



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 1661 OF 2013

BETWEEN

SAMMY GATIMU KARANJA CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Kamwaro & Company Advocates for the Claimant

Allan M. Sitima, Advocate for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

[Rule 27 [1] [a] of the Industrial Court Procedure Rules 2010]

1. The Teachers Service Commission [TSC] dismissed the Claimant Teacher from the teaching service, on the 28th January 2013. The Claimant was removed from the Register of Teachers with effect from the same date.

2. The Respondent justified its decision against the Claimant with the following statement, attached to the deregistration letter:

“You are of immoral behaviour, in that on 7th May 2012, at break time, you had carnal knowledge of your 12 year old Class 7 East Pupil PC on a table in your office, which is located between the Staffroom and the Head-Teacher’s Office, while you were a Teacher at [Particulars Withheld] Primary School.”

3. The Respondent denied the allegation, and was taken through a disciplinary hearing. The Disciplinary Panel upheld the allegations against the Claimant. He appealed with the same result. He filed this Claim on the 16th October 2013, seeking the following orders against the Respondent:-

- a) Reinstatement to his job and Register of Teachers, without loss of benefits.
- b) Specific damages of Kshs. 334,140.

c) General damages.

d) Costs, Interest and any other suitable reliefs.

4. The Respondent filed a Notice of Appointment of Advocates on the 25th November 2013. Nothing else appears to have been filed by the Respondent. There is no Statement of Response on record. The Parties were invited by the Court for a hearing during the Court's Service week on the 24th April 2016. The Respondent did not attend Court. Claimant's Counsel attended Court, and adopted the Claimant's Pleadings, Witness Statements and Documents, and urged the Court to grant the above prayers.

The Court Finds:-

5. The Claimant was employed by the TSC as a Teacher, with effect from 2nd December 2008. He was posted to [Particulars Withheld] Primary School, in South Kinagop. He taught there until he was dismissed, and deregistered from the Register of Teachers by the Respondent, on the 28th January 2013, based on the allegation contained in paragraph 2 above.

6. The allegation was investigated by the Police. The TSC has not shown any other investigation carried out internally by the TSC, which would place questions on the process and outcome of the Police Investigation.

7. The Complainant's Class Seven Teacher, Nancy Waweru, stated to the Police that both the Complainant and her Mother did not complain to the Class Teacher, on various dates after the alleged incident, that the Complainant had been defiled by the Claimant. The Class Teacher stated she retained the key to the office from where the Complainant alleged to have been defiled.

8. The Head-Teacher James Kimani confirmed the premises where defilement was alleged to have taken place was adjacent to his Office. Only the Head Teacher and Nancy retained the key to the premises. The Claimant, the Head- Teacher stated, had no Office of his own and used the Staffroom common to all Teachers.

9. Cpl Linner Mosonik from Haraka Police Station investigated the incident and confirmed the above Witnesses were truthful. He visited the School. He confirmed the Claimant had no Office of his own. The Police concluded the Complainant and her Mother had made up the story on defilement with ulterior motive.

10. The Court does not see what evidence the TSC relied on, in dismissing and deregistering the Claimant. It is not shown why the Claimant was condemned by the Disciplinary Panel, and why his Appeal was rejected. There is no other investigation shown to the Court, to have taken place, outside the Police Investigation.

11. While the TSC must act resolutely in stamping out Child defilement from the teaching profession, investigation of complaints by Pupils about defilement by Teachers, must be carried out with the seriousness such offences demand. The employment rights of affected Teachers must be protected. The Police Service did its part, and the Court has seen nothing to fault the work carried out by the Police in establishing whether there was ground to charge the Claimant with a criminal offence. The TSC ought to have endeavoured to show there was ground to charge the Claimant with an employment offence, and demonstrate there was valid reason to terminate the Claimant's service. The TSC seems to have acted without regard to the Claimant's right to procedural and substantive justice. The Claimant has shown termination did not meet the standards of fairness under Section 41, 43 and 45 of the Employment Act 2007.

12. He has established he was unfairly dismissed. He had been advised by the TSC he could apply to be reinstated to the Register of Teachers 18 months after deregistration. It is not clear if the Claimant applied for reinstatement. Reinstatement by the Court is limited by law to 3 years after termination. As the Parties

agreed the Claimant could apply for reinstatement 18 months after termination, and as the Court has concluded there was no justification in terminating the Claimant's service, the Court does not think the 3 year limitation on the order for reinstatement imposed by the law, would make the remedy of reinstatement inaccessible to the Claimant. The Claimant did not supply the Court with evidence, or focus the mind of the Court on any law, which would justify the grant of any other orders. General Damages and Specific damages of Kshs. 334,140 were not supported in evidence or law. The prayers are rejected. IT IS ORDERED:-

- a) The Claimant is hereby reinstated to his teaching job and to the Register of Teachers.*
- b) The Respondent shall pay to the Claimant all his salaries and allowances, back-dated to February 2013.*
- c) The Award shall be implemented in full within 30 days of its delivery.*
- d) Costs to the Claimant.*

Dated and signed at Mombasa this 2nd day of September 2016

James Rika

Judge

Dated, Signed and delivered at Nairobi this 2nd day of September, 2016

Joram Nelson Abuodha

Judge