



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA**

**CAUSE NO. 50 OF 2017**

**[Formerly Kisumu E&LRC Cause No. 232 of 2016]**

**EVERLYNE SHIKHONYI LUSENJI..... CLAIMANT**

**VERSUS**

**BOARD OF MANAGEMENT, SHIKOKHO SECONDARY SCHOOL**

**(Being sued through its Chair)..... RESPONDENT**

**JUDGMENT**

1. The claimant filed suit on 26<sup>th</sup> June 2016 seeking compensation for unlawful and unfair dismissal and payment of arrear salary from April 2015 up to the date of dismissal on 13<sup>th</sup> June 2016. The claimant earned Kshs. 18,540 gross salary per month.
2. The claimant worked as an accounts clerk at the respondent's school from January 2000. The claimant worked diligently and was issued a certificate of commendation on 18<sup>th</sup> November 2008 for the good work done. On 30<sup>th</sup> March 2015, the Principal of the school redeployed the claimant to the kitchen section to perform general works due to her incompetency as an accounts clerk. The letter of deployment was produced as exhibit '3'. The principal purported to get authority from the board of management made at a meeting held on 14<sup>th</sup> March 2015. The claimant wrote a protest letter through K.N. Wesutsa and Company Advocates dated 16<sup>th</sup> April 2015. The Principal had reported to the school in the year 2014 and the claimant testified that he attempted to oust her from the position of accounts clerk for no valid reason from day one.
3. The principal barred the claimant from attending school upon receipt of the demand letter from the Advocates.
4. On 19<sup>th</sup> May 2016, the principal wrote a letter to the claimant asking her to attend a Board meeting on 3<sup>rd</sup> June 2016. The claimant attended the meeting and was surprised to face accusations of financial impropriety based upon an Audit Report which was brought to the attention of the claimant for the first time in that meeting. The claimant prayed to have the meeting deferred to another date to enable her study the Audit Report and prepare her response. The request was refused and she was advised to await a decision of the Board.
5. On 13<sup>th</sup> June 2016, the claimant received a letter of summary dismissal. The claimant prays the court to declare the dismissal unlawful and unfair and compensate her accordingly.
6. Despite service of summons to enter appearance the respondent did not enter appearance nor file a defence to the claim.
7. The claimant testified under oath on 28<sup>th</sup> March 2019 and the court is satisfied that she has discharged the onus placed on her in terms of *Sections 107 and 108 of the evidence Act, Cap 80 laws of Kenya read with Section 47(5) of the Employment Act* and has proved on a balance of probabilities that the summary dismissal was not for a valid reason and was not preceded by a valid procedure in violation of *Sections 36, 41, 43 and 45 of the Employment Act, 2007*.
8. The claimant has also proved that she was unlawfully denied a salary from April 2015 up to the date of unlawful summary dismissal on 13<sup>th</sup> June 2016.
9. The court therefore enters judgment in favour of the claimant in respect of the arrear salary calculated at Kshs. 18,540 per month for 15.5 months in the sum of Kshs. 287,370.
10. With respect to compensation, the court is satisfied that the claimant is entitled to the relief in terms of *Section 49(1) (c) and (4) of the Employment Act 2007*.

11. The claimant was summarily dismissed without notice, notice to show cause and a fair hearing. The respondent failed to give the claimant opportunity to prepare her defence and to bring a representative of choice. The claimant was not paid arrear salary for many months and was not paid any terminal benefits upon dismissal. The claimant in the court's view did not contribute to the dismissal. She was instead victimized for asserting her right not to be mistreated by the new principal.

12. The claimant had otherwise served the school diligently for a period of over 15 years before she was mistreated, demoted and wrongfully dismissed by the respondent. The court finds this a suitable case to award the claimant the maximum compensation being the equivalent of 12 months salary for the unlawful and unfair dismissal in the sum of Kshs. 222,480.

13. Judgment is entered in favour of the claimant against the respondent as follows:

(a) Kshs. 287,370 being 15.5 months arrear salary.

(b) Kshs. 222,480 being the equivalent of 12 months salary in compensation.

**Total award Kshs. 509,850**

(c) Interest at court rates from date of filing suit in respect of (a) above and from date of judgment in respect of (b) above till payment in full.

(d) Costs of the suit.

**Judgment Dated, Signed and delivered this 30<sup>th</sup> day of January, 2020**

**Mathews N. Nduma**

**Judge**

**BUNGOMA**

**Appearances**

Mr. Kudu for Claimant

Chrispo – Court clerk.