



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 129 OF 2011**

**MAXWELL D. OBAGO.....CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION .....1<sup>ST</sup> RESPONDENT**

**EUNICE A. OTIENO .....2<sup>ND</sup> RESPONDENT**

Mr. Oriaro for Claimant

Mr. Kaluai for 1<sup>st</sup> & 2<sup>nd</sup> Respondents

**JUDGMENT**

1. The Claimant commenced this suit vide a Memorandum of Claim dated 1<sup>st</sup> February, 2011 on 12<sup>th</sup> February, 2011. The Claimant was an employee of the 1<sup>st</sup> Respondent (TSC) in Job Grade P1 (TSC No. 192508) teacher, working at Okana Primary School.
2. It is not in dispute that by a letter dated 8<sup>th</sup> July, 2005, the Claimant expressed his wish to resign from the service of the TSC.
3. The letter was given to the Head teacher, Mrs. Eunice A. Otieno, the 2<sup>nd</sup> Respondent.
4. The Claimant avers that, before the 2<sup>nd</sup> Respondent had forwarded the letter of resignation to TSC, the Claimant wrote a letter dated 11<sup>th</sup> July, 2005, withdrawing his intention to resign.
5. That the Claimant discussed the matter with the 2<sup>nd</sup> Respondent in the presence of a teacher colleague and the 2<sup>nd</sup> Respondent assured the Claimant that she would not forward the resignation letter to TSC and that she would destroy the letter.
6. On 7<sup>th</sup> September, 2010, the Claimant was shocked when he received a Pay Change Advice (PCA) stopping his salary on the premise that he had tendered his resignation.
7. It is the Claimant's case that he had rescinded the decision to resign from TSC service but the 2<sup>nd</sup> Respondent had maliciously forwarded the resignation letter to TSC inspite of her verbal assurance to destroy the same.

8. The Claimant did write a letter withdrawing the letter of resignation and trusted that the 2<sup>nd</sup> Respondent would not forward the letter of resignation he had written earlier.

9. The Claimant produced documentary evidence and gave oral testimony under oath detailing his effort to get the purported resignation reversed and for the reinstatement of his salary in vain.

10. He also testified that his efforts to continue teaching at Okana Primary School was frustrated by the 2<sup>nd</sup> Respondent who perpetuated the lie that the Claimant had resigned and that he had stopped working voluntarily.

11. He prays for Judgment against the TSC and the 2<sup>nd</sup> Respondent jointly and severally for;

- a. declaration that 1<sup>st</sup> Respondent's letter dated 26<sup>th</sup> April, 2007 accepting Claimant's resignation is invalid because the Claimant had withdrawn the resignation through a letter dated 11<sup>th</sup> July, 2005.
- b. reinstatement into service and payment of salary withheld and benefits with effect from 7<sup>th</sup> September, 2005.
- c. general damages for disappointment, emotional distress, deceit and breach of statutory or contractual duty.

12. A copy of the letter of resignation dated 8<sup>th</sup> July, 2005 marked 'forward for action' by the 2<sup>nd</sup> Respondent on 1<sup>st</sup> August, 2005 and bearing the signature and stamp of the school for the same date was produced and marked 'annex 2' to the Application.

13. The letter has a stamp indicating that it was received by the TSC on 11<sup>th</sup> August, 2005. The letter also bears an instruction by a TSC official dated 12<sup>th</sup> August, 2005, instructing the salary of the Claimant to be stopped on account of his resignation.

14. The Claimant also produced the letter dated 11<sup>th</sup> July, 2005 through which he withdrew the letter of resignation dated 8<sup>th</sup> July, 2005. He wrote,

*"I have withdrawn my letter of 8<sup>th</sup> July, 2005 which I wrote under stresses caused by the school administration."*

15. The letter of withdrawal does not bear any acknowledgement of receipt on the face of it. The Claimant explained this was the case because he had submitted it to the 2<sup>nd</sup> Respondent before she had forwarded the letter of resignation which she had promised to destroy and not to forward the same to the TSC. This 2<sup>nd</sup> letter was therefore not officially received and stamped as is the case with the letter of resignation.

16. The Claimant further produced a letter dated 7<sup>th</sup> September, 2005 written to TSC through the District Education Officer (DEO) and the 2<sup>nd</sup> Respondent with regard to the stoppage of his salary with effect from 12<sup>th</sup> August, 2005.

17. He wrote;

*"To the best of my knowledge and belief the letter of resignation which was written under stresses and depression was not presented anywhere because we later had discussions and consultations with the Head teacher who promised to destroy them."*

The letter is marked annex 8.

17. On 28<sup>th</sup> September, 2005, TSC wrote to the 2<sup>nd</sup> Respondent seeking clarification on the resignation of the Claimant upon receipt of the letter dated 7<sup>th</sup> September, 2005 to the effect that

the resignation was withdrawn.

