



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 167 OF 2014

BENSON M. NYAMAI CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION RESPONDENT

Mr. K.M. Mwangi for the Claimant

Mr. Anyuor for the Respondent

JUDGMENT

1. This suit was commenced by a Memorandum of Claim dated 30th January, 2014 seeking;
 1. a declaration that the termination of the Claimant's employment was unlawful and therefore invalid
 2. an order of compensation for the period the Claimant has not received his salary
 3. compensation for violation of the Claimant's constitutional rights by the Respondent
 4. exemplary and aggravated damages from the negligent and flagrant violation of the Constitution and the Claimants and his family's Human Rights and Fundamental Freedoms
 5. an order reinstating the Claimant to his position of an Assistant Teacher in Muani Primary School in Mukaa District.

2. Undisputed Facts

On 30th August, 2012, the Claimant wrote a letter of resignation addressed to the Secretary, Teachers Service Commission with immediate effect to participate in the forthcoming general elections.

3. In the letter, the Claimant requested the Secretary to confirm acceptance or refusal of the intended resignation.

4. On 12th November, 2012, the Claimant wrote a letter of reminder to the Secretary, TSC because there was no response to the initial letter.

5. On 23rd January, 2013, the Secretary TSC, wrote a letter of acceptance with effect from 1st January, 2013 of the resignation conveyed in the letter dated 30th August, 2012.
6. The general elections took place on 4th March, 2013 and the Claimant having contested failed to get the targeted position of member of Parliament.
7. On 15th April, 2013, the Claimant wrote a letter of request for reinstatement as an Assistant Teacher stating that;
 1. he had served TSC for 29 years from 1984 to 1st January, 2013
 2. he was the breadwinner of his family of three (3) children and a wife
 3. there was no possibility of him getting another job elsewhere
 4. he was a KNUT official and a committed teacher
 5. his parents were old and sickly and depended on him
 6. KNUT recommended his reinstatement
8. TSC did not respond to the Claimant's letter and on 25th July, 2013, the Claimant wrote a reminder to TSC. The Claimant in the letter, expressed his frustration in the failure by TSC to reinstate him quickly.
9. On 31st October, 2013, the Claimant wrote a 2nd reminder to TSC to consider reinstating him to his teaching job.
10. The Claimant prays for the relief sought. He supported the claim with his oral testimony stating that TSC had not timeously accepted his resignation and that had costed him valuable campaign time hence the failure to capture the parliamentary seat.

11. **Defence**

The Respondent filed a Statement of Defence dated 5th March, 2014 in which it prayed that the claim be dismissed for being frivolous, vexatious and an abuse of the court's process.

12. The Respondent acknowledged receipt of the letter of resignation dated 30th August, 2013 on 20th December, 2013. The resignation of the Claimant was with immediate effect.

13. On 4th January, 2013, the Claimant's name was removed from the Respondent's payroll on grounds of resignation.

14. On 7th January, 2013, Respondent wrote to the Head Teacher Muani Primary School asking for confirmation that the Claimant had stopped teaching.

15. On 8th January, 2013, the Respondent received a response from the Headteacher with a Casualty Return dated 7th January, 2013, in which the Headteacher confirmed that the Claimant stopped teaching on 31st December, 2012 on grounds of resignation.

16. On 23rd January, 2013 the Respondent wrote to the Claimant informing him that his resignation had been accepted with effect from 1st January, 2013. These letters are annexed to the Statement of Response.

17. The letter of resignation was processed within 33 days inspite of the large number of teachers it deals with, submitted the Respondent.

18. The Respondent had in demonstration of good faith waived the requirement under Regulation 24(2) of the Code of Regulations for Teachers as read with Clause 4 of the letter of appointment requiring the Claimant to give the Respondent three (3) months' Notice in writing or pay the Respondent one month salary in lieu of Notice before resigning from service. Appendix 8 communicated the waiver.

19. The said waiver was communicated on 14th August, 2012 but the Claimant had submitted the resignation letter much later. The Respondent submitted that the delay, if at all in processing the resignation was of his own making and should not blame the Respondent at all.

20. The Respondent submits further that it discharged its administrative mandate expeditiously, fairly, lawfully and procedurally within the meaning of Article 47 of the Constitution.

21. The Respondent denied all the allegations of negligence and or violation of rights and freedoms made by the Claimant, or at all.

22. In any event, the Claimant voluntary stopped teaching on 31st December, 2012 well before he had received the letter of acknowledgment and acceptance by the Respondent.

23. The Respondent prays that the suit lacks any basis and same be dismissed with costs.

24. **Determination**

The court has carefully evaluated the pleadings by the parties, the documentary and oral evidence adduced in court and has come to the following conclusion of fact and law;

1. the Claimant had voluntarily resigned from his employment as a teacher to contest a parliamentary seat
2. the Claimant had stopped working with effect from 31st December, 2012
3. the Respondent processed the Claimant's resignation in an expeditious manner inspite of the many clients it deals with on a daily basis
4. the Respondent had no hand at all in the failure by the Claimant to get the parliamentary seat
5. the suit as filed does not disclose any negligence on the part of the Respondent
6. the suit does not disclose any violation of the human rights and fundamental freedoms of the Claimant by the Respondent
7. the Claimant has therefore not established on a balance of probability that he is entitled to reinstatement and/or compensation since he voluntarily resigned from his employment
8. the Claimant is equally not entitled to any damages whatsoever
9. the Claimant had prior to the resignation served the Respondent for a period of 29 years and had a good record of service. The Respondent should consider re-employing him subject to the applicable laws and regulations pertaining to recruitment and retention of teachers

10. the entire suit is dismissed accordingly.

11. given the financial predicament of the Claimant having voluntarily lost his job looking for greener pastures, and the heavy burden arising from many dependents looking up to him for a source of living, the court will not make an order as to costs.

Dated and Delivered at Nairobi this 13th day of March, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE