



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1607 OF 2016**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 6<sup>th</sup> October, 2016)**

**ROSE W. KIRAGU..... CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**RULING**

1. Before the Court is a Notice of Motion Application under Section 1A and 1B and Section 3 and 3A of the Civil Procedure Act Cap 21, Laws of Kenya, Order 1 Rule (8) (d) (c) Civil Procedure Rules 2010, Laws of Kenya, Article 43 of the Constitution of Kenya 2010, the Judicature Act Cap 9 Sections 1, 2 and 3 under the High Court Vacation Rules and all other enabling provisions of law. The application is dated 10<sup>th</sup> of August 2016 filed through the firm of Musyoka Mogaka & Company Advocates seeking Orders:

***1. That the instant Application is certified as urgent and the same be heard ex-parte in the first instance.***

***2. That the Honourable Court be pleased to grant a temporary injunction and or stay restraining the Respondent, its employees, agents or servants from taking any further alienation, interdiction and or her removal howsoever from her office as Principal of Kerugoya Girls High School based on a purported letter of complaint dated 25<sup>th</sup> May 2016 pending the hearing and determination of this Application.***

***3. That the Honourable Court be pleased to grant a temporary injunction and or stay restraining the Respondent, its employees, agents and or servants from taking any further step and or an adverse decision or action, including but not limited to transfer, demotion, alienation, interdiction and or her removal howsoever from her office as Principal of Kerugoya Girls High School based on a purported letter of complaint dated 25<sup>th</sup> May 2016 pending the hearing and determination of this suit.***

***4. That in alternative to (a) and (b) above and strictly without prejudice to prayers (a) and (b) above this Court may be pleased to grant an injunction restraining the Respondent from effecting and or implementing any decision whatever the Respondent has or intends to make against the Claimant on the basis of a purported letter of complaint dated 27<sup>th</sup> May 2016 and subsequent proceedings pending the hearing and determination of this application and or suit.***

**5. That a declaration do issue that the purported parents claim dated 27<sup>th</sup> May 2016 and ensuing proceedings and or decisions violate the Claimants' rights under Article 47 of the Constitution and violates Rules of Natural Justice.**

**6. That an order of Certiorari do issue removing to the High Court for purposes of quashing and to quash the letter of complaint dated 27<sup>th</sup> May 2016 and all subsequent proceedings and or decisions in their entirety.**

**7. That costs of this application and interest thereon be provided for.**

2. That this Application is supported by the annexed Supporting Affidavit of Rose W. Kiragu, grounds to be adduced during the hearing of this Application and the following grounds:

**1. By a letter dated 26<sup>th</sup> July 2016 No. KGA/TSC/305658/7 the Respondent has required the Claimant to show cause why disciplinary action should not be taken against her for reasons stated in the said letter.**

**2. That the Claimant was not served with a copy of the allegations made against her particularly the purported complaint letter by a 'parent' dated 27/5/2016.**

**3. The panelists at the Disciplinary proceedings were actively and or passively involved in the soliciting, drawing, framing and or creation of the purported Complaint thereby lacking independence to sit in and or presiding over the Disciplinary Proceedings.**

**4. The Claimant who attended the disciplinary proceedings on the 19<sup>th</sup> July 2016 was not allowed to peruse the alleged letter of complaint dated 27<sup>th</sup> May 2016 before or during the disciplinary proceedings thereby denied an ample opportunity to prepare for the case contrary to article 47 and 50 of the constitution.**

**5. The Respondent was denied permission and or facilities to record anything that transpired in the said proceedings on 19<sup>th</sup> July 2016.**

**6. The Claimant has not been furnished with a copy of the Minutes/Proceedings of the said Tribunal yet she was the subject.**

**7. The Purported Complaint was unlawfully withheld from the Claimant with the result that she was ambushed into proceedings.**

**8. The purported complaint dated 27<sup>th</sup> May 2016 happens to be by the Respondent, its agents or servants which Respondents have been prosecutors and judges in the same cause.**

