



**Peter v Board of Management Kenya Kids Learning Centre (Cause 29,
16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 & 28 of 2017 (Consolidated))
[2022] KEELRC 13356 (KLR) (1 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13356 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 29, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 & 28 OF 2017 (CONSOLIDATED)
MN NDUMA, J
DECEMBER 1, 2022

BETWEEN

EMMACULATE MUTHOKI PETER CLAIMANT

AND

**THE BOARD OF MANAGEMENT KENYA KIDS LEARNING
CENTRE RESPONDENT**

JUDGMENT

1. The suits were consolidated since all of them arose from similar circumstances. CW1, Immaculate Muthoki Peter, testified on behalf of other claimants. She partly relied on a witness statement dated November 17, 2016 as her evidence in chief. She testified that she with others were employed by the respondent at Kids Learning Centre, Nairobi.
2. That she worked as a teacher from September 5, 2011 at a monthly salary of Kshs 6,200. She was placed on three (3) months' probation and was confirmed. That she worked diligently until September 16, 2015 when the respondent summarily dismissed her with her colleagues without notice; notice to show cause and/or any hearing. That she was underpaid throughout the period of employment despite being given letters of salary increment and the salary rise was never implemented. That no allegations of misconduct or poor work performance was made against her and she was issued no warning letters.
3. That the summary dismissal was unlawful and unfair and she prays like her colleagues for the reliefs set out in the respective statements of claim including: -
 1. The summary dismissal was unlawful and unfair.
 2. That the claimants be awarded equivalent of 12 months salary in compensation for the unlawful and unfair summary dismissal.



3. That the claimants be paid house allowance for the period worked.
 4. That the claimants be paid underpayments for period worked.
 5. Award of costs.
4. CW1 testified that the claimants were employed on different dates as teachers but were dismissed summarily on the same date without any justifiable cause and in the same manner. That they were paid different salary as set out in respective statements of claim.
 5. CW1 stated that the dismissal of all the claimants was verbal and were not issued with letters of dismissal.
 6. That the claimants demanded salary increase and they were summarily dismissed instead of getting the salary increase. That they all ought to have been paid at least Kshs 15,000.
 7. CW1 prayed all the claimants be awarded as prayed in the consolidated suit.
 8. RW1 was Christine Ingati an administrator of the school. She adopted a witness statement dated June 25, 2019 as her evidence in chief and produced list of documents dated June 25, 2019 marked exhibits '1' and '2'. RW1 testified that the respondent was an alternative provision school for the less fortunate children based at Mukuru Kwa Njenga slums. That the claimants were teachers. That the claimants sometimes in September, 2015, the claimants wrote a collective letter demanding a salary increase. That the claimants wanted to have a meeting with the managing director. That the meeting was held in which the director told the claimants that though she understood their grievance, salary could not be increased due to financial difficulties at the school. That the director proposed to increase the salary of the claimants by Kshs 2,000 each. That the claimants left the meeting making noise. That the claimants left and started another school in the neighbourhood. That the respondent called the claimants back but they refused to return. That the salaries paid were agreed upon before the claimants were employed. That the salaries paid were consolidated and included house allowance. That the school conducted replacement of teachers. That the claimants were not dismissed from employment. That they absconded work. That the suit be dismissed with costs.
 9. Under cross-examination, RW1 stated that the claimants demanded to be paid not less than Kshs 15,000 per month. That the claimants absconded work and started a rival school which had no name at a nearby church. That the claimants were not issued with letters of termination. RW1 stated that the school paid teachers a gross salary of Kshs 6,700 and did not pay house allowance; overtime or any bonus. RW1 stated that they could not pay minimum wage to teachers. They agreed with teachers what they could afford.
 10. RW2 Margaret Amisi told the court that she was the head teacher of the school. That she adopted a witness statement dated June 25, 2019 as her evidence in chief. That she was a colleague of the claimants. That she had joined the school in the year 2011. That she had a letter of appointment. That in September, 2015, the claimants wrote a demand letter to the school asking for salary increase.
 11. That RW2 did not support the demand because the school had financial constraints. That the director called a meeting and proposed to give the claimants a Kshs 2,000 increment. That the claimants refused and left the school. That the claimants told the children to go home and they paralysed the school. That the school called parents to a meeting. That the claimants never returned.
 12. RW3, Mohammed Hussein testified that he was a resident of Mukuru Kaiyaba. He adopted a witness statement dated June 25, 2019 as his evidence in chief. RW3 testified that he was a neighbor of the respondent school. That on the day the claimants left, the school was paralysed. That RW3 went there



