



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

ELRC CAUSE NO. 22 OF 2017

MARY OTWANI MAKOKHA.....CLAIMANT

VERSUS

THE B.O.G MABALE PRIMARY SCHOOL & 2 OTHERS....RESPONDENTS

J U D G M E N T

The claim was filed on 17.3.2017 in which the Claimant seeks General damages for unlawful and unfair termination of employment, costs and interest of the suit.

The Claimant testified as CW1 and adopted a witness statement dated 9.2.2017 as her evidence in chief. The Claimant also produced exhibits "1 to 11" in her list of documents in support of her case.

CW1 testified that she was employed by the Respondent as an ECD teacher at a monthly salary of Kshs 1,000 in 2001. She had earlier in 1998 joined the school on attachment.

That in the year 2009, there was an allowance of Kshs 2000 that each ECD teacher was to get for community support grant. The headteacher gave her Kshs 1000 and asked her to sign a voucher that she had received Kshs 2000.

The Claimant refused to sign and the headteacher became hostile and threatened to discipline her. Claimant reported the matter to Diocese Programme Officer who resolved the matter and the Claimant was paid in full.

The headteacher started frustrating the Claimant and even stopped paying her the Kshs 2000 grant which was paid to other teachers.

In the year 2013, an NGO sponsored the school and according to the sponsors terms, a teacher was to be paid Kshs 100 per child in the teacher's class. The Claimant had 90 pupils and was entitled to Kshs 90,000. The head teacher refused to pay her. All other teachers even in the neighbouring schools were paid. Claimant reported the matter to Diocese Programme Officer on 14.8.2013. The officer did not help this time instead the Claimant was served with a warning letter on 9.9.2013. On 17.3.2013, the Claimant was placed on three months suspension. After three months, the Claimant returned but the head teacher told her to go home and that he would communicate to her.

On 27.6.2014 The Claimant received a Letter of Termination. The Claimant was paid Kshs 18,000 as her terminal allowance. The Claimant declined to take the money. The Claimant wrote to the Diocese Programme Offices but there was no response to date of filing suit.

The Claimant was jobless she had served the school for 16 years. She had good work record and relationship with the headteacher until the issue of allowances arose.

The Claimant prays for damages for unlawful termination.

RW1, Lavi Amunga Ochieng testified for the Respondent. He told the court that he was the former head teacher of the Respondent and currently he was headteacher Nabongo Primary School. He adopted a witness statement recorded on 8.12.2017 as his evidence in Chief. He also produced exhibits '1 to 10' in the list of documents filed in court.

RW1 testified that the Claimant was employed as ECD teacher on one year fixed contract in the year 2008 earning Kshs 1000 per month.

The Claimant was told to undergo training at Eregi Teachers College but she did not do it.

That in July 2012, the government through a project identified five schools in every constituency to benefit from ECD community support grants. The 1st Respondent was one of the identified schools.

The government offered salary up to Kshs 10,000 per month and all ECD teachers in the 1st Respondent school were asked to apply.

The DEO now Sub county Director of Education, was the one to select the ECD teacher(s) to qualify. DEO selected one Madam Nancy Amata at the 1st Respondent's school.

In 2013, the government sent Kshs 15,000 which was to be given to ECD teachers as care givers allowance. The Board of Management was to allocate the same.

The Board distributed the money based on academic qualifications and commitment to work and it was paid at the rate of Kshs 8,000 and 7000 to Madam Concepta Nangira and Margaret Akinyi respectively who were colleagues of the Claimant.

The Claimant confronted RW1 on 14.8.2013 and questioned why she did not receive the grant like the others. That she was rude and told RW1 that she has seen many head teachers come and go. RW1 ignored her and went to a meeting.

That when RW1 returned to the school, it was reported that there was a quarrel between the Claimant and another teacher.

RW1 wrote a warning letter to the Claimant. The Claimant had in 2008 received another warning letter on 12.6.2008 for unbecoming conduct.

The Claimant did not respond to the warning letters and RW1 reported to the Board. The Board suspended the Claimant for 3 months for unbecoming behavior. After the suspension the Board invited the Claimant by a letter dated 18.6.2014 to appear before the Board for a disciplinary hearing on 27.4.2014. the Claimant attended but refused to speak and/or respond to questions even after she was asked to explain in writing.

