



**REPUBLIC OF KENYA**

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

**CAUSE NO. 355 OF 2014**

**JANET CHEPKOECH.....CLAIMANT**

**VERSUS**

**KITENGELA MIXED PRIMARY SCHOOL.....RESPONDENT**

**RULING**

1. On 7 March 2014, Kenya Union of Domestic, Hotels, Educational Institutions & Hospital Workers (Union) commenced action against Kitengela Mixed Boarding Primary School (Respondent) alleging that the termination of the employment of Janet Chepkoech (Grievant) through a letter dated 12 January 2013 was unfair.
2. Through a Memorandum of Reply filed in Court on 13 April 2015, the Respondent contended that the termination of the Grievant's employment as school matron was fair and was on account of gross misconduct.
3. The firm of Agina & Associates filed a *Notice of Appointment* to come on record for the Grievant and also purported to substitute her as the Claimant instead of the Union (the Respondent did not raise any questions and the Court will leave it at that).
4. The Cause was heard on 28 November 2018. The Grievant and the current Headmaster of the Respondent testified.
5. The Grievant did not file submissions as directed while the Respondent filed its submissions on 9 January 2019.
6. The Court has looked at the record, pleadings, evidence and submissions.
7. The record show that when the Cause came up for hearing on 7 April 2017, it was dismissed because the Claimant was absent.
8. The Claimant applied to have the Cause reinstated on 11 April 2017.
9. On 25 April 2017, the Court allowed the application on condition that the Grievant paid adjournment fees within 30 days failure to which the Cause would stand dismissed as of 2 June 2017 for want of prosecution.
10. There is nothing on record to evidence payment of the adjournment fees as was ordered by the Court.
11. When taking evidence, the Court was not aware of the order by the Court on payment of adjournment fees and the parties equally did not disclose the existence of the Court order and whether it had been complied with.
12. The terms of the order were clear and the Court has no hesitation in finding that there was no Cause in existence as of 28 November 2018 capable of being heard and determined.
13. In the circumstances, the Court vacates all proceedings after 2 June 2017.

**Delivered, dated and signed in Nairobi on this 8<sup>th</sup> day of February 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Grievant Mr. Agina instructed by Agina & Associates

For Respondent Mr. Kioko. State Counsel, Office of the Attorney General

Court Assistant Lindsey