



Muriuki v Principal, Warazo Jet High School & another (Cause E051 of 2021) [2022] KEELRC 13138 (KLR) (31 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 13138 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E051 OF 2021
DKN MARETE, J
OCTOBER 31, 2022**

BETWEEN

MARY WAMUYU MURIUKI CLAIMANT

AND

PRINCIPAL, WARAZO JET HIGH SCHOOL 1ST RESPONDENT

BOM WARAZO JET HIGH SCHOOL 2ND RESPONDENT

JUDGMENT

1. This matter was originated by way of a statement of claim dated 14th October, 2021. The issue in dispute is therein cited as;
In the matter of unfair termination of claimant's employment
2. The respondents in a statement of response dated 8th November, 2021 denies the claim and prays that the same be dismissed with costs.
3. The claimant's case is that on diverse dates between the months of October, 2020 and January, 2021, she received letters from the 1st respondent alleging to act on behalf of the 2nd Respondent as its secretary.
4. The claimant's further case is that vide a letter dated 22nd October, 2020, the 1st respondent put forth allegations of gross misconduct and insubordination against the claimant. These were false and maliciously fabricated to terminate her employment.
5. The claimant's other case comes out thus;
 16. Further, the claimant contends that despite her dedication and devotion in swerving the Respondents, they have deliberately frustrated, mistreated and finally terminated her employment.



Particulars of Malice/breach of Contract/statutory Duty of Care

- a. Suspending the employment of the claimant on mere allegations.
- b. Failing to make monthly payments to the claimant during the period of suspension.
- c. Failing to adhere to the procedure laid down under the *Employment Act*.
- d. Advertising the job position of the claimant during the period of suspension.
- e. Failing to notify the claimant in good time of the outcome of the investigations.

17. As a result of the aforesaid, the claimant claims reinstatement to his place of employment at Warazo Jet High School.

She prays thus;

- a. A declaration that the termination of the claimant's employment was unfair, unlawful and a nullity.
- b. An order directing the Respondent to reinstate the claimant to her employment without loss of benefits and pay to the claimant her unpaid salary and dues from her suspension up to the date of reinstatement.
- c. In the alternative to (b) above an order do issue directing the Respondent to pay to the claimant her unpaid salary from November, 2020 plus 14% per annum interest thereon until the date of his retirement at the age of 60 years;
- d. Costs of the suit;
- e. Certificate of service; and
- f. Interests of the award at court rates.

6. The respondent denies the claim and emphasises a case of gross misconduct on the part of the claimant. It is her further case that the claimant was well aware of the complaints made against her as these were communicated to her in the form of warning letters.

7. In their written submissions dated 1st March, 2022 the respondent also reiterates their case and submit that the suspension and subsequent termination of the employment of the claimant by the respondent were procedural, fair and lawful. They deny malice and illegality on their part and further submits that the claim is a non-starter.

8. At all times, the claimant was aware of her misconduct and had been subjected to various write-ups on the subject. She cannot therefore plead innocence and wish to benefit from her misdeeds.

9. The respondents' case overwhelms that of the claimant on a balance of probabilities and preponderance of evidence, the matter tilts in their favour. They have adduced evidence of lawful termination of employment which the claimant has failed to rebut, or at all. The respondents' case is



therefore not controverted and takes sway. I therefore find a case of lawful termination of employment and hold as such.

10. The issues for determination therefore are;
 1. Whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful.
 2. Whether the claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
11. The 1st issue for determination is whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful. The claimant in her written submissions reiterates a case of unfair termination of employment which is denied by the respondent. It is a case that the termination without pay was in breach of section 44 (3) of the *Employment Act* and therefore unfair and unlawful.
12. The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is not. Having lost on a case of unlawful termination of employment, she becomes disentitled to the relief sought.
13. 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 31st day of October 2022.

D.K.Njagi Marete

JUDGE

Appearances

Miss Thungu instructed by Wanjiru Thungu & Co. Advocates for the Claimant.

Mr. Muthuri instructed by State Law Office for the Respondents.

