



**Matumbi v Wachira & another (Cause E016 of 2021)
[2022] KEELRC 12749 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12749 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E016 OF 2021
DKN MARETE, J
SEPTEMBER 28, 2022**

BETWEEN

PETER MATUMBI CLAIMANT

AND

JULIA M.WACHIRA 1ST RESPONDENT

B.O.M KIRIGARA GIRLS SECONDARY SCHOOL 2ND RESPONDENT

JUDGMENT

1. This matter was originated by way of an amended Statement of Claim amended on 13th May, 2022. It does not display any issue in dispute on its face.
2. The Respondent in a reply to Memorandum of claim dated 21st April, 2022 denies the claim and prays that the same be dismissed with costs.
3. The claimant's case is that he was an employee of the 2nd Respondent from 1st January, 2015 to 9th July, 2018 when the head teacher served him with a letter of suspension. It is his contention that prior to such action, the Head Teacher should have notified the BOM who would set a date and pass a resolution on the matter.
4. The Claimant's further case is that the head teacher's action was unilateral, unprocedural and unlawful. This culminated in the loss of the employment of the claimant for no good reason.
5. The irregularity of such action comes out thus,
 1. The Principal/head teacher (1st respondent) unilaterally making a decision to suspend the claimant.
 2. Failing to comply with the relevant ministerial negotiations in respect of suspending workers working in the institution.



3. Failing to inform/call a meeting with B.O.M so as to discuss the suspensions.
 4. Suspending the claimant without B.O.M resolution.
 5. The head teacher failing to inform the B.O.M about the suspensions.
 6. The principal had strong head conduct attitude to achieve her personal gains.
 7. The principal acting unprocedurally, illegal and unlawfully.
 8. Failing to issue claimant with notice of suspension.
 9. Suspending the claimant without benefits and or half pay until the case is heard and determined.
 10. The principal undermining and/or overstepping the mandate of B.O.M.
 11. The principal causing hardship and breach of constitutional rights of the claimant.
 12. Finally hearing the case in 2018 and 2 years down the line the decision not communicated to the claimant.
6. The claimant's other case is that his suspension was unlawful and seeks an instant reinstatement until the BOM is constituted to formalise the termination. He also claim half salary for all this period w.e.f. 9th July, 2018 to date until the resolution is had.

He prays as follows;

1. Reinstatement of claimant to his job at Kirigara Girls Secondary School with immediate effect.
2. Payment of all salaries and benefits from 9/7/2018 to date and general damages for wrongful suspension.
3. Costs, interest and any other relief.

a. Grant in the circumstances.

7. The Respondent's case is a denial of the claim. Their case is that the suspension of the claimant was lawful. Further, on such suspension, the claimant was invited to a disciplinary hearing vide a letter dated 15th July, 2019 but failed to turn up.
8. It is their further case that the suit is premature as the claimant is yet to be heard by the BOM. This was occasioned by his deliberation failure to attend a scheduled disciplinary hearing.
9. They in the penultimate submit that the claimant is not entitled to the prayers sought and that the suit ought to be dismissed with costs.
10. This matter came to court variously until the 11th May, 2022 when the parties agreed on an amendment of the claim to reflect a change of name of the claimant and also a disposal by way of written submissions.
11. The issues of determination therefore are;
 1. Whether the termination of the employment of the claimant was unfair, wrongful and unlawful.



2. Whether the claimant is entitled to the relief sought.
3. Who bears the costs of this cause.
12. The 1st issue for determination is whether the termination of the employment of the claimant was unfair, wrongful and unlawful. The claimant's case is that he was always entitled to half salary during his time of suspension but this has been denied but paid recently in May, 2022.
13. It is his case that his suspension was unlawful and badly managed in that his claim before the Board of Management has not been heard. He has always been willing to subject himself to the BOM but its secretary has always provided that it is not constituted.
14. It is the claimant's further case that the BOM secretary, the school principal has no power or authority to suspend the claimant without consultation with the entire BOM and if otherwise, this authority has not been demonstrated.
15. The Respondent denies the claim. It is the case that the claimant refused or neglected to attend to a duly constituted disciplinary meeting scheduled before the BOM.
16. This is demonstrated in her letters of suspension and invitation dated 9th July, 2018 and 15th July, 2018 respectively. The claimant merely denies invitation to the meeting of the BOM but does not explain these two letters on the disciplinary aspect of his case.
17. The claimant does not also defend or answer the Respondent's claim of his misconduct. He merely seeks to rely on the technical aspect of an absence of procedure in his termination of employment on suspension.
18. This is a matter of your word against mine. It was to be decided partly on a balance of probabilities and on the other hand, a preponderance of evidence. In this regard, the claim fails on both. This is because the claim remains seeking for rebuttal of the defence. He does not disclaim his non-attendance of disciplinary proceedings or the defence per se. A balance of probabilities does not also favour his case.
19. I therefore find a case of lawful termination of employment of the claimant by the Respondent and hold as such. This occurred on the basis of events after the suspension of the claimant.
20. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF SEPTEMBER 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Miss. Kaume instructed by Kaume & Company Advocates for the Claimant.
2. Miss. Kendi for the State Law Office for the Respondent.

