



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NUMBER 1783 OF 2014**  
**OMARIBA ELIJAH KEMONDE.....CLAIMANT**  
**VERSUS**  
**THE SECRETARY, TEACHERS SERVICE**  
**COMMISSION .....RESPONDENT**

**JUDGEMENT**

1. The claimant was employed by the respondent as a teacher on contractual terms with effect from 27<sup>th</sup> September, 2010 and posted to Sheikh Ali High School in Mandera County.
2. Sometimes in October 2011, the government through the respondent commenced a process of converting the employment terms of the teachers employed on contract to permanent and pensionable. It was a requirement that in order to be employed on these terms all applicants had to meet minimum requirements regarding the relevant academic and professional qualifications which included that one ought to have attained a minimum of two principles and one subsidiary pass at 'A' level or minimum grade of C+ at KCSE and C+ in each of his or her teaching subjects.
3. The claimant had a grade of C- in English at KCSE which was one of his teaching subjects hence a deficiency in one of his academic qualifications. His services were consequently terminated with effect from 1<sup>st</sup> February, 2012. The applicant thereafter undertook a bridging course and thus fulfilled the requirement for employment on permanent and pensionable terms. As a result he was reinstated to employment and re-deployed back to Sheikh Ali High School through a letter dated 20<sup>th</sup> September, 2012. The re-appointment letter was posted to the contact address provided by the claimant which was the same as the school he was redeployed to.
4. According to the claimant, on March, 1<sup>st</sup> 2012 a Mr Isaac Gitau based at the respondent's headquarters gave him a note to take to the Principal of his school whose content was that his services had been reinstated. On reaching the school he handed over the note to the school's Principal but once in the staffroom he found his name had been deleted from the timetable and on 12<sup>th</sup> March, 2012 the Deputy Principal handed him a letter terminating his services.
5. On 21<sup>st</sup> March, 2012 the Principal called him to his office and told him he wanted to clear him (the claimant) from the school so that he could go back to Kisii or anywhere else he wished. According to

him, he picked the clearance letter and reported the issue to the District Education Officer and also Provincial Education Officer. He further travelled back to respondent's headquarters where he once again met Mr Gitau who placed the clearance letter in his file and asked him to report to the school once they reopen since at that time schools were about to close.

6. When schools opened, he once again saw Mr Gitau who asked him to write a letter to the respondent's secretary giving a chronology of what happened in Mandera and also indicate his preferred area of posting which he did and was advised by Mr Gitau to wait for further communication. According to him on 25<sup>th</sup> July, 2012, Mr Gitau called him to the respondent's headquarters and asked him to fill new employment forms and file the name of the school where he had been released then he would be transferred to a different school.

7. He waited for the appointment letter in vain and on 22<sup>nd</sup> October, 2012 he travelled to respondents headquarters and when he once again saw Mr Gitau, the latter was surprised he had not received his appointment letter. Mr Gitau checked the claimants file and gave him an unsigned copy. He went with this letter to Mr Abdirizack Farah who had signed the original copy and requested he signs the copy but Mr Farah refused and referred the claimant to the school where he would find the signed copy of the appointment letter. Around the same time, the claimant received a call from the Deputy Principal of the school asking him to report back to school.

8. According to the claimant, around this time there were tribal clashes between two clans in Mandera and Wajir hence travelling was dangerous besides it was also a rainy season hence roads were impassable. When the clashes ceased and it became dry the claimant travelled to the school and arrived on 19<sup>th</sup> November, 2012 but the Principal chased him away. He subsequently sought audience with the respondent's Director of staffing Mrs Nancy Macharia but was unsuccessful. He however met with Mrs Rotich who informed him he had forfeited his chance of being employed by the respondent.

9. The respondent's version however was briefly that as a matter of practice, appointment letters were sent through the contact address furnished by the applicants in respective forms. Consequently the claimant's letter of appointment was posted to the said contact address in Mandera. According to the respondent, despite being reinstated, the claimant refused to report to work and instead visited various offices with a view to getting assistance to move to near his home area. The claimant was however advised severally to report to Sheikh Ali High School since the respondent was not in an immediate position to grant his request but the claimant declined to do so.

10. The respondent further stated that as per the express terms of his letter the claimant was supposed to report to work within a period of thirty days from the 1<sup>st</sup> October, 2012 and failure to do so, the offer would lapse and the claimant deemed to have forfeited the offer. The respondent further stated that by a letter dated 16<sup>th</sup> January, 2014 the claimant was advised to re-apply afresh when vacancies are advertised.

11. This case presents to me a possible case of miscommunication and misapprehension of the claimants' personal circumstances when his services were terminated for the first time on account lacking the requisite academic qualifications. He ceased to be an employee of the respondent hence had no reason or obligation to remain in the school where he was teaching. He may have filled the former school's postal address as his contact address but that can be understood and plausible.

12. Old habits die hard. When it emerged as it is clear here that there could have been difficulty or delay in receiving the appointment letter, the respondent could have been a bit flexible considering the fact that the claimant was no longer residing in Mandera but had instead moved to Kisii. There is also one issue of concern raised by the claimant which the respondent should not have ignored. This is the issue of threats and harassment of the claimant by the Principal of his former school. No evidence was tabled by the respondent to show any attempt was made to cross check the veracity or otherwise of these very serious allegations.

13. In the circumstances the court will not order reinstatement since the claimant's new job offer lapsed

before he could take it up but this can be understood from the claimant's personal circumstances noted above. Teaching is a very noble career and critical aspect of our childhood upbringing. It takes a lot of personal sacrifice at times to choose a career as a teacher and remain as one throughout one's life. The claimant's ambition and sacrifice cannot therefore be brought to an end because of some plausible mistake or omission. The court will therefore direct that the respondent gives priority and recruits the claimant as a teacher at the next available recruitment exercise. There will be no order as to costs.

14. It is so ordered.

**Dated at Nairobi this 10<sup>th</sup> day of February 2017**

**Abuodha J. N.**

**Judge**

**Delivered this 10<sup>th</sup> day of February 2017**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**