



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 2210 OF 2015**

**BETWEEN**

**JANE NYAMBURA NGUGI.....CLAIMANT**

**VERSUS**

**1. BOARD OF GOVERNORS KIRANGARI YOUTH POLYTECHNIC**

**2. KIAMBU COUNTY GOVERNMENT..... RESPONDENTS**

**Rika J**

**Court Assistant: Emmanuel Kiprono**

**Njuguna Ng'ang'a & Associates, Advocates for the Claimant**

**Nyamweya Mamboleo & Company Advocates for the Respondents**

**JUDGMENT**

1. The Claimant filed her Statement of Claim on 11<sup>th</sup> December 2015. She states that she was employed by the 1<sup>st</sup> Respondent Polytechnic as an Instructor, on 6<sup>th</sup> January 1992. Her salary was Kshs. 1,780 monthly. It has not been paid to-date.
2. The 2<sup>nd</sup> Respondent is a County Government responsible administratively and financially, for the 1<sup>st</sup> Respondent, under the Constitution of Kenya, the Claimant avers.
3. She wrote to the 1<sup>st</sup> Respondent on 23<sup>rd</sup> April 2013, demanding for payment of her salary. The 1<sup>st</sup> Respondent replied on 5<sup>th</sup> August 2013, advising that the 1<sup>st</sup> Respondent had resolved the Claimant's N.S.S.F contributions would be remitted promptly and that, she would receive Kshs. 2,000 from the 1<sup>st</sup> Respondent in addition to the Government top-up grant.
4. The 1<sup>st</sup> Respondent confirmed in a letter dated 26<sup>th</sup> August 2011 that the Claimant was employed by the 1<sup>st</sup> Respondent. She was paid nothing by the 1<sup>st</sup> Respondent up to 1<sup>st</sup> August 2013. The 1<sup>st</sup> Respondent had only been paying the Claimant grant, extended by the Ministry of Youth and Affairs.
5. Amidst her demands for salary payment, the Claimant received verbal communication from the 1<sup>st</sup> Respondent that her contract would be terminated. This was confirmed in a letter dated 14<sup>th</sup> November 2014, 6 months after the verbal communication. Termination was indicated to be effective from 1<sup>st</sup> May 2014.
6. On 9<sup>th</sup> June 2015, she was issued a notice by the 2<sup>nd</sup> Respondent to vacate staff house, without word on her arrears of salary and terminal dues.
7. Her salary was not within the minimum wage standards. She complained about this to the 1<sup>st</sup> Respondent, who ignored her. She obtained N.S.S.F Statements, which indicated contributions had not been remitted for 40 months.

8. She was not heard before termination. She claims that she was denied her right of fair labour practice, by prolonged denial of her salary. She was denied her Certificate of Service, losing alternative employment opportunities as a result. She never went on annual leave.

9. The Claimant prays for Judgment against the Respondents as follows: -

- a. Declaration that termination was unfair and unlawful.
- b. 1-month salary in lieu of notice at Kshs. 17,932.
- c. Accrued annual leave of 23 years at Kshs. 412,574.
- d. Service pay, or payment of unremitted N.S.S.F contributions at Kshs. 62,000.
- e. Accrued salary from January 1992 to 31<sup>st</sup> July 2013 at Kshs. 1,999,804.
- f. Underpayment of salaries 1992 -2014 at Kshs. 2,019,948.
- g. Compensation for unfair termination at Kshs. 215,184.
- h. Luggage and baggage allowance at Kshs. 20,000.
- i. Gratuity of 23 years at Kshs. 215,000.
- j. Costs.
- k. Interest.
- l. Certificate of Service.

10. The monetary claim stands at Kshs. 4,879,173.

11. The Respondents filed their Statement of Response dated 10<sup>th</sup> December 2020. It is conceded that the Claimant was employed by the 1<sup>st</sup> Respondent in 1992.

12. Her salary of Kshs. 1,780 was paid monthly up to the time of dismissal. She boycotted her duties, and was summarily dismissed for gross misconduct. She went on maternity leave. She was notified to vacate staff house because she was no longer in employment. The Respondents urge the Court to dismiss the Claim with costs.

13. On 10<sup>th</sup> December 2020, the Claim was fixed for hearing in Open Court, in the presence of Parties' Advocates. Hearing was fixed for 5<sup>th</sup> February 2021. The Respondents and their Advocates did not attend Court for hearing on the appointed date. The Claimant gave her evidence and closed her case. The Claim was last mentioned on 3<sup>rd</sup> June 2021, when the Claimant confirmed the filing of her Submissions.

14. She adopted her Documents and Witness Statement on record. She was employed as a Dress-Making Instructor by the 1<sup>st</sup> Respondent. She was not paid her salary by the 1<sup>st</sup> Respondent. She made several demands. She was paid Kshs. 2,000 by way of Government Grant, from 1<sup>st</sup> August 2013 to May 2014 when she left employment. Her salary was payable by 1<sup>st</sup> Respondent's Board. She was dismissed after she demanded for payment. She was not paid terminal dues. She did not have any warning. She was evicted from staff house. N.S.S.F contributions were remitted inconsistently. She worked for 22 years without a salary.

15. Judgment was reserved for 23<sup>rd</sup> September 2021. The Court has however completed preparation of Judgment before this date, and has no reason to keep its delivery in abeyance. The date of delivery has been adjusted as indicated at the end of the Judgment. Parties have duly been notified by the Registry.

