



**REPUBLIC OF KENYA**  
**EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 79 OF 2016**

**(BEFORE D. K. N. MARETE)**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,  
HOSPITALS AND ALLIED WORKERS (KUDHEIHA).....CLAIMANT**

**VERSUS**

**THE B.O.M ST JOHN'S METEMBE SEC. SCHOOL.....RESPONDENT**

**JUDGEMENT**

This matter was brought to court by way of a Memorandum of Claim dated 30th May, 2015. The issue in dispute is therein cited as;

“Unfair termination of Mrs. Teresa Nyariki”

The respondent in a Response to Memorandum of Claim dated 20th June, 2016 denies the claim and prays that it be dismissed/struck out with costs to herself.

The claimant's case is that the grievant, Mrs. Teresa Nyariki, was invited for an interview and appointed a Copy Typist in February, 1992. She then earned Kshs. 400.00 per month without house allowance.

The claimant's further case is that her salary was raised to Kshs.1,400.00 in 2002 and in 2006 to date, this was raised to Kshs.6,000.00.

She served with due diligence and faithfulness and without any warnings of misconduct and always co-operated well with other non teaching staff, teachers and students. However, at around mid January, 2009 the claimant started having problems with the school principal, a Mr. Orina who had hatched a plan to get rid of her through frustrations. She was even demoted from a Copy Typist to grounds person.

The claimant's other case is that she reported the matter to the union who on 12th February, 2009 discussed the issue with the principal who however insisted that she will resume the duties of grounds person on 16th February, 2009. This involved strenuous and hard work, being forced to cut grass under wet conditions, compulsion to clean in very dusty conditions and without protective gear and suitable clothing and appliances such as gloves, goggles, nose masks and head covers.

It is her further averment that the grievant eventually fell sick and was admitted to Kisii Level 5 Hospital and diagnosed with chronic bronchitis a condition that is precipitated by working in dusty environment

and also doing strenuous jobs. She was put on medication and advised to refrain from this kind of work.

The claimant further avers that this was notified to the employer and the union but the school principal refused re-deployment and insisted on a resumption to ground duties. On 14th October, 2009, the principal issued her with a show cause letter requesting that she shows cause as to why she should not be terminated. On 3rd November, 2009 she was terminated from service without proper reason.

The claimant's penultimate case is that this matter was reported to the union who thereupon pursued conciliation as a dispute resolution mechanism but this failed to yield any positive results.

She prays as follows;

1. THAT, the Respondent be found in breach of article 47 of the constitution of Kenya on everyone's right to a process that is legal, reasonable and procedurally fair administrative & section 41 of the same on right fair labour practices & Article 50 of the constitution on the right to fair hearing right, right to be informed of the charge with sufficient detail to answer to it & also be represented.
2. THAT, the Respondent be found in breach of Sec 41 of Employment Act 2007 on account of invalidity of reasons for termination & procedural impropriety & also in breach of clause 6 (c) of the CBA between KUDHEIHA & the Ministry of Education, Science & Technology.
3. THAT, the Respondent be found in breach of article 10 on natural values & principles expected of public officers in regard to human dignity, equality, social justice, non discrimination, good governance & integrity to protect human rights and not to subject or expose others to degrading dignity as envisaged in article 19 of the Bill of Rights.
4. THAT, the court finds the termination unfair and unlawful and orders that the employee be reinstated without loss of benefits or on the contrary be paid terminal dues as per the parties CBA and as stated below.
5. THAT, the court orders to the Respondent to pay cost of this suit and any other remedy it deems fit & just.

