



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 241 OF 2018**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND  
HOSPITAL WORKERS .....CLAIMANT**

**VERSUS**

**BOARD OF MANAGEMENT OF BUTERE GIRLS HIGH SCHOOL..RESPONDENT**

**JUDGMENT**

1. The Kenya Union of Domestic, Hotels, Educational Institutions & Hospital Workers (the Union) sued the Board of Management, Butere Girls High School (the Board) on 2 July 2018 and the Issues in Dispute were stated as:

Wrongful summary dismissal of Mrs Alexina Anyanda S and Mrs Helen Ayino Muhonja contrary to Article 41, 47 and 50 of the Constitution of Kenya, 2010 and section 41, 43 and 45 of the Employment Act, 2007 and also contrary to the recognition agreement and CBA.

2. The Respondent filed a Memorandum of Defence on 22 August 2018, and the Cause was heard on 14 May 2019 when Helen Muhonja and Thomas Mboya testified and on 26 January 2021, when the Board's Secretary and Principal of the School testified.

3. The Union filed its submissions on 28 May 2019 and 23 February 2021, while the Board filed its submissions on 23 April 2021.

4. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

**Procedural fairness**

5. Section 35(1)(c) of the Employment Act, 2007 anticipates written notice of termination of employment, whilst section 41 of the Act requires the employer to afford the employee an opportunity to make representations before a decision to terminate is taken. The hearing should be in the presence of a colleague of the employee or trade union representative.

**Mrs Alexina Anyanda**

6. Mrs Alexina Anyanda was employed as a Matron by the Board around 10 February 2010. She was later appointed as Director of the ECDE.

7. On 18 May 2018, the Board issued a show-cause letter to Mrs Anyanda. The letter set out some 11 allegations Mrs Anyanda was to respond by 21 May 2018.

8. The Board sent another show-cause to Mrs Anyanda on 1 June 2018 and requested her to respond by 4 June 2018. On the same day, the Board invited Mrs Anyanda to appear before a subcommittee of the Board on 5 June 2018.

9. The Board suspended Mrs Anyanda through a letter dated 12 June 2018 because she had failed to produce her original certificates by 8 June 2018 as requested.

10. She was to await an appearance before the full Board.

11. On the same day, the Board invited Mrs Anyanda to appear before the full Board for a disciplinary hearing on 26 June 2018. The letter informed her of the right to attend with a colleague or a trade union representative.
12. On 11 June 2018, the Union wrote to the Board to complain that it had not been involved in the disciplinary process, and on 12 June 2018, the Board replied stating that the Grievants would be subjected to due process.
13. Mrs Anyanda attended the hearing, but a trade union representative was not present.
14. The Branch Secretary of the Union testified that the Board did not notify them to attend the hearing of the case against the Grievant as provided for in the collective bargaining agreement between the parties.
15. Mrs Anyanda was informed of the allegations to confront. She was requested to make a written response which she did. She was later invited to attend an oral hearing. The invitation letter informed her of the right to be accompanied. She attended without a trade union representative.
16. The Union argued that the Board should have directly invited it to attend. Since Mrs Anyanda was informed of the right to attend the hearing with a trade union representative, the Court finds that the failure to directly invite the Union was not fatal.
17. The Court finds that the Board was in substantial compliance with the statutory requirements of procedural fairness as envisaged under sections 35(1) and 41 of the Employment Act, 2007.

### **Mrs Helen Muhonja**

18. Mrs Muhonja was employed as Accounts Clerk/Bursar.
19. On 1 June 2018, the Board sent a show-cause to Mrs Muhonja and requested her to respond by 4 June 2018.
20. On 5 June 2018, the Board invited Mrs Muhonja to appear before a subcommittee of the Board.
21. The Board suspended Mrs Muhonja through a letter dated 12 June 2018 because she had failed to produce her original certificates by 8 June 2018 as requested.
22. On the same day, the Board invited Mrs Muhonja to appear before the full Board for a disciplinary hearing on 26 June 2018. The letter informed her of the right to attend with a colleague or a trade union representative.
23. On 11 June 2018, the Union wrote to the Board to complain that it had not been involved in the disciplinary process, and on 12 June 2018, the Board replied stating that the Grievants would be subjected to due process.
24. Mrs Muhonja attended the hearing, but a trade union representative was not present.
25. The Branch Secretary of the Union testified that the Board did not notify them to attend the hearing of the case against the Grievant as provided for in the collective bargaining agreement between the parties.
26. Mrs Muhonja was informed of the allegations to confront. She was requested to make a written response which she did. She was later invited to attend an oral hearing. The invitation letter informed her of the right to be accompanied. She attended without a trade union representative.
27. The Union argued that the Board should have directly invited it to attend. Since Mrs Muhonja was informed of the right to attend the hearing with a trade union representative, the Court finds that the failure to directly invite the Union was not fatal.
28. The Court finds that the Board was in substantial compliance with the statutory requirements of procedural fairness as envisaged under sections 35(1) and 41 of the Employment Act, 2007.

### **Substantive fairness**

29. In terms of sections 43 and 45 of the Employment Act, 2007, the Board was expected to not only prove but prove as valid and fair the reasons for the dismissal of the Grievants.
30. The Board called its Secretary in a bid to discharge the burden placed upon it.
31. She testified that Mrs Muhonja had handled parents rudely on 11 May 2018 and refused to issue manual receipts on 18 May 2018 and disrespected her on 25 May 2018 in the presence of parents.
32. In respect to Mrs Anyanda, the witness testified that she had allowed a student to use her phone on 15 January 2018, assaulted a named student on 21 February 2018, sold unauthorised foods to the students, failed to lock dormitories leading to the theft of students' property and failing to turn for work on 4 March 2018.

33. Mrs Anyanda did not testify.

34. Mrs Muhonja did not attempt to deny the allegations against her in the witness statement or during oral testimony.

35. The Union did not interrogate the witness on the veracity of the allegations. Its cross-examination concentrated on the failure to involve the Union in the disciplinary process.

36. Without any interrogation of the Board's witness on the validity and fairness of the termination of the contracts, and the failure by the Grievants to testify on the existence of the allegations, the Court can only conclude that the Board had and has proved valid and fair reasons to dismiss the Grievants.

#### **Breach of contract**

37. The Union pleaded and sought remedies, including that the Grievants be paid all monies, allowances and benefits due to them under the collective bargaining agreement.

38. The particulars of these monies, allowances and benefits were not disclosed in the pleadings, witness statements or during oral testimony.

39. The Union introduced them in the submissions. Being facts requiring evidence, the Court finds that the Union did not satisfy the evidential burden of proving these heads of the claim(s).

#### **Conclusion and Orders**

40. In consideration of the foregoing, the Court finds no merit in the Cause. It is dismissed.

41. The parties are in an on-going social partnership, and so each party to bear its own costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN NAIROBI ON THIS 28<sup>TH</sup> DAY OF APRIL 2021**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

#### **Appearances**

For Union Mr Siembo, Assistant Secretary-General

For Respondent Mr Langat/Mr Omondi M.M. instructed by Omondi Abande & Co. Advocates

Court Assistant Chrispo Aura