



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 411 OF 2015**

**(Before Hon. Justice Hellen S. Wasilwa on 10<sup>th</sup> February, 2016)**

**PHILIP KARANJA KARUNGU ..... CLAIMANT**

**VERSUS**

**SENIOR BOARD OF DISCIPLINE .....1<sup>ST</sup> RESPONDENT**

**DEPUTY VICE CHANCELLOR-ADMINISTRATION .....2<sup>ND</sup> RESPONDENT**

**KENYATTA UNIVERSITY .....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant Philip Karanja Karungu filed this Application on 18/3/2015 through the firm of Gathii Irungu and Company Advocates. The Application was filed under Certificate of Urgency and brought through a Notice of Motion filed under Section 25, of the Employment Act 2007, Section 12 of the Labour Institutions Act 2007, Labour Relations Act 2007 and all other enabling provisions of the law.
2. The Applicant sought orders as follows:

***1. That this Honourable Court be pleased to certify this matter as urgent and service hereof be dispensed with in the 1<sup>st</sup> instance.***

***2. That this Honourable Court be pleased to issue an order directing the 3<sup>rd</sup> Respondent to pay the Applicant his house allowance and half salary backdated to August 2014 for subsistence until hearing and determination of this suit.***

***3. That this Honourable Court be pleased to issue a restraining order against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, their Agents, Servants and/or Anybody claiming through them from harassing, intimidating, threatening, dismissing, terminating, passing a decision and/or in any other way interfering with the Claimant's employment until and determination of this Application.***

***4. That this Honourable Court be pleased to issue a restraining order against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, their Agents, Servants and/or Anybody claiming through them from harassing, intimidating, threatening, dismissing, terminating, passing a decision and/or in any other way interfering with the Claimant's employment until and determination of this***

**suit.**

**5. That costs of this application be provided for.**

3. The Application was premised on the following grounds:

**a. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent suspended the Claimant without paying him half salary and full house allowance contrary to Labour Relations Act 2007.**

**b. Further the Claimant believes that he would never be accorded a fair and free hearing.**

**c. The 1<sup>st</sup> Respondent being propelled by malice alleged that the Applicant had failed to report acts of theft to her and convened an illegal meeting to discuss the Applicant and which allegation is untrue, baseless and unfounded.**

**d. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents interdicted and/or terminated employment of the Claimant without any lawful and/or said illegal meeting without following the laid down channels only to suit their needs.**

**e. That the Claimant was condemned exparte as he was not given a chance to defend himself.**

**f. That the Claimant feels that all the invited guests were biased and had interest in one way or another and if he is not represented by someone of his choice then the purported meeting did not meet the minimal threshold of free, fair and legal.**

**g. That the Claimant feels that panel invited in the meeting had already passed unfair and partial judgment on him.**

**h. That the Claimant should have been given an impartial, free and fair hearing otherwise all his fundamental rights as guaranteed by the Constitution of Kenya 2010 were infringed in toto.**

4. The Application is also supported by the affidavit of Philip Karanja Karungu the Applicant herein and sworn on 4/3/2015. It is the Applicant's case that he was employed by the Respondent in year 2012 and had been working on contractual basis and willfully and dutifully performed his duties.

5. He avers that on 23<sup>rd</sup> July 2014, the Respondents while acting on the instructions of the 3<sup>rd</sup> Respondent levied untrue and misleading accusations against him based on allegations that he failed to report acts of theft of stationary and cartridges at the school of Engineering Technology whilst knowing that he had reported the same at the earliest opportunity possible. He was then suspended on 23/7/2014 as per Appendix PKK 2 without payment of any salary.

6. The Applicant denies the allegations leveled against him and avers that he strictly adhered to the University Code of Regulations especially Section 22 and 24 which requires a member of staff to report acts of malpractice to their immediate supervisor.

7. He avers that he reported the incident to his two seniors Dean Engineering Nzomo and Chairman Mechanical and Manufacturing Department Engineer Okaka.