to find out what was going on since he was a parent at the school. RW3 stated that he was told that the school had closed. RW3 stated that he could hear noises from outside the school. That he realized it was the claimants arguing with the security guards. That the claimants broke the gate, took their personal effects and left the school. RW3 stated that this was a slum school, helping the community. RW3 stated that the claimants did not return to the school even after a meeting was convened by the area chief. RW3 stated that the school hired new teachers.

13. The parties filed written submissions. The issues for determination are: -
 - (a) Whether the claimants were summarily dismissed from the school or they absconded.
 - (b) Whether the claimants are entitled to the reliefs sought.
14. Upon a careful consideration of the testimonies by the CW1 and that by RW1, RW2 and RW3, the court finds that the claimants were employed by the respondent on diverse dates as school teachers. That the claimants worked continuously for the school. That they were all underpaid even though they had agreed with the respondent to accept the meagre salaries they were paid due to the poor financial situation of the respondent which was an Early Childhood Development School, at Mukuru Kaiyaba, slum area.
15. It is not in dispute that the employment of all the claimants came to an end on September 16, 2015. That the claimants had demanded a meeting with the managing director of the school demanding a salary increment to a minimum of Kshs 15,000 per month. That all the claimants received the lowly salaries indicated in their statements of claims. That the stated salaries were consolidated and they were not paid any extra allowances. RW2 admitted that the claimants including herself were underpaid but the financial situation of the school could not permit any salary increment. RW2 stated that to be the reason that she did not join the claimants in their demand.
15. The court is satisfied that the claimants were not summarily dismissed by the respondent but they had refused to work when their demand for salary increment was not met by the respondent. The court is satisfied that the claimants paralyzed the operations of the school on the material day, took their belongings, went away and did not return to the school.
16. The court finds that the claimants have failed to prove to the court that they were unlawfully and unfairly summarily dismissed from the school. To the contrary, the claimants absconded from their work in protest upon failure by the respondent to increase their salaries.
17. The court is also satisfied that the claimants had agreed to be paid the respective monthly salaries they were paid by the respondent. The court is satisfied that the respondent had no financial capacity to pay the claimants the money they had demanded because the school could not afford the same.
18. The court finds that though the claimants had a legitimate demand, they did not follow a lawful procedure in making their demands.
19. The claimants have therefore failed to prove that they were summarily dismissed from their employment from the school and so the claimants are not entitled to any compensation for the alleged dismissal.
20. Only CW1 testified in support of the claimants' consolidated case. The claimants bore the burden of proving that they were entitled to a minimum wage pleaded in the consolidated claims on a balance of probability.



21. The claimants have proved that they were entitled to payment of gross salary of about Kshs 15,000 per month but the school could not afford to pay the amount. From the letters of appointments, the teachers were paid Kshs 9,250; 7,500; 6,500; 6,200 respectively. The court finds that the claimants have proved that they were all entitled to payment of at least Kshs 15,000 per month. The court finds that each of the claimants is entitled to the difference between the salary paid during the period worked and salary of Kshs 15,000 per month. The court awards each of the claimants the stated underpayment. The said amount to be computed by the respondent in respect of each claimant and the computation to be filed within 60 days of this judgment. The claimants to confirm the computation within 30 days of the said filing. The court to consider and confirm the final computation in respect of each claimant.
22. Parties to bear their own costs of the suit.
23. Mention on May 30, 2023.

DATED AND DELIVERED AT NAIROBI (ELECTRONICALLY) THIS 1ST DAY OF DECEMBER, 2022

MATHEWS N NDUMA

JUDGE

Appearances

Mr Githinji for claimants

Mr Wesonga for respondents

Ekale – Court Assistant

