



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
AT NAIROBI
CAUSE NUMBER 1667 OF 2011
BETWEEN

1. **CLYDE ALIELO KHAYIYA**
2. **DOROTHY DUNGA**
3. **MARY GATHOGO**
4. **PETER GITARI**
5. **FAITH L.KITONYO**
6. **JACINTA KOKI**
7. **SAMUEL LEPARACHAO**
8. **FREDRICK CHITIRA LIKHANGA**
9. **GEORGE MAGERO**
10. **JOTHAM MAGOTSWI**
11. **JERUSA MORAA KEENGWEE**
12. **PATRICK MUCHIRI**
13. **JOSPHAT MUMO**
14. **BARNABAS MUSEMBI MUTUA**
15. **JOHN MUTUA**
16. **KENNEDY MUZEMBI MUGALO**
17. **JULIUS NGECHU MURIUKI**
18. **ROSEMARY I. NGUNE**
19. **MONICA NJERI NJOROGI**
20. **PETER NJOROGI**
21. **GEORGE OMONDI OKUNY**
22. **JOSEPH RONGOMA MWAKESI**
23. **RACHEL THUMU KOMBE**
24. **ROSE NJERI WANDERE**
25. **GABRIEL WANG'ANG'A**
26. **CATHERINE AGESA**
27. **PASCALIAH MWENDE**

28. JOSEPH NGULUKA.....CLAIMANTS

VERSUS

BOARD OF GOVERNORS NGARA GIRLS HIGH SCHOOL.....1STRESPONDENT

ASUMPTA NDUNGE MUNYASYA.....2ND RESPONDENT

RULING

The 28 Claimants filed this Claim way back on 29th September 2011. They seek against the Respondents the following Orders:-

- (i) Review of the terms of service of employment of the Claimants from the year 2003 to the present.
- (ii) Payment of the Claimants' annual salary increments from January 2003 to the present.
- (iii) Payment of the Claimants' Annual Leave Travelling Allowance and Commuter Allowance.
- (iv) Provision of Protective Clothing for the Claimants working under hazardous conditions and two pairs of uniforms annually to all the Claimants.
- (v) Claimants be at liberty to join Trade Union of their choice.
- (vi) Any other Order and/or relief that this Honourable Court may deem just and expedient to grant.

The Respondents filed their Statement of Response through the Attorney-General on 22nd February 2012.

The Claimants' case was heard and closed on 7th February 2013. The Respondents' case has not taken off, delay being attributed to certain actions taken by the Respondents as the hearing was going on, which are perceived by the Claimants to constitute contempt of Court. The Claimants initially filed an application dated 16th December 2011, alleging that the Respondent had declined to obey Orders issued by the Court on 9th November 2011, and 18th November 2011.

The Order of 8th November 2011 was in the following terms:-

1. The Application is certified urgent.
2. That an interim order is granted temporarily restraining the Respondents, their agents, servants and/or any other persons acting on their behalf from harassing, intimidating, threatening to terminate the Applicant's services and/or in any other manner interfering with the Applicants' employment pending the hearing of this Application *inter partes*.
3. The Application be served upon the Respondents.
4. The Respondents to file and serve their Replying Affidavits/Grounds of Opposition within 7 days of service.
5. Mention on 18th November 2011 for further orders.

On 18th November 2011, Advocates for both Parties were present. The Attorney General asked for a space of 30 days, within which to file the Replying Affidavit/Grounds of Opposition to the Application dated 8th November 2011. The Order issued 18th November 2011 reads:-

1. The Respondent to file Response to the Claim and/or Replying Affidavit to the Application within 30 days.
2. The 1st Claimant to report back to duty and continue performing his duties until further orders of this Court.
3. The amount of Kshs.5,000 deducted from the 7th Claimant's salary be refunded to him forthwith.
4. The Respondent to refrain from any action that may be interpreted as victimization of the Claimants, pending the outcome of the proceedings filed herein.

5. Parties to agree on a date for the application dated 8th November 2011.

6. Hearing on 3rd April 2012.

Between 18th November 2011 and the date scheduled for hearing, 3rd April 2012, the Claimants returned to the Court on 9th January 2012 alleging the Respondents had disregarded the orders on record.

On 30th March 2012, the Court ordered hearing of 3rd April 2012 taken out of the hearing list, and the main Claim to be prosecuted on 6th June 2012. The Trial Court was not in session on 6th June 2012. The Industrial Court was undergoing transition under the Constitution of Kenya 2010. The Claimants opened the hearing of their main Claim on 9th October 2012, and as seen elsewhere, closed their case on 7th February 2013.

The Dispute was scheduled for the hearing of the Respondent's case on 18th March 2013.

It was on this date that the Court was informed the Respondents had terminated the services of 5 of the Claimants – Peter Gitari, Faith Kitonyo, Sammy Leparachao, Josphat Mumo, and George Magero.

