



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 802(B) OF 2013**

**(Formerly High Court CC No. 235 of 2005)**

**(Before Hon. Justice Hellen S. Wasilwa on 11<sup>th</sup> July, 2018)**

**MUKOYA QASSIM KUPUONI ..... CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**JUDGEMENT**

1. This Cause was initially filed before the High Court Nairobi as HCCC No. 253/2005.
2. On 17/5/2013, by Consent of the parties this claim was transferred before this Court by the Order of the Court (Waweru J).
3. The Claimant filed his Complaint on 4/3/2005 through the firm of Enonda Makoloo, Makori and Company Advocates. He contended that on 1/1/1975 he was employed by the Respondent as a teacher. He avers that he served the Respondent dutifully and diligently until 8/8/2002 when he was illegally, unlawfully and without justifiable cause interdicted from duty on unfounded and unsubstantiated allegations.
4. He avers that on 5/6/2003, without any reason and without being accorded a fair hearing, he was unlawfully dismissed from employment. It is his position that the Defendant also proceeded to dismiss him without his salary and other benefits totaling to 294,746/= being:-

***a) Salary in lieu of notice = 18,932/=***

***b) Unpaid salary = 8,284/=.***

***c) Severance pay (28 years x 18,932 x 15/30 = 266,706.00***

***Total = 294,746/=.***

5. He also contends that he was denied his pension benefits in accordance with Regulation 73 of the TSC Rules and Regulations on terms of service due to the actions of the Defendant. He therefore claims for damages following the wrongful acts of the Respondent. He sought also reinstatement and in the alternative he be retired in the public interest and payment of the sum of Kshs.294,746/= plus costs and interest.
6. The Respondent filed their Defence on 7/6/2005 through the Attorney General's Office. They admitted that the Plaintiff was in their employment from 13.5.1997 to 5<sup>th</sup> June 2003 when he was dismissed after a full hearing of its disciplinary committee. They deny that the Plaintiff was in their service from 1975.
7. They also aver that the Plaintiff was lawfully interdicted while serving as the Head Teacher of Muchumu Primary School for offences of:-
  - i) Forging signatures of teachers on Blue Shield Insurance Company Application forms purporting that they had signed them freely.***
  - ii) Affixing the school rubber stamp on the Insurance Contract Application forms with a view of validating them while well aware that the purported applicants were not aware or had not given their consent.***

*iii) Forging the rubber stamp of the DEO and stamping the assurance contracts.*

*iv) Submitting the forgery documents to the Defendant and causing the Defendant to deduct salaries of teachers for onward transmission to Blue Shield Insurance Company.*

*v) Entering into a contract of employment with Blue Shield Insurance Company without inform and/or seeking approval from his employer, the Defendant herein.*

8. The Defendant also aver that the Claimant appeared before its disciplinary committee on 5.6.2003 and was found guilty of the offences pleaded above and was thereafter dismissed from employment.

9. The Defendant therefore aver that the Claimant's dismissal was lawful and deny treating him unlawfully or with any contempt at all.

10. They aver that no Notice of Intention to sue was issued and therefore the suit is incompetent and fatally defective. They therefore urge this Court to dismiss the claim with costs.

11. The Claimant exhibited various documents to support his claim and amongst them is the appointment letter dated 15/11/80 but indicating that he was appointed with effect from 1.1.1975 as a P3 teacher. He was later promoted as a P1 teach on 1/1/1982.

12. He was appointed a Head Teacher on 8/1/2001 vide a letter dated 1/1/2001. A letter dated 7.8.2002 written by Head Teacher of Mukhuma R.C School shows that he was arrested on 8/7/2002 on account of forgery of certain documents but he was released by police for lack of evidence.

13. On 8/8/2002, he was served with a letter of interdiction and asked to make a statement to the Commissioner in writing concerning the offences of forgery. He responded accordingly denying the allegations.

