



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1031 OF 2010**

*(Before Hon. Lady Justice Maureen Onyango)*

**MARION CAROLINE KANURI.....APPLICANT**

**VERSUS**

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

**JUDGMENT**

The Claimant is a former employee of the Respondent engaged as a teacher under TSC No. 3 51532, teaching Business Studies and History at various secondary schools and for purposes of this claim at Kimuchu Secondary School. The Respondent on the other hand is a constitutional commission mandated with among other functions regulating the teaching service and discipline of teachers.

The Claimant avers that on or about the 25<sup>th</sup> September 2009, she appeared before the Board of Governors, Kimuchu Secondary School to answer to charges levelled against her of absenteeism, insubordination and negligence and on the 28<sup>th</sup> September 2009 the claimant was served with a letter of interdiction for chronic absenteeism, insubordination, negligence of duty and infamous conduct.

She further avers that she presented her version of events to the defendant's Commission and on the 7<sup>th</sup> April 2010, the defendant communicated its decision to suspend her for four (4) months from the date of the letter. That the suspension was in regards to events that allegedly occurred 4 years prior and she could not clearly recollect the events of those years. Further that the charges were informed by misrepresentation.

It is the claimant's contention that after serving the suspension, the respondent kept her floating for three months by way of tossing her from one school to another school and in the process lost payment for the three months. That despite reporting to her new station she was still not paid salary for 2 months the Respondent alleging that they were withholding it for the time she was not on duty.

She further alleges that the Board that sent her on interdiction and the subsequent suspension was illegal as it was not a full board contrary to the Education Act and the Teachers Service Commission Act.

In the Amended Statement of Claim dated 6<sup>th</sup> May 2012, the Claimant prays for:

1. A declaration that the interdiction and subsequent suspension of the claimant by the respondent was unlawful.

2. Payment for the period of interdiction and suspension

----- 11 x 45,345..... Kshs.498,795/-

3. Payment for the period she was floating (three months)

----- 3 x 45,345.....Kshs.136.035/-

4. Payment for the two months worked but not paid

----- 2 x 45,345.....Kshs.90,690/-

5. Costs of this suit.

6. Interest at court rates

The Respondent filed a statement of Defence and later an amended statement of Defence dated 7<sup>th</sup> April, 2014, wherein they state that the contract of Employment with the Claimant was governed by the provisions of the Education Act Cap 211, the Teachers Service Commission Act, Cap 212, and the Code of Regulations for teachers together with the Administrative Circulars issued from time to time by the Respondent and/or its authorised agents.

That sometime in June 2009 the Respondent received complaints from various students of Kimuchu Secondary School against the claimant of interalia poor coverage of the course outline for the subjects which the Claimant taught.

That they also received complaint letters from teachers: F. N. Kinuthia TSC No. 357681, Jane Makara TSC No. 334557, Jane Makumi TSC No. 482224, Doris Alla TSC No. 339525, E.N.Sudi TSC No. 233647 who complained that the Claimant's behaviour was wanting and did not echo the nobleness of the teaching profession.

That the Respondent through the Head-Teacher Kimuchu Secondary School conducted investigations, took statements from the aggrieved students and invited the Claimant to answer to the allegations levelled against her.

That the Board of Governors after evaluating the teacher's evidence and circumstances surrounding the case agreed and recommended that the teacher be interdicted to facilitate further inquiries in the matter.

They aver that the Claimant was given an opportunity to prepare her defence pursuant to which she wrote an elaborate response which was duly considered by the Respondent in compliance with provisions of Code and rules of Natural Justice. Further that the Respondent convened its disciplinary panel on 7<sup>th</sup> April, 2010, where the Claimant was invited to present her case and cross examine Respondent's witnesses with a view to rebut any adverse evidence against her. That the Respondent arrived at the inference that the claimant was guilty of breach of the terms of the Code and recommended that she be suspended from service for 4 months.