The Board then decided to terminate her services and she was paid Kshs 15,000 being salary arrears for January to June 2014 at Kshs 3,000 per month and Kshs 3000 being one months salary in lieu of notice.

The Respondent prays that this suit be dismissed since the Claimant's employment was terminated for lawful and fair reason.

Determination:

The issue for determination is whether the Respondent terminated the employment of the Claimant for a valid reason and in terms of fair procedure and whether the Claimant is entitled to the reliefs sought.

From the testimony of RW1, the Claimant was served with a warning letter dated 15.8.2013 for four reasons stated in the letter of suspension to wit.

- (i) Unprofessional and unethical conduct for quarreling and abusing a colleague by the name Nancy Amata.
- (ii) Being an habitual late comer despite all the verbal warnings
- (iii) Being argumentative and having little regard for the headteacher and spreading malicious rumours that the headteacher favours other colleagues.
- (iv) Being insubordinate and questioning decisions reached by members of the school management committee and after an explanation went ahead to attack a colleague verbally and challenged her to a fight.

The Claimant was given three days to respond to the warning and explain why disciplinary action ought not to be taken against the Claimant.

RW1 testified that the Claimant did not respond to the show cause letter and when she attended a disciplinary hearing she did not explain herself to the Board. The Claimant told the court in her testimony that she was not given opportunity to defend herself. That she was given a piece of paper to write an apology but she refused because she had not been given a chance to defend herself.

The minutes produced by RW1 of the Board of management meeting held on 10.5.2013 regarding the disciplinary case being minute MIN 05/09/2013 does not indicate that the Claimant attended any disciplinary hearing. Instead the Headteacher made a report to the Board regarding the quarrel between the Claimant and another teacher over a decision made by the school management committee.

The Head teacher reported that the Claimant had walked out of a meeting called by the head teacher with her colleague and Deputy teacher in protest. Members then deliberated on the character and conduct of the teacher and drew conclusions and found the Claimant guilty of disrespect, insubordination, unethical and unprofessional conduct. The Board decided to suspend the Claimant without pay and the Claimant to re-apply for her job at the end of that period and also present her academic certificates and other testimonials for consideration.

The Claimant was then served with a Letter of Suspension as directed with those conditions dated 17.9.2013.

The Board sat again on 27.6.2014 when the Claimant was summoned before the committee. The committee recalled the suspension of the Claimant and that she had not re-applied for the job as required when school opened in January 2014. The committee explained to the Claimant why she had been suspended. The committee asked the headteacher to provide the record of the Claimant at work.

The Claimant was given time to defend herself but she kept quiet and said she had nothing to say. She then accused the headteacher and some Board of Management members that they were against her.

Chairman gave her a piece of paper and a pen and told her to go out, control her temper and then write what she felt.

After 20 minutes she came back with a blank paper.

The Board then deliberated the matter and terminated her services.

The Board also directed she be paid some terminal benefits.

A careful consideration of the testimony by RW1 and that by the Claimant coupled with the minutes of the management Committee meetings shows clearly that the Claimant was guilty of misconduct enumerated in the letter of suspension, the minutes of the board and in the letter of termination.

It is also apparent that the Claimant was given enough time to defend herself, to re-apply for her job in the new term.

The Claimant was not co-operative at all and was disrespectful to her colleagues and insubordinate to the head teacher and the members of Board of Management.

The Claimant may have had genuine grievances in the beginning but she resorted to self help and vented her anger on her colleagues, the head teacher and ultimately the board.

The Claimant has in the circumstances not established that her termination was wrongful and unfair. To the contrary the Respondent has demonstrated that the Respondent had a valid reason to terminate the employment of the Claimant. The Respondent has also demonstrated that

It gave the Claimant opportunity to explain herself in writing and verbally before the Board but she declined to take that opportunity.

Accordingly, the claim by the Claimant lacks merit and is dismissed in its entirety.

The court considers this an appropriate case for each party to bear their own costs of the suit. The Claimant remains unemployed whereas the Respondent is a public institution.

DATED, SIGNED and DELIVERED at BUNGOMA this 30Th day of MAY, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearances:

Mr. Megegenya for Claimant

Mr. Tarus for Respondent

Chrispo: Court Assistant.