18. The 2<sup>nd</sup> Respondent replied to TSC on 25<sup>th</sup> October, 2005 and stated ;

*“Mr Obago tendered his resignation through his letter dated 8<sup>th</sup> July, 2005. On 1<sup>st</sup> August, 2005, I forwarded the letter. On 8<sup>th</sup> August, 2005 I did not discuss the letter dated 7<sup>th</sup> September, 2005 but forwarded it through my office. He has not been on duty since 7<sup>th</sup> September, 2005. Mr. Obago makes technical appearance in school. In September, 2005, he appeared on the following dates; 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 12<sup>th</sup>. In October 2005 on 6<sup>th</sup> and 9<sup>th</sup>.”*

19. The 2<sup>nd</sup> Respondent wrote a further letter dated 7<sup>th</sup> November, 2005 to TSC informing them that the Claimant reported to school on 1<sup>st</sup> November, 2005 but did not return again.

20. On 23<sup>rd</sup> November, 2005, the Claimant wrote to TSC, alleging that on 7<sup>th</sup> September, 2005, the 2<sup>nd</sup> Respondent sent him away from a staff meeting attended by the Assistant Education Officer and an Officer from DEO's office, Kisumu. That the 2<sup>nd</sup> Respondent refused the Claimant to teach but asked him to occasionally report to the school, awaiting the decision to assign him other duties.

21. On 16<sup>th</sup> December, 2005, TSC asked the District Education Officer to investigate the matter of the Claimant's resignation and advise TSC on the way forward.

22. On 26<sup>th</sup> January, 2006, the District Education Officer responded to the letter of 16<sup>th</sup> December, 2005 with the following findings;

1. the Claimant had resigned from duty on 8<sup>th</sup> July, 2005
2. he reportedly revoked his resignation on 7<sup>th</sup> September, 2005, two months later. The DEO's office was not aware of this communication until the 4<sup>th</sup> January, 2006 through the letter of 16<sup>th</sup> December, 2005
3. that the 2<sup>nd</sup> Respondent removed the Claimant from the timetable on 7<sup>th</sup> September, 2005 owing to his resignation
4. the Claimant made appearances at the school in September, 2005 on 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 12<sup>th</sup>, October, 2005 on 6<sup>th</sup>, 19<sup>th</sup> and in November on 1<sup>st</sup> and 11<sup>th</sup>.

23. That the Claimant had taken the school timetable on 10<sup>th</sup> January, 2006 from the staffroom without permission but was persuaded by the teachers to return it.

24. A further letter was written by the Kisumu DEO dated 6<sup>th</sup> February, 2006, clarifying the position further because the Claimant had insisted that he had withdrawn his letter of resignation.

25. The Education Officer castigated the Claimant for writing directly to the Secretary of TSC and copying to his office. He described the Claimant as a teacher of uncouth character, a confrontational, combatant of very poor school attendance and a liability to the teaching service.

26. The DEO noted that the rescission of the resignation was contentious but should TSC choose to retain the Claimant's services, the DEO recommended he should not be posted in the District, but tried elsewhere.

27. On 6<sup>th</sup> March, 2006, the Claimant himself wrote to the TSC asking that he be transferred to another school due to the mistreatment he was receiving from the 2<sup>nd</sup> Respondent at Okana Primary School.

28. TSC on 5<sup>th</sup> May, 2006, wrote again to the 2<sup>nd</sup> Respondent asking to be informed when the Claimant stopped teaching. The Claimant on 5<sup>th</sup> May, 2006, also wrote to TSC reiterating the withdrawal of his letter of resignation on 11<sup>th</sup> July, 2005 and that there was no intention to have the same forwarded to TSC but the 2<sup>nd</sup> Respondent had deceitfully forwarded the same. The letter was forwarded through the District Education Office, Kisumu.

29. The TSC wrote to the 2<sup>nd</sup> Respondent on 18<sup>th</sup> May, 2006, asking her to confirm if she had responded to the letter by TSC dated 3<sup>rd</sup> May, 2006.

30. The 2<sup>nd</sup> Respondent wrote 'annex 33' dated 7<sup>th</sup> June, 2006 to TSC confirming that the Claimant resigned with effect from 7<sup>th</sup> September, 2005.

31. By a letter dated 25<sup>th</sup> June, 2006, Hon. Rev Ken O. Nyagundi, M.P for Kisumu Town West Constituency wrote to TSC, interceding on behalf of the Claimant to persuade TSC to reinstate him to his work and payroll.

32. The Claimant thereafter wrote numerous reminders to TSC.

33. The District Education Officer on 26<sup>th</sup> October, 2006, wrote to TSC enclosing the Claimant's resignation letter, letter rescinding his resignation, Head teacher's report and DEO's report.

34. On 26<sup>th</sup> April, 2007 the Secretary, TSC, Mrs. Mary N. Njogu, wrote to the Claimant a letter accepting his resignation with effect from 7<sup>th</sup> September, 2005 subject to payment of Ksh.11,120.00 being one month's salary. The letter is 'annex 51' to the Memorandum of Claim.

## **Defence**

35. TSC and the Head teacher made a joint Statement of Defence filed on 17<sup>th</sup> February, 2011 confirming the sequence of events outlined hereinabove.

36. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents maintain that the Claimant tendered his resignation by a letter dated 8<sup>th</sup> July, 2005 the resignation to take effect on 7<sup>th</sup> September, 2005.

37. That the purported withdrawal of resignation was without basis. That the claimant had subsequently stopped teaching.

38. That TSC accepted the resignation by the Claimant on 26<sup>th</sup> April, 2007.

39. That the 1<sup>st</sup> Respondent's acceptance of resignation was lawful and in terms of a fair procedure.

40. This position was supported by the oral testimony of Eunice Atieno, the 2<sup>nd</sup> Respondent. She denied ever receiving a letter withdrawing the letter of resignation and confirmed that she had immediately removed the Claimant from the teaching time table upon his tendering resignation letter. The letter is 'annex 51' to the Memorandum of Claim.

## **Determination**

41. The bone of contention in this matter is whether or not the Claimant had withdrawn the letter of resignation dated 8<sup>th</sup> July, 2005, by a letter of withdrawal dated 11<sup>th</sup> July, 2005 and whether the 2<sup>nd</sup> Respondent had undertaken not to forward the letter of resignation to the TSC.

42. This is a point of fact which was hotly contested by the parties.

43. The totality of evidence indicates that the Claimant had no intention to resign from the teaching service and had informed his immediate supervisor the 2<sup>nd</sup> Respondent as soon as he had changed his mind about the letter of resignation.

44. When the employer (TSC) became aware of the dispute regarding the resignation, they made extensive inquiry and the Claimant consistently indicated his intention not to resign from the service and that the letter he had initially written was deceitfully forwarded to the TSC by the 2<sup>nd</sup> Respondent inspite of her assurance not to.

45. The demeanor of the Claimant demonstrated by his persistent effort to be reinstated to the timetable and to the payroll is indicative of a person who had not voluntarily resigned from his service.

46. The Claimant explained the frustration that had led him to temporary depression and the momental wish to resign which he had immediately rescinded as soon as he had regained his senses.

47. On the contrary, the conduct by the 2<sup>nd</sup> Respondent demonstrated through her letters and oral testimony in court is of a person who was very keen to get rid of the Claimant from her school.

48. The Claimant had intimated his intention not to resign from the teaching service but she evidently frustrated his effort to be reinstated to the teaching timetable and to the payroll.

49. The letters by the 2<sup>nd</sup> Respondent did not reflect the Claimant's wish to continue teaching and not to resign from employment.

50. The 1<sup>st</sup> Respondent had also, through the extensive inquiry, established the clear wish by the Claimant not to resign from teaching but purported to hold him to a letter which he clearly told them and the court had no intention of delivering to his employer, the TSC.

51. It is the court's finding that the 2<sup>nd</sup> Respondent conveyed the letter of purported resignation to TSC inspite of express instructions by the Claimant not to forward it. The court also finds that the 2<sup>nd</sup> Respondent had made a commitment to the Claimant that she would not convey the letter but reneged on this promise subsequently.

52. The Claimant was not accused of any misconduct by TSC and no adverse record while in his long teaching service was presented to court by TSC.

53. The few incidents of confrontation at the school, which resulted from the determination by the Claimant to resume teaching matched by the determination by the 2<sup>nd</sup> Respondent not to allow the Claimant to resume teaching were not the subject of consideration by the employer (TSC) for purposes of this case.

54. This is a clear case of a Teacher being wrongfully held to an alleged resignation inspite of the very clear manifestation by the Claimant that he had as a matter of fact not resigned and had no intention to do so.

55. It is the court's considered view that, it was wrongful, unlawful and unfair for TSC to purport to accept the resignation by the Claimant, two(2) years from the date of purported letter of resignation in spite of consistent and credible protestation by the Claimant to the contrary.

56. It is the court's finding that TSC with the help of the Head teacher, delayed in resolving the

dispute and erroneously denied the Claimant the opportunity to resume teaching upon rescission of the letter of resignation.

57. At the time the Claimant was removed from the payroll, he had long withdrawn the purported resignation and had tried to resume teaching but this effort was thwarted by the 2<sup>nd</sup> Respondent through deliberate misinformation and at one point physical restraint.

58. The court finds the Claimant's case has merit and finds in his favour as prayed as against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally and makes the following orders;

1. declares that 1<sup>st</sup> Respondent's letter dated 26<sup>th</sup> April, 2007, accepting Claimant's resignation is invalid because the Claimant had withdrawn the resignation on 11<sup>th</sup> July, 2005
2. directs the 1<sup>st</sup> Respondent to compute within 30 days the Claimant's salary and benefits from the date the payment of salary and benefits was stopped up to the date of the erroneous acceptance of resignation by the 1<sup>st</sup> Respondent on 26<sup>th</sup> April, 2007
3. directs the 1<sup>st</sup> Respondent to re-engage the Claimant to a teaching position without loss of status, salary level and benefits with effect from the date of this Judgment
4. the Respondents to pay the costs of the suit.

**Dated and Delivered at Nairobi this 17<sup>th</sup> day of April, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**