The Claimants therefore renewed their application for contempt of Court on 25th February 2013. The Court, very unfortunately, was compelled to stay the hearing of the Respondents' case, and enquire into the fresh allegations of contempt of Court.

The School Principal Ms. Asunta Ndunge Munyasia attended Court and gave oral evidence on 13th June 2013, 12th July 2013, 30th July 2013 and 5th December 2013.

State Counsel Ms. Nthiga for the Respondents and Mr. Ashiruma for the Claimants underscored their written submissions in an address made to the Court on 14th February 2014.

Upon hearing the evidence of the School Principal and the Submissions by Learned Counsel for the respective Parties; and upon reading the various Affidavits sworn by the parties the *Court Finds and Orders:-*

1. The Parties and their Advocates understood the Orders issued on 8th November 2011, and 18th November 2011. The main Order was that pending the outcome of the proceedings filed by the Claimants, the Respondents refrain from any action that may be interpreted as victimization of the Claimants. In plain language Parties were to retain the position that prevailed at the date the Orders issued, pending the outcome of the proceedings.

2. Hearing of the Main Claim proceeded on the understanding that the Employer and the Employees would respect the *Status Quo* as reinforced in two Orders above, until hearing and determination of the Claim. The Court went out of its way to hear the Main Claim on an accelerated basis.

3. The Claimants gave evidence in full, and closed their case at the start of the year 2013. There were no major complaints by either party for the better part of the year 2012, that either of them, had fundamentally interfered with the *Status Quo*.

4. It was only when it was the Respondents' turn to state their case, that major complaints of breach, were raised by the Claimants. On 12th November 2012, the School Principal issued 5 of the Claimants warning letters, alleging they have been found guilty of selling edibles around the school.

5. On 11th February 2013, the School Principal wrote to the 5 Claimants, informing them that the School Board of Governors had resolved to terminate their contracts of employment with effect from 25th January 2013.

6. The School Principal in her evidence testified she was aware of the Orders made by the Court. She did not enquire from the Court at any time, if any disciplinary action against any of the Claimants taken during the pendency of the Main Claim, would be in violation of the Orders on record.

7. There have been several letters written by the Claimants' Advocates to the Respondents, requiring that the Respondents accord respect to the judicial process that is underway. The Attorney General requested for 30 days to file the Replying Affidavit on 18th November 2011. On 9th January 2012, Ms. Nthiga requested for more time, and informed the Court the Attorney General had no objection to the extension of the Orders on record. The Orders ceased to be *ex parte* Orders, and Rule 16(7) (b) of the Industrial Court (Procedure) Rules 2010, could no longer be invoked by the Parties in challenging the validity of the Orders. The Orders became Orders issued in the presence of both Parties.

8. There is strong evidence from the record, showing that the School Principal has been prevailing upon the Claimants to withdraw their Claim. The action taken against the 5 Claimants was ostensibly taken on their refusal to withdraw the Claim against the school.

9. The validity of the Orders of the Court cannot be doubted. The Attorney General only filed an application to set aside the Orders on record on 24th October 2013. It is apparent the School Principal and the Board acted in November 2012 and January/February 2013, without consulting the Attorney-General. This resulted in their involvement in contempt of Court. The School should seek the Advice of the Attorney-General before engaging in perilous undertakings.

10. The conduct of the School Principal and her attitude and demeanour throughout the contempt hearing, left the Court with a very strong impression that she has no full appreciation of the sanctity of judicial proceedings.

11. All that remained of the Main Claim was for the Respondents to state their case, and allow the Court an opportunity to make its determination. Instead, the Respondents have opted to engage in contemptuous conduct, which has had the effect of undermining the proceedings, and delaying the resolution of the main issues in dispute. Such conduct is always appalling, especially coming from a Party who has the advantage of representation by a major custodian of Law and Order, in this case this Custodian being the Office of the Attorney General.

12. Against this background the *Court Orders*:-

(a) The Respondents acted in contempt of the Court by terminating the 5 Claimants' contracts of employment before the main dispute is fully heard and determined.

(b) The Respondents shall forthwith reinstate the 5 Claimants to the positions they held immediately before the 25th January 2013.

(c) The Respondents shall pay to the 5 Claimants all their salaries and allowances dating back from 25th January 2013, within 14 days of the delivery of this Ruling.

(d) The Respondents may undertake fresh disciplinary processes against the 5 Claimants, only after the Main Claim is heard in full and determined.

(e) The Respondents are severely warned that should there be no compliance with the Orders given herein, or should there be further violations, custodial sentences shall be imposed against each and every contemnor.

(f) The Parties to schedule the Respondents' case for hearing on a suitable date at the Registry.

Dated and delivered at Nairobi this 28th day of March 2014

James Rika

Judge