



**Mutekhele v Teachers Service Commission (Cause 382 of 2017)  
[2022] KEELRC 13268 (KLR) (23 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13268 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 382 OF 2017  
S RADIDO, J  
NOVEMBER 23, 2022**

**BETWEEN**

**BERYL NAMALWA MUTEKHELE ..... CLAIMANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. Beryl Namalwa Mutekhele (the claimant) sued the Teachers Service Commission (the commission) on September 8, 2017, alleging that the termination of her employment as a teacher on November 4, 2016 was unfair.
2. The commission filed a response on November 2, 2017, and the cause was heard on July 24, 2019 when the claimant testified and on June 29, 2022, when a Deputy Director with the commission testified.
3. The claimant filed her submissions on and the commission on
4. The court has considered the pleadings, evidence, and submissions.
5. On February 4, 2009, the commission transferred the claimant from Lugulu Girls Secondary School to Kibabii Teachers College. The claimant reported to the new institution on March 17, 2009.
6. The commission again transferred the claimant from Kibabii Teachers College to Cardinal Otunga Girls Secondary School around June 21, 2012.
7. The claimant collected the transfer letter on August 7, 2012 but did not formally clear or hand-over. The principal of the new institution confirmed to the commission on the phone on October 24, 2012 that the claimant had not reported to the school.
8. The claimant meanwhile cleared with Kibabii Teachers College on November 6, 2012 en route to Cardinal Otunga Girls Secondary School.



9. On November 8, 2012, the commission notified the claimant that she should report to Matili Technical Training College instead of Cardinal Otunga Girls Secondary School.
10. The claimant reported to Matili Technical Training Institute on November 12, 2012.
11. Having learnt that the claimant never reported to Cardinal Otunga Girls Secondary School, the commission requested the claimant through a letter dated February 5, 2013 to explain her whereabouts from August 7, 2012 to November 7, 2012 before she could be reinstated to the payroll.
12. In May 2013, the Governor County of Bungoma nominated the claimant to serve as a County Executive Committee member, Education.
13. On June 10, 2013, the principal of Matili Technical Training Institute reported to the commission that the claimant had been absent since March 2013 and that he had information that she had been nominated to serve as a county executive committee member County of Bungoma.
14. The Governor, County of Bungoma, appointed the claimant to the office of County Executive Committee member on or around June 1, 2013.
15. The claimant must have got wind of the brewing storm, for on June 14, 2013, she requested the commission to release her to the County Government.
16. Through a letter dated June 20, 2013, the commission informed the claimant that the release had been denied until the issues concerning her unexplained absence had been resolved.
17. Ultimately, on November 4, 2016, the commission notified the claimant of the termination of her contract because she had failed to resume duty after May 8, 2013.
18. The claimant then moved to court.
19. It is not in contention that the claimant was nominated as a County Executive Committee member sometime in May 2013 and that she was eventually approved by the County Assembly of Bungoma and formally appointed to the office of County Executive Committee member in June 2013.
20. By the time of nomination and appointment, the claimant had yet to be released by the commission.
21. On appointment as a County Executive Committee member, the claimant became a state of officer within the context of article 260 of the Constitution. And by virtue of article 77 of the Constitution, the claimant was forbidden from holding any other gainful employment.
22. The claimant could not and cannot thus allege that she continued to hold a public office under the commission, not when she abandoned her previous public office without any notice to the employer.
23. The claimant frustrated her contract with the commission, and it is double-faced for her to turn around and attempt to seek the protections assured employees by sections 35(1), 41, 43, 45 and 47(5) of the Employment Act, 2007, to assert unfair termination of employment. If anything, the claimant's conduct fell short of the expectations of the principles and values of public service.
24. The court finds that the case under consideration does not fall within the purview of unfair termination of employment.

### **Conclusion and Orders**

25. The court finds no merit in the cause. It is dismissed with costs.



**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS  
23RD DAY OF NOVEMBER 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

For claimant Mr Kundu instructed by Situma & Co Advocates

For respondent Ms Ngere instructed by Allan Sitima Advocate

Court Assistant Chrispo Aura