That the disciplinary panel acted impartially, independently and with utmost professionalism and arrived at a fair, just and appropriate decision based solely on merits of the case and evidence adduced before it. The Respondent aver that prior to reaching the decision to interdict and subsequently suspend the Claimant, the Respondent and/or its agents caused several warning letters to be served on the Claimant.

The Respondent avers that the Claimant is not entitled to any remuneration for the period she was under interdiction/suspension as she did not render any service to the Respondent upon which she could be paid.

The respondent further avers that there was no misrepresentation and the date alleged to have been inconsistent by the claimant were typing errors and the school logbook confirms the dates as annexed in the supplementary list of documents in the principal's report.

That the Claimant was not left floating but she insisted on being posted to a school within Thika as she was enrolled at Kenyatta University for a PhD whereas the respondent had informed her that there was no vacancy for her subjects within Thika Municipality. The respondent prays that the suit be dismissed for being devoid of merit.

## **Evidence**

The Claimant gave evidence on her own behalf as per her memorandum of claim and stated that she was posted to teach Business and history at Kimuchu Secondary School and was there for a while when bad blood developed between her and the principal. On or around the 9<sup>th</sup> September 2009, she received a letter from the principal of the school to appear before the Board of Governors of the school on the 25<sup>th</sup> September 2009, to answer to a charge of chronic absenteeism and neglect of duty.

That she was given many dates on which she was absent over a period of four years. She stated that the incidents complained of happened years before and she could not recollect her whereabouts. That the Board recommended interdiction thereafter on 29<sup>th</sup> September 2009.

She also led evidence stating that on 7<sup>th</sup> April 2010, she was summoned by the Respondent and charged with similar offences as those before the Board of Governors to which she defended herself albeit unsuccessfully leading to her suspension for a period of 4 months without pay.

That after her suspension she was posted to a neighbouring school where the principal objected to her teaching there. She went back to the Respondent who posted her to another school where she was equally rejected by the principal. She then posted to Gaichanjiru Secondary School on 16<sup>th</sup> November 2010 where she started in January 2011. That she was unemployed all this time after serving her suspension. She prayed for her claim to be allowed.

The Respondent put up two witnesses. RW1 one Samuel Njuguna was the Head Teacher Kimuchu Secondary School where the Claimant was a teacher. That he was the one who suspended the Claimant having received complaints from teachers who were not happy with the Claimant's conduct by a letter dated 9<sup>th</sup> September 2009. That she had used abusive language against her fellow teachers on 23/9/09. That the letter of complaint had a typographical error and it should have been dated 9<sup>th</sup> October 2009. That she appeared before the Board of

Governors who decided that she should proceed on suspension for 4 months.

RW2 was one LUCY NYAMWANGE the Assistant Deputy Director, Teacher Management Directorate, who confirmed that the Respondent received an interdiction letter. That the Respondent summoned her for a hearing on 7<sup>th</sup> April 2010, over the charges of infamous conduct, chronic absenteeism and neglect of duty. She was found guilty of most of the offences and was as a result suspended for 4 months.

That the Respondent sent her a posting letter before the suspension period was over but she wrote a letter requesting to be posted to a school of her choice since she was pursuing her PhD. She was posted to Gituru Secondary School where she was to commence teaching on 7<sup>th</sup> August 2010 but she did not take up the posting. She wrote another letter requesting for another posting in Thika but there were no vacancies in Thika. RW2 stated that the charges the claimant was accused of did not attract any pay and she therefore cannot be awarded the same by the Court. She prayed that the Claim be dismissed.

#### **Claimant's Submissions.**

On behalf of the Claimant it is submitted that the interdiction and subsequent suspension ought to be lifted and she be paid for the 11 months she was under interdiction and suspension. That the Court should do so based on the fact that the disciplinary panel found that the charges were poorly done and backdated too far.