**The Court Finds: -**

16. The Claimant was employed by the 1<sup>st</sup> Respondent through a written contract, exhibit 1 of the Claimant's Documents. Commencement date was 6<sup>th</sup> January 1992. Her designation was Dress- Making Instructor. Her salary was Kshs. 1,780, monthly. The Ministry of Youth Affairs paid her an equal amount by way of grant. This was improved by the Ministry to Kshs. 2,000 monthly, beginning 1<sup>st</sup> August 2013, until 1<sup>st</sup> May 2014 when her contract was terminated. The 1<sup>st</sup> Respondent did not pay her the contracted sum of Kshs. 1,780 throughout.

17. She made constant demands for payment. The 1<sup>st</sup> Respondent seems to have shirked its responsibility to pay its part of the salary under contract, instead letting the Claimant to depend on stipends from the Ministry of Youth, throughout her 22 years of service.

18. When she wrote a written demand on 23<sup>rd</sup> April 2013, the 1<sup>st</sup> Respondent made a reply on 5<sup>th</sup> August 2013, announcing that the Ministry had improved its monthly stipends from Kshs. 1,780 to Kshs. 2000. The 1<sup>st</sup> Respondent said nothing about its own obligation, and arrears

outstanding from the year 1992.

19. The Court is satisfied that the 1<sup>st</sup> Respondent owes the Claimant arrears of salary, at Kshs. 1,780 monthly, from 6<sup>th</sup> January 1992, to 1<sup>st</sup> May 2014.

20. She has not established underpayments for specific years. She has not pointed out to the Court in which columns, an Instructor, Dress-Making fell, in the various Minimum Wage Orders she has exhibited.

21. Polytechnics, at the time the Claimant was employed, were viewed as community projects, partly facilitated by the Government through grants and by the relevant Communities. This explains the duality of funding of the Claimant's salaries. She accepted what was agreed fully, understanding the nature of her workplace, and the Court would be asking too much of the Respondents, in finding that the Claimant was underpaid, and by ordering payment of underpayments in arrears. Employment contracts are dynamic.

22. The prayer for underpayment of salary is declined.

23. The Court is similarly unpersuaded about the prayer for accumulated annual leave. Polytechnics, like other institutions of learning and training, are not in session throughout the year. Instructors, like Teachers, are expected to take their annual leave within the vacation period, when learners and trainees are away. This ensures the institutions' learning/training calendars are not unduly interrupted. The Claimant must have had time away to rest, during the 1<sup>st</sup> Respondent's vacations. The claim for annual leave in arrears is declined.

24. The Claimant has not justified the prayer for gratuity through her contract of employment, or any provision of the law. The prayer is declined.

25. She did not clearly establish the prayer for service pay, or refund of N.S.S.F contributions. The Court has in the past held the view that statutory contributions which have not been remitted, ought to be pursued through the relevant statutory body, rather than being reverted to the individual Employee. There are mechanisms for enforcement under the various constitutive laws relating to these statutory bodies. The prayers for service pay or refund of N.S.S.F dues are declined.

26. There is no clause in the Claimant's contract on luggage and baggage allowance. The Court has no reason to enforce payment under this item.

27. She did not elaborate in her evidence, the prayer for withholding of grant, from December 2013 to May 2014. The prayer is declined.

28. The Claimant's contract was terminated without the benefit of a notice or hearing. She was not given reason or reasons to justify the decision. She was not presented any charges. She was advised by word of mouth that her contract would be terminated. It took 6 months for a written letter of termination to issue. The letter was received by the Claimant on 14<sup>th</sup> November 2014 and was backdated to 15<sup>th</sup> May 2014. It gave the effective date of termination as 1<sup>st</sup> May 2014. The 1<sup>st</sup> Respondent serially violated the Claimant's procedural and substantive rights.

29. Her salary at the time of termination was Kshs. 2,000 by way of grant, and Kshs. 1,780 due from the 1<sup>st</sup> Respondent, totalling Kshs. 3,780 monthly. She had worked for 22 years. She had a clean record. She was paid nothing on termination. She was permanent and pensionable. **She merits full compensation for unfair termination, which the Court allows at equivalent of 12 months' salary at Kshs. 45,360.**

**30. She is allowed the prayer for 1-month salary in lieu of notice, at Kshs. 3,780.**

31. The 1<sup>st</sup> Respondent failed to pay to the Claimant salary at Kshs. 1,780 monthly, from 6<sup>th</sup> January 1992 to 1<sup>st</sup> May 2014. **The prayer for salary in arrears over this period is allowed, computed at [256 months x Kshs. 1,780] = Kshs. 455,680.**

32. The Judgment shall be satisfied by the Respondents, jointly and severally.

**33. Certificate of Service to issue.**

**34. Costs to the Claimant.**

**35. Interest granted on court rates, from the date of Judgment till payment is made in full.**

**IT IS IN SUM ORDERED: -**

**a. It is declared that termination of the Claimant's contract was unfair and unlawful.**

**b. The Respondents shall pay to the Claimant, jointly and severally, compensation for unfair termination at Kshs. 45,360; notice at Kshs. 3,780; and arrears of salary at Kshs. 455,680 – total Kshs. 504,820.**

**c. Certificate of Service to issue.**

**d. Costs, with interest from the date of Judgment till payment, to the Claimant.**

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, NYERI COUNTY, UNDER  
MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 20<sup>TH</sup> DAY OF AUGUST 2021.**

**JAMES RIKA**

**JUDGE**