14. The Respondent also wrote to Blue Shield Insurance Company Limited who responded vide a letter dated 21.2.2003 indicating that they had not offered the Claimant a contract with them and had terminated his temporary agency in 2002. They could not ascertain whether he was the one who sold policies to a number of teachers as per the TSC letter of 11/12/2002.

15. The Claimant was later served with an Amended Interdiction Letter dated 2/4/2003 indicating that he had breached TSC Act 202 Section 7(36) of the Laws of Kenya and Regulation 26(1) (a) (d) (e ) of the Code of Regulation by forging teachers signatures and personal details. The teachers in question were TSC No. 384243, 412074, 405857, 412198 and 400588.

16. The Claimant was thereafter invited for a disciplinary hearing on 5.6.2003 at TSC Headquarters.

17. During the disciplinary hearing, the Claimant denied the charges levelled against him. He also denied knowing the teachers who had complained of their signatures being forged.

18. The affected teacher also gave evidence. One Mwasame indicated that he knew the Claimant as an Insurance agent. He told the disciplinary committee that the Claimant never went to him but that a lady and a gentleman went to him asking him to join the insurance.

19. Another teacher said she was showed the Claimant as the person who had forwarded the teacher's name to Blue Shield Insurance at the Insurance Company's office.

20. After the hearing the Respondent decided to dismiss the Claimant from service vide a letter dated 5/6/2003.

21. The Claimant appealed the dismissal. Part of the reasons for the appeal was based on the reason that no one from the Insurance agency recognized him nor gave evidence to the effect that it was him who was their Insurance agent and who submitted the insurance forms. The appeal was acknowledged but the dismissal was upheld.

22. From the evidence above, what comes out is that though it is all alleged that the Claimant was the person who forged the signatures of some teachers and also the DEO's rubber stamp, no evidence to prove the forgery was presented before this Court. Forgery is a criminal case and the police investigated the issue and found the Claimant not culpable.

23. The Insurance Company nor an agent even gave evidence to the effect that it was the Claimant who filed the insurance claim forms. A letter from the Insurance Company signed by one Ngatia the Life Manager dated 27<sup>th</sup> June 2003 also exonerated the Claimant indicating that after meeting the Claimant, they ascertained that it was a case of mistaken identity and that he was not the person they had employed as a Sales Representative based in their Bungoma office. The Insurance Company also indicated in writing that they did not have records or particulars of the persons they had employed including his identity or his photograph.

24. The Claimant was dismissed during the pendency of the repealed Employment Act Cap 226 Laws of Kenya. Under this regime, it was not mandatory to give reasons for termination. Nonetheless, the employer was required to prove valid reasons before dismissal of an employee.

25. From the analysis of the evidence above, it is my finding that the Respondent did not have valid reasons to dismiss the Claimant. They chose to dismiss the Claimant on account of forgery which position was refuted by both the police and the Insurance Company.

26. Though the Claimant was subjected to a disciplinary hearing, the panel failed to analyze the evidence before it and therefore arrived at a wrong determination.

27. It is my finding therefore that the dismissal of the Claimant was unfair and unjustified. The costly decision made by the Respondent led to the untimely dismissal of the Claimant cutting short his career as a teacher spanning a period of 28 years.

28. In the premise, I find for the Claimant and I award him as follows:-

*1. 1 month salary in lieu of notice = 18,932/=.*

*2. Unpaid salary = 8,284/=.*

*3. Claimant be considered to have lawfully retired on 5.6.2003 and so he is entitled to payment of his pension dues earned upto 5.6.2003.*

*4. 12 months salary as damages for unlawful termination =  $18,932 \times 12 = 227,184/=$ .*

*Total = 254,400/=*

*5. The Respondent will pay costs of this suit with interest at Court rates with effect from the date of this judgment.*

Dated and delivered in open Court this 11<sup>th</sup> day of July, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

**In the presence of:**

Miss Nafula holding brief for Enonda for Claimant

Githinji holding brief for Anyuor for Respondent – Present