That a comparison between the accusations raised and responses given reveals that the Board of Governors and the TSC disciplinary committee proceeded to act on a charge sheet which was full of errors, contradictions and malice. It is urged that the Claimant was accused and found guilty of negligence of duty, absenteeism on days which are not corrected leading to the Claimant being interdicted and suspended.

Counsel submits that from the Statement of Response, the principal is clearly correcting dates and alleging typing errors when injury has already been done and cannot be undone.

On the issue of the Claimant being kept floating for four months, it is submitted that the Claimant did write to the Respondent preferring a school near Thika to enable her continue with her studies. That the Respondent took advantage of the situation after she failed to take up her 1<sup>st</sup> posting and decided not to pay her. That the process of posting her took four months for which the Claimant should not be penalised. Furthermore that upon resuming her duties at Gaichanjiru Secondary school she worked for two months for which she was not paid. Counsel urges the Court to allow the Claim as drawn.

#### **Respondent's submissions.**

On behalf of the Respondent, it is submitted that the Claimant was suspended on reasonable grounds having had a history of professional misconduct which is a matter that had on several occasions been cautioned by the Respondent's agents. That the same professional misconduct lead to her ultimate dismissal from employment of the Respondent. That investigations were conducted and the Claimant was found guilty of the charges leading to her suspension.

On the process followed before her interdiction and eventual suspension it is submitted that Regulation 66 of the Code sets out the procedure that the Respondent is required to comply with in disciplining teachers. The Respondent submits that in disciplining the Claimant, it faithfully adhered to the procedure set out in the Code. That the Claimant was accorded a fair hearing and the opportunity to be heard in compliance with the Rules of Natural justice.

That the Respondent is a quasi-judicial body hence the proceedings of the Respondent must not be compared to those of a court of law created under the Judicature Act and the Constitution as observed by the Court of Appeal in Civil Appeals No (S). 26 & 27 of 2012: **BETT FRANCIS BARNGETUNY & ANOTHER VS. TEACHERS SERVICE COMMISSION AND ANOTHER**:

*“The general principles that should guide statutory, domestic or administrative tribunals sitting in a quasi-judicial capacity... are incorporated in the Regulations... accusing an employee of misconduct by way of query and allowing an employee to answer the query before a decision is taken satisfies the requirement of fair hearing or natural justice. If an employer has conducted disciplinary proceedings fairly in accordance with statutory or laid down regulations, a court of law should exercise great caution before it interferes with the employer's findings.”*

That the standard of proof in cases of professional misconduct is not proof beyond reasonable doubt as is required in criminal cases as was stated in the case of **JUDICIAL SERVICE COMMISSION VS GLADYS BOSS SHOLEI AND ANOTHER (2014) eKLR**.

That by dint of the aforesaid decisions the Respondent is exempted from the application of strict rules of evidence and procedural technicalities that form the background of criminal process.

On the issue of reinstatement after suspension it is submitted that the Claimant was posted to Gituru Secondary School within Thika which posting the Claimant refused to take up and appealed against stating that the posting would inconvenience her in accessing the campus at which she was pursuing her PhD degree. That the claimant ought to have reported to the school awaiting the outcome of her appeal which she never did and thus remained out of employment until a suitable vacancy arose. That the Claimant is estopped from claiming any salary for the period she was not in active employment.

Furthermore that by dint of Regulation 68 of The Code the Respondent is prohibited from paying salary to a teacher who has been interdicted on account of chronic absenteeism.

That the Claimant did not prove that she worked for the 2 months she claims that the Respondent failed to pay and thus the claim should be disallowed. It is submitted that the entire suit ought to be dismissed for being devoid of merit.

### **Determination**

I have considered the pleadings, the evidence on record and the submissions. The issues arising for determination are whether the interdiction and suspension of the claimant were lawful and whether the claimant is entitled to the remedies sought.