**9. The purported complaint is a fabrication by agents, servants and or employees of the Respondent to unfairly jeopardize and or ruin the Claimant's hitherto distinguished career as teacher and principal of various public schools including Kerugoya Girls High School.**

**10. Parents have a Parent Teacher Association to deal with and or front their complaints, if any, and the Respondent's is only prematurely seized of this matter.**

**11. The Respondent, its agents and or servants have a fixated attitude and the matters complained of herein are a sham and mere formality as the case before the Respondent is already fate accompli**

**12. The Respondent is entitled to protection of this Honourable Court against the Respondent abuse of office to ruin the Claimant well-earned career and reputation as teacher and principal.**

**13. The Respondent's agents, servants and or employees seized of the instant matter have vested interest rendering them not independent to handle or determine the matter.**

**14. Unless the orders sought are granted the Claimant's distinguished career and position as principal of a competitive public school will suffer irreparably.**

**15. The irreparable injury that will include loss of confidence in the Claimant is not capable of compensation by way of damages.**

**16. The balance of convenience tilts entirely in favour of the orders sought being granted.**

**17. The Respondent will suffer no prejudice whatsoever.**

**18. The interest of justice will best be served if the orders sought are granted.**

3. The Respondents have filed grounds of opposition dated 24<sup>th</sup> of August 2016 via their Advocate Zipporah Mambo.

4. They oppose the Notice of Motion and pray that the same be dismissed with costs on the following grounds and others to be adduced at the hearing:

**1. The Application has no merit, is misconceived, bad in law, fatally defective and ought to be struck out.**

**2. That the Application raises no reasonable causes of action against the Respondent.**

**3. That the Application has been brought to Court prematurely based on the Claimant's misapprehension of facts.**

**4. That the Applicant has failed to explore alternative dispute resolution mechanisms before invoking the powers of Honourable Court.**

5. The Claimant has filed an Amended Supporting Affidavit where she avers that she was duly employed on the 19<sup>th</sup> February 1990 by the Respondent herein with a Service Number 305658 as an Assistant Teacher Job Group J and rose through the profession to her present position as Principal, Kerugoya High School.

6. She avers that she was given a show cause letter why disciplinary action should not be taken against her. She attended the Disciplinary Tribunal at the Teachers Service Commission – Kirinyaga County Office- Kerugoya on the 19/7/2016.

7. She avers that her Constitutional and Labour Rights to Fair Administrative Action and Fair Hearing was grossly violated at the proceedings by the Respondent and or its agents, employees and or servants thereby rendering the entire exercise mala fides, a sham, an abuse of the due process and or mere formality as apparently the Respondent had made up its mind on the matter.

8. She avers that she was not served with a copy of the allegations made against her, the panelist at the Disciplinary Proceedings were actively and or passively involved in the soliciting, drawing, framing and or creation of the purported compliant, thereby lacking independence to sit in and or presiding over the Disciplinary Proceedings.

9. She avers that she was not allowed to record anything that transpired in the proceedings, and she has not been furnished with a copy of the Minutes/Proceedings of the said Tribunal yet she was the subject.

10. She avers that the genesis of the complaint against her was resolutions made after a Board of Governors approved AGM where it was resolved that parents should keenly follow their daughters'

progress, meet their fee obligation on time, discipline them at home and take responsibility and attend school functions particularly academic clinics. It was specifically resolved that time should be kept when attending these clinics and that late comers would not be served.

11. She avers that she later came to learn that one parent who is one of the complainants came late for the Form 2 clinics and did not see any teacher but visited his daughter. This parent also caused his daughter to leave the school contrary to the school regulations to go for the parent.

12. She avers that a complaint was later made that she had locked out parents from the school compound and denying them an opportunity to attend a Form 2 academic clinic, failing to communicate to those parents who were locked out, sending out students of parents who were locked out, and failing to comply with instructions from her superior.

13. She avers that the lock out was in keeping with the decision of the board, and that the said complaint is phony and is but a guise to portray the Claimant in bad light. There have been investigators sent to the school who obtained statement by force from the teachers and some students. No complaint was ever lodged with her or the school by any parent regarding the academic clinic program and the complaint only came to her attention via the show cause letter.

