



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 792 OF 2010**

*(Before Hon. Justice Mathews Nderi Nduma)*

**EUNICE AKOYI CHETI.....CLAIMANT**

**-VERSUS-**

**EVANS ASENEKA T/ACHILD OF GOD ACADEMY.....RESPONDENT**

**JUDGMENT**

The suit commenced vide a statement of claim filed on 13<sup>th</sup> July 2010. The claimant seeks compensation for unlawful and unfair termination of employment and terminal benefits to wit: -

- a) Arrear salary of Kshs.19,000
- b) One month in lieu of notice 8,000/=
- c) Payment for unserved term of the contract Kshs.136,000
- d) Interest and costs

**Facts of the Claim**

From the sworn testimony by the claimant, the statement of claim and annexures thereto, the claimant was employed by the respondent on a two-year contract dated and signed by the parties on 9<sup>th</sup> November 2009.

The contract was effective 1<sup>st</sup> November 2009 at a monthly gross salary of Kshs.8,000. In terms of the contract, termination was by either party giving one month notice or payment in lieu thereof. The claimant worked continuously until 7<sup>th</sup> June 2010, when she was given a letter of suspension in that: -

- (i) She was engaged in immoral behaviour and
- (ii) Lacked respect

contrary to the school policy based on Christian moral values.

The suspension was for one month. She was asked to meanwhile meditate. That she would be recalled once investigations were over. The letter was produced as exhibit 'E'.

The claimant testified that she was unaware of the reason for the suspension. She went to school after two days to seek explanation but was told by the Head teacher to leave the school and not come back.

The claimant testified further that at the time she was owed arrear salary of shs.19,000/=. That she was not given notice nor paid in lieu of notice. She was not given a show cause letter nor did she attend a disciplinary hearing.

The claimant prays that she be paid for the unserved term of the contract since the termination was unlawful and unfair.

She prays for interest and costs of the suit.

The claimant stated that she was never recalled back to school. The claimant has not obtained alternative job at the time of hearing.

## **Response**

The respondent filed a memorandum reply on 6<sup>th</sup> July 2011 in which the employment on a two-year contract is admitted.

The claimant was accused of having a love affair with a teaching colleague contrary to the moral values of the school, well known to the claimant.

That upon discovery of the affair, the Head teacher called a meeting of all the staff including the claimant and reminded them that in terms of their contracts of employment, they were to keep high moral standards. The minutes of the meeting were produced as exhibit 'A'

That upon the claimant's suspension, she wrote a demand letter through her advocate dated 11<sup>th</sup> June 2011 demanding terminal dues and damages for unlawful termination of employment.

The respondent denies ever terminating the claimant's employment and responded to the letter of demand on 15<sup>th</sup> June 2010 stating that the claimant was expected to return to work on 8<sup>th</sup> July 2010 when her suspension was to come to an end.

That the claimant did not return to work on 8<sup>th</sup> July 2010 and therefore deserted work.

RW1 Mr. Evan Aseneka Midenya testified that he was the Patron of the school whose mission was to bring up children in a morally upright way. That this was a term of the contract of employment contained in the contract itself.

That in March 2010, he received reports that the claimant was having an affair with a male counterpart. That upon learning of this matter, he requested the Head Teacher to convene a meeting and remind the Teachers of their moral obligations.

That the affair persisted notwithstanding the counselling. The management therefore suspended the claimant by a letter dated 7<sup>th</sup> June 2010 for one month. During suspension, the school received a letter of demand seeking terminal benefits. RW1 admitted that the school owes the claimant arrear salary of Kshs.19,000/=. RW1 stated that another teacher had at the time of suspension been recruited to step in for the claimant. That the claimant failed to go back to collect her dues. That she absconded work.

## **Determination**

The issues for determination are –

- a) Whether the claimant's employment was terminated by the respondent or she absconded work
- b) If the answer to (a) above is in the affirmative, whether the termination was for a lawful reason and in terms of a fair procedure.
- c) Whether the claimant is entitled to the reliefs sought.

## **Issue i**

From the evidence before court, it is clear that the claimant who was a teacher at the respondent school was suspended on 7<sup>th</sup> June 2010 for a period of one month for a reason not stated in the letter of termination.

RW1 told the court that the suspension followed reliable information that the claimant was having a love affair with a fellow teacher contrary to the moral code of the school.

It is not in dispute that the claimant's advocate wrote a letter of demand to the respondent on 11<sup>th</sup> June 2010, a few days later demanding to be paid terminal benefits. The claimant told the court that the respondent had already fundamentally breached the contract of employment by suspending her from work for a reason which was stated and not valid in law and by recruiting her replacement immediately she was suspended, a fact not denied by the respondent.

It is the court's considered finding that the reason for suspending the claimant from work was totally invalid in law and was only a pretence to terminate the contract of employment of the claimant. It is also not in dispute that the claimant was immediately replaced by another teacher and was entitled to conclude that her employment had been unlawfully and unfairly constructively terminated. The court indeed finds this to have been the case. All facts were known to the respondent when it suspended the claimant for a reason that is simply untenable.

The respondent violated Section 41, 43 and 45 of the Employment Act by terminating the employment of the claimant without notice; without notice to show cause; without a disciplinary hearing and for an invalid reason.

The claimant is entitled to compensation in terms of Section 49 (1) (c) of the Act as read with subsection 49 (4) of the Act.

The claimant expected to serve a two year contract, was constructively dismissed for a ridiculous and invalid reason. Her legitimate expectation was unlawfully curtailed.

The respondent cannot purport to police consenting adults who have freely and voluntarily decided that they like and probably love each other and have developed a relationship, which could possibly lead to marriage. There is no law or policy that prohibits such.

The claimant suffered loss and damage. She lost the job suddenly without payment of arrear salary and other terminal benefits. She did not contribute to the breach of the contract of employment. The claimant had yet to serve, substantial part of her two years fixed contract.

The court finds this an appropriate case to award the claimant the maximum compensation of equivalent of 12 months' salary for the unlawful and unfair termination in the sum of Kshs.96,000/=.

The terminal benefits set out earlier have been proved and are awarded accordingly.

In the final analysis, judgment is entered in favour of the claimant as against the respondent as follows –

(i) Kshs.96,000 in compensation

(ii) Kshs.19,000 arrear salary

(iii) Kshs.8,000 in lieu of notice

**Total award Kshs.123,000/=.**

(iv) The award is payable with interest at court rates from date of judgment till payment in full

(v) Costs to follow the outcome.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20<sup>TH</sup> DAY OF APRIL 2018**

**MATHEWS NDERI NDUMA**

**JUDGE**

**Appearance:**

Gulenywa for the claimant

Oraro for the respondent

Chrispo: Court Clerk