The claimant has made sweeping statements about both the interdiction and the suspension. She has not stated that the interdiction or suspension was not within disciplinary rules that she was subject to. She has stated that the Board of Management was not properly constituted but does not state how. According to the minutes of the meeting at which the claimant's interdiction was decided, the quorum was proper and she was given an opportunity to respond to the charges against her. She was thereafter given an opportunity to respond to the charges in writing and again at the disciplinary hearing before the respondent's Disciplinary Committee. At the disciplinary hearing, the charges were read to the claimant and she was given an opportunity to cross-examine witnesses and to present her case.

It is after she was heard that a verdict was passed, finding her guilty as charged. Although the disciplinary committee observed that the charges were poorly done and backdated too far and further that charges were too accurate and amounted to witch-hunting, it was observed that she did not submit any documents to show she was present in school on the days she was accused to have been absent without permission and did not apply for sick leave on days she alleged to have been sick. It was further a finding that she was rude to the Board of Management, she had very poor past records and had taught in nine different schools. She did not contest any of these findings.

As submitted by the respondent, it complied with the procedures under Regulation 66 of the Code of Regulations for Teachers and rules of natural justice. It is further submitted as is evident in the minutes of the disciplinary hearing, that the claimant admitted to most of the charges of professional misconduct levelled against her.

As was held by the Court of Appeal in the case of **BETT FRANCIS BARNGETUNY AND ANOTHER -V- TEACHERS SERVICE COMMISSION** –

*“The general principles that should guide statutory, domestic or administrative tribunals sitting in a quasi-judicial capacity... are incorporated in the Regulations... accusing an employee of misconduct by way of query and allowing an employee to answer the query before a decision is taken satisfies the requirement of fair hearing or natural justice. If an employer has conducted disciplinary proceedings fairly in accordance with statutory or laid down regulations, a court of law should exercise great caution before it interferes with the employer's findings.”*

In **REPUBLIC -V- EGERTON UNIVERSITY EX PARTE ROBERT KIPKEMOI KOSKEV 2006** KLR, it was held that where an administrative body has complied with Rules of Natural Justice, the Courts will be reluctant to interfere with the proceedings.

Prof. J. B Ojwang J. in **KENYA REVENUE AUTHORITY -VS- MENGINVA SALIM MURGANI** in Civil Appeal No. 108 of 2009, the Court of Appeal stated: -

*“There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task, it is for them to decide how they will proceed.”*

I find that the claimant has not proved that either the interdiction before the hearing or the suspension of four months which was the punishment meted out against her were unlawful or unjustified. I also do not find any proof of malice alleged by the claimant.

### **Remedies**

The claimant prayed for refund of monies withheld during interdiction and suspension.

The respondent submitted that she is not entitled to the same as the Regulation 68 of the Code under which she was interdicted provides that the interdiction be without pay where it is on grounds of absenteeism. That the regulations further provided for suspension without pay as a punishment.

On refund for four months' salary after claimant had served the period of suspension, the claimant admitted that she wrote a letter requesting for a school near Thika to enable her continue with her studies.

The claimant admits the delay in her posting resulted from her rejection of the school to which she was first posted. In the circumstances, her prayer for salary between the time she was first posted in August 2010 and the time she reported in January 2011 was of her own making.

As submitted by the respondent, she should have first reported to the school where she was posted after suspension and appealed after reporting. Had she done so, her salary would have been reinstated immediately. She however elected to stay at home awaiting posting to a school of her choice. It was not possible for her salary to be reinstated before she reported back to work.

I find that the delay in reinstating the claimant was her own making and as such, she cannot claim the same from the respondent as she was

not entitled to pay for the period she did not work.

In conclusion, I find that the claimant's interdiction and subsequent suspension were not unlawful, and that she is not entitled to salary for the period before she resumed duty after suspension. The result is that the entire claim fails and is dismissed.

Each party shall bear its costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 2<sup>ND</sup> DAY OF NOVEMBER 2018**

**MAUREEN ONYANGO**

**JUDGE**