14. She avers that the Board of Management and Parent Teacher Association have expressed their exceptions on the manner the Respondent is handling the Claimant and school affairs, further, that the complaint has not been notified to the PTA the organ mandated to deal with parents complaints before such complaints are escalated. She also states that in a joint meeting of the Board of Management and the Parent Teacher Association, the duly signed minutes stated:

***“The PTA Chairman explained that majority of parents were satisfied with the running of the school and that there is no problem between the PTA and the Principal...”***

15. She avers that she has fully cooperated with the Respondent in providing every expiation and that Article 47 of the constitution entitles her to fair administrative action and fair hearing before an independent body which she has been denied.

16. She avers that in the instant matter the process is flawed and or unfair and this Court has powers to terminate it.

17. The parties proceeded by way of oral submissions in Court.

18. The Applicant relied on their pleadings and added that Teachers Service Commission (TSC) cannot initiate a disciplinary proceeding from their own letter. The procedure that ought to be followed in the launching of investigations after a complaint has been initiated. The show cause letter in this instant came after the disciplinary proceedings and the purpose of the show cause letter then is questioned.

19. They submit that the Respondent has yet to file a replying affidavit.

20. They submit that no student was sent home, and in this matter rules were set out on how things should be done and the said rules were not followed. They pray that their application be allowed.

21. The Respondents relied on their grounds of opposition. They submit that the matter has been brought to Court prematurely; the complaint while written on Teachers Service Commission (TSC) paper has been signed by the complaining parents. Teachers Service Commission (TSC) was not satisfied with her response hence the show cause letter which she is yet to respond to.

22. They submit that the order granted by the Court on the 15<sup>th</sup> of August 2016 has taken away their right of the employer to discipline the employee and that the Claimant did not seek clarification from the Respondent as to the procedure to follow after the disciplinary process.

23. Having considered the submissions by both parties, I will from the onset indicate that Courts should not interfere with the employer's right to internally discipline an employee unless the process is lawfully and out rightly flawed and this interference will be in this case limited to correcting wrong Procedural Internal Mechanisms.

24. The Courts have held so in many instances. See **Dr. George Wekesa vs. Multimedia University of Kenya (Case No. 1682/2016)**; **Prof. Gitile Naituli vs. University Council, Multimedia University of Kenya (Case No. 1200/12)** and **Case No. 2244/2014 – Nixon Bigo vs. The Alliance for a Green Revolution in Africa**; where the Learned Js have held the same position on Court's interference with internal disciplinary issues.

25. In case of the Claimant Applicant herein, she has contended that though she is being subjected to a disciplinary process, the same is flawed as she has not been supplied with any written complaints made against her. She indicates that the disciplinary panelist was passively and actively involved in soliciting, drawing and framing the complaints against her dated 27/5/2016.

26. She also avers that she was not allowed to peruse the alleged letter of complaint during and before the disciplinary hearing nor given ample time to prepare for her cause. She says even copies of minutes and proceedings of the said tribunal were not supplied to her.

27. I have considered the complaints raised by the Applicant and response by Respondent. The Respondent only state that the application is filed prematurely. I however note the complaint by the Applicant that she was not given any complaints raised against her.

28. However I note that a letter dated 27.7.2016 is such letter detailing the allegations against her but the letter comes after another dated 17.6.2016 summoning her to the County Disciplinary Committee and another of 6.6.2016. Indeed the Applicant replied to these complaints in her letter of 10.6.2016 and therefore her averments that she was not informed of the complaints against her is not true.

29. The Applicant may have been denied other documents which she does not list but she has not pointed out any of the Respondent's disciplinary procedures that have been flouted.

30. I find that the application as filed is premature and this Court would not like to interfere with the ongoing disciplinary process at this stage. The orders also sought by Applicant are final and they can only be determined after the final hearing of this case.

The costs will be in the cause.

Read in open Court this 6<sup>th</sup> day of October, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Miss Kalwayi holding brief for Maibo for Respondent – Present

No application for Claimant