



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1308 OF 2015**

**ANNROSE WAWIRA MUNENE.....CLAIMANT**

**VERSUS**

**ELIMU HOUSE SCHOOLS.....RESPONDENT**

**JUDGMENT**

1. The claimant filed suit on 29<sup>th</sup> July 2015 praying for maximum compensation for unlawful and unfair termination of employment and payment of terminal benefits including unpaid salary for the month of April 2015, payment in lieu of leave days not taken from the year 2011 to 2015, payment of salary for the unexpired 9 months of contract and payment of house allowance for the entire period served. The claimant also seeks provision of certificate of service.

2. CW1 testified that she was employed by the respondent as a teacher in August 2011 on one year fixed contract. That the contract was renewed upon expiry. That she was paid Kshs. 10,000 per month. That she worked until April 2015. That in April 2015, the school closed as usual and the teachers went on holiday and were supposed to go back to school during holiday to prepare scheme of work. That each teacher was to go for three days each.

3. That the claimant went to school for the purpose and found the head teacher named Evelyn who told the claimant that she had been replaced. CW1 testified that she called the Director of the school to clarify the matter and the Director informed CW1 that she would call her back. That the Director never called her as promised. The claimant went to school later to ask for her April salary but she was not paid. The claimant was then given a certificate of service. The claimant testified that she was not given chance to explain herself or to clear. That the dismissal was wrongful. CW1 testified further that she did not take leave the entire period she worked for the respondent. That the respondent did not pay for her NSSF and NHIF and she was not paid house allowance. The claimant testified that she did not get letter of dismissal. She wrote a letter of demand through her advocate and demanded payment as set out in the statement of claim and provision of certificate of service. The claimant prays to be awarded as prayed.

4. RW1 Veronica Wangari Mwangi testified that she was the Director of the respondent since 2009. That the claimant worked for the respondent as a teacher. That her performance was good and respondent had no issues with the claimant. That the respondent did not terminate the claimant's employment.

5. That the claimant had arranged a wedding in August 2014, which wedding aborted. The respondent had offered the school for the wedding reception. That the claimant became uncomfortable after the wedding failed and was traumatized. That the school closed on 2<sup>nd</sup> April 2015. That on 7<sup>th</sup> April 2015 all teachers were supposed to report to school to prepare scheme of work. That the claimant did not turn up. That the claimant reported to school on 28<sup>th</sup> April 2015 and asked for a letter of recommendation which she was duly given. That the claimant did not resign from her work. RW1 stated that the respondent did not terminate the employment of the claimant and was ready to take her back anytime. That usually the school issues a termination letter and pay one month notice which was not the case with the claimant. That teachers are supposed to apply for leave during school holidays except the one week when teachers are supposed to be in school to prepare scheme of work plus two days duty per teacher.

6. That the claimant did not apply for leave during the period she served the respondent. That the claimant was paid a consolidated salary. RW1 stated that she did not pay the claimant salary for April 2015 because on 28<sup>th</sup> April 2015 when she came to school salary had not been processed. RW1 stated that the claimant was entitled to 21 days leave every year but she did not apply for the same. RW1 insisted that she did not terminate the employment of the claimant.

**Determination**

7. The issues for determination are:

(i) Whether the employment of the claimant was terminated by the respondent unlawfully or she left her employment willingly to

another school.

(ii) Whether the claimant is entitled to the reliefs sought.

8. The court has carefully considered the competing evidence by CW1 and RW1 and has evaluated the relative credibility of the testimony by the two witnesses.

9. The court notes that the claimant had served the respondent from August 2011 on one year contracts. At the time the claimant ceased to work for the respondent she still had nine (9) months left on her one year contract of service.

10. Whereas the claimant testified that she was verbally dismissed by the school head, who was not called to testify, and that she was informed that she had been replaced by a new teacher, RW1 stated that the claimant did not report to school to prepare the scheme of work on 7<sup>th</sup> April 2015 but only came on 28<sup>th</sup> April 2015 to request for a letter of recommendation.

11. The respondent did not respond to the letter of demand written to the school by the Advocate for the claimant dated 27<sup>th</sup> April 2015 in which she states that her employment was terminated on 24<sup>th</sup> April 2014 when she reported to work without being given opportunity to show cause why her employment should not be terminated. Another pointer which supports the view that the employment of the claimant was indeed terminated is the fact that she was not paid the salary for April 2015 up to the time of hearing the suit. Nothing would have been easier than for the respondent to call the head teacher as a witness whom the claimant testified terminated her employment verbally and informed her that she had been replaced.

12. It is the court's considered view and finding that the employment of the claimant was unlawfully and unfairly terminated in violation of Sections 36, 41, 43 and 45 of the Employment Act, 2007.

13. The claimant is entitled to compensation in terms of *Section 49(1) (c) and (4) of the Act*. In this regard RW1 testified that the claimant was a good teacher and had no adverse record. That the claimant had served the respondent for about four (4) years. That the claimant was not paid her salary and any terminal benefits upon termination. That the termination was without any notice and the claimant suffered loss and damage. The claimant was replaced without her knowledge which is an aggravating factor. The claimant was able to secure another job which is a mitigating factor. The court awards the claimant the equivalent of four (4) months salary in compensation for the unlawful and unfair termination in the sum of Kshs. 40,000.

14. The claimant is awarded one month salary in lieu of notice in the sum of Kshs. 10,000. The claimant was paid consolidated salary and is not entitled to a separate pay in respect of house allowance.

15. The claimant did not go on leave at all for the entire period worked and is awarded three months salary in lieu of leave days not taken for three years preceding the termination in the sum of Kshs. 30,000.

16. The claimant is also awarded unpaid salary for the month of April in the sum of Kshs. 10,000.

17. The claim for payment of salary for the unserved nine (9) months lack merit and is dismissed.

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

(i) Kshs. 40,000 in compensation.

(ii) Kshs. 10,000 in lieu of one month notice.

(iii) Kshs. 10,000 being unpaid salary for April 2015.

(iv) Kshs. 30,000 in lieu of three months untaken leave for 3 years.

Total award Kshs. 90,000

(v) Interest at court rates from date of filing suit in respect of (ii) (iii) and (iv) above and from date of judgment in respect of (i) above till payment in full.

(vi) Costs of the suit.

**Dated, Signed and delivered in Nairobi this 16<sup>th</sup> day of April, 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

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**Judge**

**Appearances**

M/S Chepkirui for the Claimant.

Mr. Kabiru Macharia for Respondent.

Mamo – Court clerk.