



**REPUBLIC OF KENYA**

**IN THE EMPLOYEMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NUMBER 21 OF 2019**

**BETWEEN**

**HOWARD OMUKAMI.....CLAIMANT**

**VERSUS**

**THE AGA KHAN ACADEMY MOMBASA..... RESPONDENT**

**RULING**

1. The Claimant worked for the Respondent as a Senior School Mathematics Teacher, and was Head of Department Mathematics. He worked between 1<sup>st</sup> October 2017 and 15<sup>th</sup> May 2019.

2. He resigned as Head of Department on 15<sup>th</sup> February 2019. He states that the Respondent accepted his resignation, but purported that resignation applied to all positions held by the Claimant, including that of Senior School Mathematics Teacher.

3. Considering his contract to have been unfairly terminated, the Claimant filed this Claim on 10<sup>th</sup> April 2019, against the Respondent, asking for Judgment in the following terms:-

- a) Lost wages for the period 16<sup>th</sup> May 2019 to 30<sup>th</sup> August 2039 at Kshs. 71,598,535.
- b) Notice pay at Kshs. 177,913.
- c) 12 months' salary in compensation for unfair termination at Kshs. 2,044,956.
- d) Certificate of Service.
- e) Costs.
- f) Interest.

4. Filed simultaneously with the Statement of Claim is an Application through which the Claimant seeks that the Respondent is ordered:

*“Pending hearing and determination of the Suit, the Defendant [Respondent] do deposit security in Court and/or present/ execute a bank guarantee in the sum of Kshs. 35,000,000 as a security for the Claim subject hereof.”*

5. The Application is supported by the Affidavit of the Claimant, sworn on 10<sup>th</sup> April 2019.

6. It is opposed through Grounds of Opposition filed by the Respondent on 20<sup>th</sup> May 2019. The Respondent states, the Application has no legal basis; it is not supported in fact; and cited legal provisions are irrelevant.

7. Hearing took place on 11<sup>th</sup> June 2019.

**The Court Finds:-**

8. The Application is very weak on facts and the law. The Claimant is a Mathematics Teacher who has lost his job, through a contested resignation. He had worked for less than 2 years, earning a monthly gross salary of Kshs. 228,000. He has asked for compensation equivalent of 12 months' salary and salary for the balance of his contract period. If successful, he stands to pocket Kshs. 73 million from the Respondent.

9. Why is it necessary to have security? Why a sum of Kshs. 35 million? The Respondent is a learning institution. It must not have its finances encumbered on account of a Claim filed in Court for unfair termination. No reasonable Court would direct that school fees totaling Kshs. 35 million, paid by School Children, is held in a Judiciary account, for an unknown period of time, awaiting the Claimant to establish that he was unfairly dismissed. The amount sought as security would strangle Respondent's operations and completely disable the Respondent in offering education to many pupils. In asking whether the Respondent is likely to honour decree, the Court has taken into account also, the likelihood of the Claimant obtaining a money decree for the amount pleaded in the Statement of Claim. The Claim appears *prima facie*, highly overstated. ***The Application is dismissed with no order on the costs.***

**Dated and delivered at Mombasa this 18<sup>th</sup> day of July 2019.**

**James Rika**

**Judge**