



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO. 344 OF 2017**

**JOSEPH MUHORO MURAGE & 7 OTHERS.....CLAIMANT/APPLICANTS**

**VERSUS**

**THE BOARD OF MANAGEMENT ST. AUGUSTINE**

**GIKONDI BOYS SECONDARY SCHOOL.....RESPONDENT**

**RULING**

1. The Notice of Motion application before me is the one dated 11<sup>th</sup> September 2018 and it seeks various orders against the Respondent for alleged unfair labour practice. The Claimants assert that the Respondent has effected a 17%-30% increase in salary for all non-teaching BOM Staff excluding the Claimants so as to coerce them to withdraw the suit. The Claimants' motion is supported by the annexed affidavit of Peter Waitara Kimani the 4<sup>th</sup> Claimant which reiterates the same assertions. He avers that the Respondent has engaged in discriminatory practice by offering a wage increase to the other staff backdated to January 2018 and that letters to this effect were issued.

2. The Respondent is opposed and filed grounds of opposition in which it asserts that the application is incurably defective and merely speculative and brought in bad faith. The Respondent seeks the dismissal of the said application with costs.

3. The application was urged by Mr. Ng'arua for the Claimants who submitted that the motion seeks the orders of the court to compel the Respondent to show cause why orders should not issue against it for the discriminative action in effecting a wage increase of between 17-30% for other staff and excluding the Claimants herein. Counsel argues that it is the right of any person who seeks relief from court not to be discriminated against for articulating his or her claim and that the Claimants have a right to expect their dignity to be respected. They should not be discriminated against or punished for coming to court. It was submitted that the Respondent had even attempted to meet the Claimants without their lawyer to persuade them to withdraw the suit in lieu of the wage increase. The Claimants urge that the motion be granted.

4. The Respondent opposes the grant of the orders sought and asserts that the Claimants motion is based on falsehoods, is speculative and should be dismissed. The Respondent argues that none of the employees have received a wage increase and that nothing would have been easier for the Claimants to avail the documents to prove the allegations. The Respondent thus urges the dismissal of the motion with costs.

5. The motion is one that seeks remedies akin to injunctive orders as the action sought to be enforced against the Respondent is one to show cause for the alleged discriminatory treatment of the Claimants. It is true as Mr. Ng'arua submits that the dignity of any party before court must be respected. There should not be any discrimination meted out against a party because of approaching the court for remedy. However, the motion before me falls short of the standard required of such a motion. The Claimants have not placed before me any material to show the 17-30% pay hike implemented from January 2018 in respect of other staff. The affidavit sworn in support of the motion is just mere allegations with no more. Nothing would have been easier than to present a copy of the letter effecting the increase for the other staff or contrast payslips (with names redacted if need be) to show the increments. As the motion does not meet the threshold for grant of the remedy sought I will dismiss it with costs to the Respondent.

It is so ordered.

**Dated and delivered at Nyeri this 1<sup>st</sup> day of November 2018**

**Nzioki wa Makau**

**JUDGE**