board meeting and were told the Board had decided that they reapply for there jobs.
 12. The next day he asked the principal about the decision and further told him that if the intention was to terminate his service, he should be let go decently and paid his dues. It was his evidence that interviews were conducted and another driver was employed in his place.
 13. Upon termination he was offered approximately Ksh. 33,000/= as his terminal dues. He asked how the figures were arrived at but was not told.
 14. In cross-examination he stated that he worked for five years and that his contract stated that it was from May 5, 2012 to December 31, 2016. He further stated that he was given extension of contract letter but did not have a copy before the Court. He further stated that he never applied for the advertised jobs.
 15. The 2nd claimant further stated that he lived approximately 1 ½ Kilometres from the school and used to walk home. It was further his evidence that he drove throughout including during school holidays. The bus would be hired and he was the one to drive it. He further stated that he was not registered with NSSF.
 16. The Respondent's witness Mr. Silas Ruto on the hand stated that he was the Secretary to the Respondent's Board of Management and had worked there for 7 years.
 17. It was his evidence that the 1st claimant worked from 2001 to 2017. According to him the Board of Management was trying to regularize school workers. That is to say the personal files of the workers had no job descriptions. There was overlapping of duties. This was why the school advertised for positions. The 1st claimant was required to apply so that she could be given a proper job description. But she did not apply. The 1st claimant was paid Ksh. 123,000/= as general terminal benefits.
 18. Concerning leave, it was his evidence that the 1st claimant went on leave during school holidays and that she was housed at the school. He denied knowledge of the policy manual produced by the 1st claimant.
 19. According to him, the 1st claimant was fairly terminated for refusing to reapply for the job. The respondent considered that insubordination.



20. Concerning the second claimant he stated that he worked as the school driver from May 8, 2012 to December 31, 2016 and that no contract was never extended when the Board decided the positions would be advertised. The 2nd claimant never applied for the advertised positions. The school therefore hired another driver who applied upon termination of his contract, the 2nd claimant was paid Ksh. 33,000/= as terminal dues.
21. In cross-examination he stated that there was no provision for serving staff to reapply. The staff were given a memo to reapply. The memo was however not available in Court.
22. It was common ground that both claimants were not terminated on disciplinary grounds. Concerning the 1st claimant, her service was terminated when the respondent hired someone else in her place when she failed and or refused to reapply for her job as required by the respondent.
23. According to the respondent. A decision was made by the Board to reorganize job descriptions for staff of the respondent. According to the respondent, most staff never had job description hence there was a lot of overlapping of duties.
24. The 1st claimant on her part conceded that she never reapplied for her job. She did not give any reason why she did not. The Court will therefore deem the claimant's loss of employment as arising out of redundancy. The respondent therefore ought to have followed the provisions set out under section 40 of the employment Act while separating with the claimants.
25. Section 40 requires among others that before a termination of employment is done on account of redundancy an employee be given at least one month's notice of the intended redundancy or pay in lieu, any leave due is paid in cash, and severance pay at the rate not less than fifteen days' pay for each complete year of service. In addition to other requirements stipulated under section 40 of the Act the respondent did not lead any evidence showing they complied with section 40 of the Act. The 1st claimant however conceded that she was paid some Ksh. 123,000/= which she stated she had no idea how that was arrived at. The respondent on their part described it as general terminal benefits without giving details.
26. The Court therefore awards the 1st claimant as follows:
 - a. One month's salary in lieu of notice Ksh. 17,000
 - b. Severance pay at the rate of 15 days for each complete year of service (16 years) Ksh. 136,080
 - c. Four Month's salary as compensation for unfair termination on account of redundancy Ksh. 68,000Total = Ksh. 221,080
Less Amount paid Ksh. 89,080
27. The 1st claimant made claims for over time, leave and underpayments. She however did not clearly come out in her evidence, the nature of the work she undertook that required her to work overtime and the periods she worked overtime. regarding underpayments she never produced any documents to support her professional skills as an accountant and further, never pleaded the salary she expected as an accountant for the court to note how much less she was paid.
28. Concerning leave, the Court noted that the respondent was a school and most likely the 1st claimant would not be working during school holidays. These heads of claim would therefore be disallowed.



29. Regarding the 2nd claimant the same reasoning would apply with regard to his claim for underpayment, overtime and leave.
30. The Court further notes that the 2nd claimant was on a fixed term contract for six years. This is expired and was never renewed. The 2nd claimant further conceded he never re-applied for his job when advertisements were called. All he said was that he told the respondent that if they wanted him out, it ought to be done decently. His contract had expired and was paid someKsh. 33,000/= which he said he did not know how it was arrived at. However apart from the claims for overtime, under payment and leave, he did not dispute the payment he received.
31. From the foregoing, the Court finds that 2nd claimant's claim unmerited and dismissed the same with costs.
32. In conclusion the court allows the 1st claimant's claim as above with costs but dismisses the 2nd claimant's claim for reasons above stated.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF MAY, 2022

ABUODHA NELSON JORUM

JUDGE

ELRC

