



**Kenya Union Of Domestic, Hotel, Education Institution and Allied Workers... v Director Hill Top Preparatory School (Cause 5 of 2020) [2022] KEELRC 3861 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3861 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 5 OF 2020  
NJ ABUODHA, J  
JULY 29, 2022**

**BETWEEN  
KENYA UNION OF DOMESTIC, HOTEL, EDUCATION INSTITUTION AND ALLIED WORKERS... CLAIMANT  
AND  
DIRECTOR HILL TOP PREPARATORY SCHOOL RESPONDENT**

**JUDGMENT**

1. The claimant alleged that the grievant was employed by the respondent as a grounds-man on October 30, 2016 at a monthly salary of Ksh 4,500/= He served the respondent without any record of indiscipline up to February 6, 2018 when he was served with a suspension letter accusing him of forming a cartel of support staff with vested interests against the school policy and inciting other workers in the school to neglect their duties
2. The grievant was subsequently issued with a termination letter signed by one Ms. Irene Chepng'etich, the Finance and Administration officer.
3. The matter was reported to the claimants Kitale Branch which wrote a letter requesting for a meeting with the respondent's management but their advocate responded indicating the respondent would not attend such meeting because it was not anchored in law.
4. The union therefore referred the dispute to the minister for conciliation. The conciliator called two meetings both of which were snubbed by the respondent.
5. The claimant union contended that the termination letter never indicated when the disciplinary hearing took place and that the grievant was never granted right of appeal against the decision to dismiss him.



6. The claimant therefore sought on behalf of the grievants orders against the respondent for, payment of one month's salary in lieu of notice, underpayment of wages, annual leave not taken and compensation for loss of employment.
7. The respondent filed a response to the claim denying the claimants allegations and further averred that the complainant was a member of the cartel of employees of the respondent who would meet outside the workplace and plan to resist the school administration thereby causing staff apathy and lowering productivity. Further that the complainant was inciting the other employees to disrespect or not follow the orders of their supervisor.
8. The respondent further pleaded that the complainant was given a fair hearing on 8<sup>th</sup> February, 2018 before the termination of his employment and upon termination he was paid his terminal dues.
9. At the oral hearing the claimant stated that on the material day he was at work when he was called to the office and terminated. He further stated that on February 8, 2016 there was a board meeting but he was never called to the meeting. He denied that he was part of a gang and stated that he found those people there. He admitted signing a document and stated that he was called just to sign. He denied knowledge of English.
10. The grievant further stated that he was given the termination letter by the head teacher and that he was not paid his terminal dues immediately but later in the middle of the month. It was his evidence that he signed the vouchers because he wanted to be paid and that he was only paid his salary for the month.
11. In cross-examination he stated that he was employed on February 16, 2016 and that they agreed on his monthly salary. He further stated that he was suspended before termination and that he was called for a meeting by the head teacher.
12. The grievant further stated that his name was on the minutes as number three in the list. He admitted signing but stated he did not know how to read and write. The grievant further stated that he was paid Ksh 4,500/= upon termination and that he used to get one week off and used to be off duty during school holidays.
13. The respondent's witness stated that he was the Head Teacher of the respondent and that he adopted his statement recorded on February 14, 2020 as his evidence in chief.
14. According to him, the school realized that the grievant was a member of a cartel sabotaging the school's activities and that he also incited staff. The claimant was as a consequence suspended and thereafter called for a disciplinary hearing. He was the secretary to the meeting and that the minutes were before the Court. It was his evidence that the claimant went through the minutes and signed them. The school found that it was not in its best interest to continue employing the grievant upon termination, the grievant was paid his dues and further that the grievant used to go on leave and would sign for the same.
15. The grievant herein was accused of insubordination that is to say he was part of group of workers that sabotaged the school activities and incited workers to disobey their supervisors thereby lowering productivity.
16. The claimant was called to a disciplinary meeting on February 8, 2018 which was chaired by one Irene Chepng'etich. He attended and made representation. He was thereafter terminated.
17. The claimant union took up the matter on behalf of the grievant. They did not produce any recognition agreement between them and the respondent however they were within their right to represent the grievant if he was a member in his private capacity but had no locus to declare a trade dispute with the respondent.



18. The claimant did not state why he never involved the union during his suspension in order to be represented by the union at the disciplinary hearing. He only involved the union after he had been dismissed following a disciplinary hearing which he attended and signed the minutes.
19. Insubordination and incitement is valid ground for termination hence the respondent was justified in terminating the claimants service after subjecting him to disciplinary hearing.
20. The claim for underpayment has not been proved since the claimant union never produced the relevant wage order to compare with what the grievant earned. Further, it is curious that the Union has raised the issue of underpayment yet if it was indeed the Union representing the grievant, they ought to have raised the issue during the currency of the claimant's employment and not after he was terminated. The claim for leave is further rejected because the claimant himself stated he used to take leave during school holidays.
21. In conclusion the Court finds the claim without merit and hereby dismisses the same with costs.
22. It is so ordered

**DATED AT ELDORET THIS 29TH DAY OF JULY, 2022**

**DELIVERED THIS 29TH DAY OF JULY, 2022**

**ABUODHA JORUM NELSON**

**JUDGE**

