



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE 1800 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 30th April, 2020)

ROSE NJERI WANDERE.....CLAIMANT

VERSUS

BOARD OF MANAGEMENT NGARA GIRLS HIGH SCHOOL.....1ST RESPONDENT

PRINCIPAL NGARA GIRLS HIGH SCHOOL.....2ND RESPONDENT

RULING

1. Pending before me for determination is the Notice of Motion Application dated 28th January, 2020 filed under Certificate of urgency. The same is brought under Rule 17 of the Employment and Labour Relations Court (Procedure) Rules and all enabling provisions of the law seeking Orders that:-

1. *This application be certified urgent and be heard ex parte and service be dispensed with in the first instance. (Spent).*
2. *The Applicant's suspension from duty by the Respondents vide letter dated 8th August, 2019 be temporarily stayed and/or set aside for the Applicant to resume duty pending hearing and determination of this Application inter partes.*
3. *The Applicant be temporarily allowed free access to her residential premises located within the school compound of Ngara Girls High School pending inter partes hearing of this Application.*
4. *The Respondents be and are hereby ordered to release the Applicant's withheld salary of July, August, September, October, November and December 2019 pending the hearing of this Application inter partes.*
5. *The Applicant's suspension from duty by the Respondents vide letter dated 8th August, 2019 be stayed and/or set aside for the Applicant to resume duty pending the hearing and determination of this suit.*
6. *The Applicant be allowed free access to her residential premises located within the school compound of Ngara Girls High School pending the hearing and determination of this suit.*
7. *Costs of this Application be provided for.*
8. *Any other and/or further orders of this Honourable Court do issue as it may deem necessary and expedient in the interest of justice.*

2. The Application is premised on the grounds that:-

- a) *The Applicant has been unfairly harassed, intimidated and threatened with termination of employment by the Respondents through false allegations contained in a myriad of letters served on the Applicant.*
- b) *The Applicant is currently serving unjustified six (6) months suspension based on falsehoods perpetrated by the 2nd Respondent.*

c) The Respondents have unfairly denied the Applicant access to her residential premises located within the school compound of Ngara Girls High School Nairobi.

d) The Respondents have without any colour of right, notice or reasonable cause withheld the Applicant's salary since July, 2019 up to date.

e) The Respondents have unfairly denied the Applicant together with her dependants their source of livelihood and the Applicant has been rendered destitute.

f) The Applicant is likely to appear before the Respondents in a disciplinary process that is biased and based on falsehoods and purely vindictive of which the obvious result is unfair termination of the Applicant's employment.

g) The Applicant is likely to suffer prejudice, irreparable loss and damage if this Honourable Court does not intervene and grant orders against the Respondents.

3. The Application is further supported by the Affidavit of **ROSE NJERI WANDERE**, the Claimant herein sworn on 28th January, 2020, in which she reiterates the averments made in the Notice of Motion Application.

4. In response to the instant Application, the Respondents seem to rely on a Replying Affidavit sworn by **BEATRICE NDIGA**, the 2nd Respondent herein on 22nd October, 2019, in which she avers that the Claimant/Applicant has been allowed access to her house to collect her personal belongings but has refused to collect the same.

5. She further averred that sometime in the year 2013 the Applicant was suspended and was advised to stay away from the school to pave way for investigations. She further averred that during the period of her suspension the Applicant was put on half her basic salary.

6. The 2nd Respondent contended that on 8th August, 2019 the Applicant reported back to duty from her suspension accompanied by a stranger purportedly from the Ministry of Labour, refused to sign upon gaining entry to the school and took the stranger to her house that was adjacent to the students dormitories in complete disregard to the safety of the students.

7. The 2nd Respondent further confirmed having received complaints from Patmol Security Services, the security firm tasked with providing security at the school that the Applicant opened the grill door and left it open on 27th and 28th June, 2019 exposing the students to eminent danger and that she (the Applicant) used abusive language to intimidate the security officers.

8. The 2nd Respondent further contended that the Applicant absented herself from lawful duty without permission on 12th July, 2019 leaving the students unattended and dormitories were not secured on time.

9. She further averred that there were other instances of indiscipline exhibited by the Applicant that warranted the issuance of a notice to show cause and later an invite for a disciplinary hearing on 22nd July, 2019 which the Applicant defied and maintained that she was to discuss the issue with her lawyer.

10. The 2nd Respondent further stated that on 14th March, 2018 the 1st Respondent at a meeting decided to employ a new matron who was also allocated the House which was previously used by the Applicant due to the shortage of housing facilities at the school and the Applicant was asked to vacate.

11. The 2nd Respondent further maintains that the Applicant is guilty of material non-disclosure for failing to disclose to this Honourable Court all the facts surrounding this Claim in particular that she left the school grounds in 2013 and that in 2019 she had sufficient time to vacate the house and/or arrange for alternative housing for herself.

12. The 2nd Respondent insisted that the instant Application is therefore baseless and an abuse to the Court process and urged the Court to dismiss the same with costs.

13. The parties hereto agreed to dispose off the Application by way of written submissions.

Submissions by the Parties

Respondent's Submissions

14. The Respondent submitted that the Claimant/Applicant's suspension was justifiable and lawful as due process as laid out under Section 41 of the Employment Act was adhered to. It is further maintained that Section 47 (5) of the Act places onus on the Applicant to prove that her suspension from duty was unfair and unlawful, which onus was not proved.

15. The Respondents further maintained that it was within their mandate to discipline the Applicant and that having followed due process the Court cannot interfere with such a process. To fortify this argument the Respondents cited the case of **Nampak Corrugated Wadeville Vs Khoza (1998) ZALAC 24** where the Court held that:-

“A Court should, therefore not lightly interfere with sanctions imposed by the employer unless the employer acted unfairly in

imposing the sanction. The question is not whether the Court would have imposed the sanction imposed by the employer, but whether in the circumstances of the case the sanction was reasonable.”

16. The Respondents further submitted that the Applicant has failed to tender any evidence of unfairness to support her assertions. To buttress this argument the Respondent cited **Justus Wambua Kavyu Vs Kenya Commercial Bank Limited (2016)**.
17. The Respondents further maintain that the Applicant has failed to collect her belongings from her residence despite an Order issued by this Honourable Court on 3rd September, 2019 and the Respondents in compliance with the said Order allowing her access to collect her belongings.
18. In conclusion, the Respondents urged this Honourable Court to dismiss the instant Application with costs to the Respondents.
19. I have considered the averments of both Parties. This Court indeed issued an order on 3/9/2019, which allowed the Applicant access to her house at Ngara to collect her personal effects and leave.
20. That in my view disposed off prayer No. 3 and which I now confirm as prayer No.6.
21. The Applicant also sought an order from this Court revoking her suspension from duty and payment of her withheld salaries.
22. I note that in suspending the Applicant, the Respondent exercised their employer’s duty as per law and gave reasons for the same.
23. The Applicant was also expected to submit before the Board of Management for a disciplinary hearing.
24. The Applicant was also charged by police for assault emanating from the events leading to suspension.
25. This Court will not interfere with an employer’s duty and prerogative to discipline its staff through their own internal mechanisms unless the process is flawed or in breach of the law.
26. The Applicant has not indicated to this Court how the process is flawed to enable this Court intervene and stop it.
27. In the circumstances, I find the prayers sought by the Applicant are untenable. I decline to grant them and direct that the Applicant proceeds to set down the hearing of the main claim.
28. Costs in the cause.

Dated and delivered in Chambers via Zoom this **30th day of April, 2020**.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Chesyna for Respondent – Present

Claimant

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Absent