*From 1<sup>st</sup> Feb/1992 to 3<sup>rd</sup> Nov/2009(17years + 8 months)*

*(job group D)*

*1. Pay in lieu of notice*

*(as per the CBA clause 6 (a) (ii)*

*3 months*

*6,000 x 3 months =18,000.00*

*2. Annual leave due for 3 years (2007/8 and 0*

*63 days (63 x 6000) =14,538.00*

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*Leave travelling allowance (for 3 yrs)*

*1000 x 3 yrs =3,000.00*

3. Service gratuity for (17 yrs

*(as per clause 31 of the C.B.A)*

6000 x 17 yrs =102,000.00

4. Salary Arrears (as per B.O.G

*Minutes of 25<sup>th</sup> /July/2008* =44,330.00

5. Public holidays (worked) (for 3 yrs)

33 days (33 x 6000) =7,615.00

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6. Unpaid medical allowance

*For 14 yrs*

*(375.00 x 14 yrs)* =5,250.00

*(7) Unpaid House Allowance*

*(for 14 yrs)*

*From 1<sup>st</sup> /Feb/1992 – 31<sup>st</sup> /June/2001*

*9 years + 4 months*

*1,900 x 99 months* =188,100.00

7. Under payment of wages (for 3 years)

*From 1<sup>st</sup> /April/2006 – 31<sup>st</sup> /June/2008 (20 months)*

*8163.00 legal notice*

*6,000 actual paid*

*Less 2,163.00 x 20 months* =43,260.00

*From 1<sup>st</sup> /July/2008 – 3<sup>rd</sup> /Nov/2009*

*8,819.00 legal notice*

*6,000.00 Actual paid*

*Less 2,819.00 x 16 months* =45,104.00

8. Max compensation for unlawful

*Loss of employment*

6,000 x 12 months = 72,000.00

*Total* = 666,397.00

The respondent denies that the claimant was invited to serve as a Copy Typist in February, 1992.

The respondent's further case is a denial of the claim of due diligence and avers that the claimant was given several warning letters leading to her demotion to grounds person from copy typist.

The respondent further denies having ignored the grievant's medical practitioner's advice and also denies receipt of the same. She however admits having issued a show cause letter to the claimant.

The respondent in the penultimate avers that the claimant was cited for disciplinary proceedings and was subsequently terminated from service justifiably and lawfully owing to her unbecoming behaviour and gross misconduct on her part. She had been served with several warning and show cause letters which she ignored to heed or answer.

She enlists a case of gross misconduct as follows;

- a. Willfully, destroying school's past records.
- b. Absenting herself from duty without permission.
- c. Divulging office secrets contrary to the official secrets act.
- d. Insubordination.
- e. *Inciting teachers and students to strike.*

The matter came to court variously until 6th December, 2017 when the claimant requested for a determination on the basis of the pleadings filed in court by the parties.

The issues for determination therefore are;

1. Was the termination of the employment of the claimant was wrongful, unfair and unlawful?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this claim?

The 1st issue for determination is whether the termination of the employment of the claimant was wrongful, unfair and unlawful? The claimant enlists the following documents in support of her claim;

1. Union constitution.
2. Basic Education Act, 2013
3. Legal Notice No. 262 (Education Act, Chapter 211, Laws of Kenya.
4. Copy of Recognition Agreement and CBA with the ministry of Education Science and Technology and the claimant union.

The respondent in support of her defence annexes the following document;

1. Letter of appointment of the grievant to the office of Secretary/Typist commencing on 1st January, 2008.
2. Letter to the grievant dated 25th January, 2008 headed Negligence of Duty – Warning.
3. Letter to the grievant dated 14th January, 2009 headed Your Discipline Cases
4. Letter of invitation to the grievant to meet the Board of Governors on disciplinary issues dated 23rd January, 2009.
5. Letter by the secretary KUDHEIHA dated 12 February, 2009 on re-deployment to the station of grounds person for the grievant.

An analysis of the respective cases of the parties brings out a resounding case of lawful termination of employment. A display of the defence case and numerous annexures thereof illustrates various cases of disability and misconduct on the part of the grievant. She was a poor performer and a bad worker unsuitable for the job she was employed to do. Her conduct at the work place reduced her to material for good riddance which the respondent was ultimately forced to do. I therefore find a case of lawful termination of the employment of the claimant by the respondent and hold as such.

On a finding of a case of lawful termination of employment, the claimant is disentitled to the relief sought.

I am therefore inclined to dismiss the claim with costs to the respondent.

**Delivered, dated and signed this 15th day of December, 2017.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Joseph Okwach for the claimant union.
2. Mr. Aboki Begi instructed by Aboki Begi & Company advocates for the respondent.