8. That he further obtained a confession from a suspect one Grace Konye and M-pesa transaction deal and gave the same to the Dean thus reporting a malpractice. He avers that there was no laxity in pursuing this matter and that he also informed the Caretaker, the Gatekeeper one Lucy Wakinyi to intensify checks and inspect and report any suspicious luggage.

9. He avers that he was also able to convene a non-teaching staff meeting where theft was as agenda

as per Appendix 7 and he was not privy to any other criminal information of substantial detriment to the University.

10. The Applicant's contention is that he wants the Respondents to pay him his salary as he has been on suspension for 1 year and he wants the Court to order he be paid his dues as per his Notice of Motion.
11. The Respondents opposed this application and they filed their replying affidavit on 16/7/2015. The affidavit was sworn by one Professor P. K. Wainaina the 2<sup>nd</sup> Respondent herein. In their affidavit, the 2<sup>nd</sup> Respondent depones that the Applicant was suspended on 23/7/2014 pending investigations into his alleged involvement in theft of stationery and cartridges. That his suspension letter was issued after carrying out proper investigations and finding that the Claimant had committed crimes of omission by failing to report acts of theft in the school where he was administrator.
12. That after investigation, it was found that the Applicant had in addition committed actual offences and the charges against him were amended and notified to him through a letter dated 8<sup>th</sup> December 2014.
13. That in view of the above, the Applicant was invited to attend a special board of Discipline on 1<sup>st</sup> July 2015 for his chance to be heard and defend himself but that he never appeared.
14. The Respondents therefore aver that the Applicant cannot plead lack of free and fair hearing or having been denied a chance to defend himself which he has refused, neglected or ignored to avail himself.
15. The Respondents have submitted that the prayers sought in the Notice of Motion are clearly those in Petition and that the clear cause of action is for the Applicant to go through the disciplinary process. They want this application dismissed.
16. The Applicant has reiterated that he has not refused to attend the disciplinary process. That he has even written to Deputy Vice Chancellor asking him to invited him for a disciplinary process and on all occasions, they have invited him, they have postponed the meeting on 3 occasions.
17. I have considered the submissions of both parties. The issue for determination is whether:
  1. ***The suspension of the Applicant is justified.***
  2. ***The disciplinary process already instituted against the Applicant is fair.***
18. On the 1<sup>st</sup> issue, I have looked at the letter suspending the Applicant dated 23/7/2014 which explains that the Claimant was to be suspended for having committed offences of gross misconduct and his salary was to be stopped.
19. The alleged offences are also mentioned. A revised suspension letter is dated 8/12/2014. From the letter of suspension, reasons of suspension are explained which would be valid reasons to suspend an employee. After this suspension however, the earliest time we see Applicant invited for a disciplinary hearing is on 24/6/2015 to attend on 1/7/2015 which is one year since the suspension. On 1/7/2015, the hearing didn't proceed and the record indicate that hearing was deferred as Applicant was unwell and admitted in hospital.
20. The prudent thing to do then would have been another invitation to another hearing which has not been displayed before Court. This implies that from the time the Applicant was suspended, it is well over 1 ½ years and no disciplinary hearing has been commenced. This is an infringement of Applicant's right to a fair and expeditious hearing as provided under Article 50 (5) (e) of the Constitution. A reasonable disciplinary hearing process should be conducted within 6 months and

a delay of over 1 year is unacceptable and unfair in the circumstances.

21.The Respondents have not annexed their Discipline Manual for Court to assess their process but that notwithstanding the delay occasioned is inordinate.

22.Though the Respondents aver that the Applicant has refused to attend a hearing, there is no evidence to that effect. I therefore find that the suspension pending investigation is unjustified and unfair and I lift it up and direct that the Respondent pay the Applicant all dues from the time of suspension to date and to continue to do so until a proper disciplinary hearing against the Applicant is carried out.

23.That in effect means that the disciplinary process already commenced is flawed and a fresh fair process ought to be commenced and be finalized within the next 3 months in default then the Applicant should be considered cleared of any wrong doing of the charges leveled against him.

Read in open Court this 10<sup>th</sup> day of February, 2016

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Mwathe holding brief for Kibe Mungai for Respondent

Applicant present in person