



**REPUBLIC OF KENYA**

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

**PETITION NO.81 OF 2015**

**(Before Hon. Justice Hellen S. Wasilwa on 25<sup>th</sup> June, 2019)**

**BOARD OF MANAGEMENT**

**UHURU SECONDARY SCHOOL.....PETITIONER**

**VERSUS**

**CITY COUNTY DIRECTOR OF EDUCATION.....1<sup>ST</sup> RESPONDENT**

**DUNCAN JUMA.....2<sup>ND</sup> RESPONDENT**

**TEACHERS SERVICE COMMISSION.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. This Petition was initially filed by the Petitioner herein at the High Court of Kenya as Petition No. 359 of 2015. On 23/8/2015. The Hon. J. Onguto in his ruling found that the right forum to handle this Petition was before the Employment & Labour Relations Court. The Petition was thereafter transferred before this Court and registered as Petition 18/2015.

2. This Petition was filed on 28/8/2015 through Wamwayi & Company Advocates and filed under Certificate of Urgency seeking certain orders now overtaken by events.

**Description of the Parties**

3. The Petitioner herein is a Board created under Section 55 of the Basic Education Act, the Board of Management of Uhuru Secondary School.

4. The 1<sup>st</sup> Respondent has their function spelled out in Section 20(b) of the Basic Education Act, the City County Director of Education.

5. The 2<sup>nd</sup> Respondent is an employee of the 3<sup>rd</sup> Respondent under the Teachers Service Commission Act Cap 212 serving as a Deputy Head Teacher of Uhuru Secondary School.

6. The 3<sup>rd</sup> Respondent is the Representative of the Government under the Teachers Service Commission act Cap 212 Laws of Kenya.

**Background of the case**

7. The Petitioner indicated that one Andrew Obaga had been Principal of Uhuru Secondary School for a considerable length of time and during his tenure, he was hand working and diligent in his day to day running of the school.

8. The Petitioner further aver that the office of the County Director and the Teachers Service Commission County Staffing Officer however have been using the Deputy Principal to cause instability in the school a matter that students have complained of and which act has now threatened the stability of the learning institution.

9. The Petitioner aver that Mr. Obaga was stripped off his position without any justifiable cause and procedural fairness. The Petitioner aver that this act has equally denied the students the proper, conducive peaceful atmosphere to carry out their education in a manner profitable for their excellence and graduation.

10. The Petitioner therefore pray as follows:-

1. ***“Declaration that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have infringed, interfered with the childrens right to education contrary to Article 53(b) Constitution and Section 7(1) of the Childrens Act.***
2. ***Declaration that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have contravened with the rights of the Principal (Mr. Andrew Obaga) as enshrined in Article 41(1) of the Constitution.***
3. ***Declaration that the 3<sup>rd</sup> Respondent is the body constitutionally mandated body with the functions to hire, fire, promote, demote a Principal or a Deputy Head Teacher as enshrined in the Constitution Article 237(f) and the Teachers Service Commission Act Section 11(e).***
4. ***Permanent injunction do issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and or their servants, agents, from interfering with the running of Uhuru Secondary School and or with the office of the Principal of Uhuru Secondary School.***
5. ***Permanent injunction do issue restraining the 2<sup>nd</sup> Respondent from assuming the office and functions of the Principal (Mr. Andrew Obaga).***
6. ***General and Special damages be awarded to the Petitioner.***
7. ***Costs of this suit be awarded to the Petitioner.***

#### **Respondent’s case**

11. The Respondents opposed this Petition indicating that the gist of this Petition was to challenge the retirement of Obaga’s retirement from public service upon attaining the age of 60 years and for the said teacher to be allowed back into the service as Principal of Uhuru Secondary School.
12. The Respondent averred that such an order allowing Obaga back into the service would be a contravention of the law and go against the policy on retirement from public service.
13. The Respondent also submitted that this Petition offends the doctrine of privity of contract as the Petitioner was not privity to the contract of employment between the teacher and the 3<sup>rd</sup> Respondent.
14. The Respondent asked this Court to dismiss this Petition accordingly.
15. This Court ordered this Petition to proceed by way of written submissions.
16. I have considered the submissions filed herein. From the body of the Petition and the Response thereof, the main contention herein by the Petitioner is what they term the unlawful termination of the Petitioner.
17. The Respondents position is that Mr. Obaga was not terminated but he was voluntary retired upon attaining the age of 60 years which is compulsory retirement age.
18. The Respondent demonstrated that the said Obaga was employed by the 3<sup>rd</sup> Respondent in March 1983 and from his documents submitted at the time of employment, he was born in September 1995 and therefore as at August 2015 when he was retired, he was 60 years of age.
19. I do agree with this position as the said Obaga turned 60 years of age in August 2015. Prior to this date, he had been served with a retirement notice dated 20/3/2015 informing him that he was due for retirement on 1/9/2015. The Chairman of the BOG even wrote to the Teachers Service Commission requesting for a 2 year contract on behalf of Mr. Obaga upon retirement and the request was rejected.
20. The Petitioners have not shown any other reasons or any other mode through which Obaga was terminated. They have averred his rights were infringed upon but the particular rights transgressed upon and the constitutional provisions which confer the said rights were not pointed out.
21. **Annarita Karimi Njeru vs Attorney General (1979) KLR 54** was reiterated by the Court of Appeal in **Mumo Matemo vs Trusted Society of Human Resource and Others (NRB) 2013 eKLR** where the Court opined as follows:-

***“We wish to reaffirm the principle on this question in ANARITA KARIMI NJERU vs. REPUBLIC (supra). In view of this we hold that the Petition before the High Court did not meet the threshold established in that case..... the Petition was not pleaded with precision as required in constitutional Petitions.....”.***

22. The Court of Appeal emphasized that a Petition should be pleaded with precision, which I find lacking in the Petition before me.
23. Given the above findings, I do not find the Petition before me having any merit. I dismiss it accordingly with costs to the Respondents.

Dated and delivered in open Court this 25<sup>th</sup> day of June, 2019.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Sitima for 3<sup>rd</sup> Respondent – Present

Petitioner – Absent