



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 327 OF 2014**

**JOSEPH GIDRAF WANJALA ..... CLAIMANT**

**V**

**DIANE HAMRICK ..... 1<sup>ST</sup> RESPONDENT**

**UNITED METHODIST MISSION SCHOOLS (NAKURU).....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Joseph Gidraf Wanjala (Claimant) was employed by United Methodist Mission Schools-Nakuru (2<sup>nd</sup> Respondent) as Principal, through a letter of appointment dated 10 January 2013.
2. On 24 July 2014, he commenced legal proceedings against Diane Hamrick (1<sup>st</sup> Respondent) and the 2<sup>nd</sup> Respondent alleging unfair termination of employment.
3. The Memorandum of Claim was accompanied with a Motion under certificate of urgency seeking various injunctive reliefs. Ongaya J who heard the motion granted an order directing the 2<sup>nd</sup> Respondent to convene a meeting to resolve the issue of the Claimant's termination of employment.
4. The Memorandum of Claim and motion were served upon the Respondents and on 28 July 2014, the firm of Waiganjo & Co. Advocates filed a Memorandum of Appearance on behalf of the 2<sup>nd</sup> Respondent.
5. However, the firm of Kiarie, Kabita, Kihunyu & Co. Associates also filed a Memorandum of Appearance on behalf of both Respondents on 30 July 2014.
6. On the same day (30 July 2014), Ongaya J issued further interdict restoring the Claimant to his position as Principal and Manager of the 2<sup>nd</sup> Respondent and allowing the 1<sup>st</sup> Respondent to file a Response to the Memorandum of Claim.
7. The 1<sup>st</sup> Respondent filed another motion on 18 August 2014 seeking stay of execution and/or review of the orders by Ongaya J, and the same was argued and I rendered a ruling on 14 November 2014 dismissing the same. The Court further directed that the Cause be set down for hearing on a priority basis.
8. Immediately after the ruling, Mr. Kabita informed the Court that the firm of Waiganjo & Co. Advocates had no instructions to act for the 2<sup>nd</sup> Respondent.
9. Because the Court thought it was just a normal passing of the baton from one firm of advocates to another, the Court directed the firm of Kiarie, Kabita, Kihunyu & Associates to file a Notice of Change of Advocates.
10. On 26 January 2015, the firm of Kiarie, Kabita, Kihunyu & Associates filed a Notice of Change of Advocates to come on record for the 2<sup>nd</sup> Respondent in place of Waiganjo & Co. Advocates.
11. However, this served as a catalyst for a no holds barred war, in which at times, decorum and courtesy expected of Advocates was thrown out of the window.

12. On 3 February 2015, Mr. Waiganjo appeared in Court and asserted that the Notice of Change of Advocates was irregular, he was still on record for the 2<sup>nd</sup> Respondent and that he wished to file an affidavit to that effect.
13. The Court allowed the respective Advocates the liberty to file any necessary documentation to enable it determine the issue of representation for the 2<sup>nd</sup> Respondent, as between the firms of Waiganjo & Co. Advocates and Kiarie, Kabita, Kihunyu & Associates.
14. The ensuing fight (on the application) was so vicious that even witnesses were called and examined at length.
15. Because of the view the Court has taken of the dispute as to representation of the 2<sup>nd</sup> Respondent, the Court will not delve in any depth as to the versions narrated by the witnesses. That narration only went to display a collateral war over property and assets which is being fought at another forum.
16. It is not the intention of this Court to attempt to help the parties fight that war. That war will only be fought in that other forum and the Court is aware that this war has been fought both before the Environment and Land Court and the Chief Magistrate's Court.
17. The Claimant's appointment letter dated 10 January 2013 was signed by the 1<sup>st</sup> Respondent as the Chairperson of the 2<sup>nd</sup> Respondent.
18. In his Memorandum of Claim, the Claimant contended that the 1<sup>st</sup> Respondent purported to unfairly terminate his employment on 19 July 2014. According to the Claimant, this was not in order because the 1<sup>st</sup> Respondent had been replaced as Chairperson of the 2<sup>nd</sup> Respondent.
19. Mr. Waiganjo took the position that the 2<sup>nd</sup> Respondent was owned and operated by the East Africa United Methodist Church, and that having been instructed by the Church, which owned the 2<sup>nd</sup> Respondent, he was properly on record. According to him, the 1<sup>st</sup> Respondent had been removed as Chairperson of the 2<sup>nd</sup> Respondent and she could not competently give any instructions to an advocate to act on behalf of the 2<sup>nd</sup> Respondent.
20. Mr. Kabita for the 2<sup>nd</sup> Respondent on the other hand took the contention that Mr. Waiganjo had no instructions to act for the 2<sup>nd</sup> Respondent.
21. And his reasons were that the 1<sup>st</sup> Respondent was still registered with the Ministry of Education as the Manager and sponsor of the 2<sup>nd</sup> Respondent, and that the United Methodist Church did not feature anywhere in the application for registration or registration certificate of the 2<sup>nd</sup> Respondent.
22. For purposes of employment and labour disputes, the Court is more concerned with who is an employer.
23. Under section 2 of the Employment Act, 2007, employer has been defined as *means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.*
24. The material placed before Court *prima facie* show that the 1<sup>st</sup> Respondent is registered with the Ministry of Education as the Manager of the 2<sup>nd</sup> Respondent.
25. The Claimant entered into a contract of service with the 2<sup>nd</sup> Respondent. That contract was signed by the 1<sup>st</sup> Respondent as the Chairperson of the 2<sup>nd</sup> Respondent.
26. Records produced before Court indicates that the 1<sup>st</sup> Respondent is still the registered manager of the 2<sup>nd</sup> Respondent.
27. For the purposes of the Employment Act, 2007, the 1<sup>st</sup> Respondent is an employer who is competent of being sued in a cause of action for unfair termination of employment.
28. And until such a time as the registration of the 1<sup>st</sup> Respondent as manager of the 2<sup>nd</sup> Respondent is changed, the 1<sup>st</sup> Respondent is the proper party to instruct an Advocate to represent the 2<sup>nd</sup> Respondent in a complaint of unfair termination of employment.
29. It is not disputed that the firm of Waiganjo & Co. Advocates was instructed by the United Methodist Church which also lays claim to ownership of the 2<sup>nd</sup> Respondent and such properties thereto.

