



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NYERI**

**CAUSE NO.16 OF 2014**

**PETER NDIRANGU**

**NDIRITU.....CLAIMANT**

**-VERSUS-**

**THE SCHOOL COMMITTEE, [PARTICULAS WITHHELD] PRIMARY  
SCHOOL.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 28<sup>th</sup> November, 2014)

**JUDGMENT**

The claimant was employed by the respondent as a grounds man in January 18, 2001 to July 15, 2013. The claimant left employment on July 16, 2013 on account of the suspension letter dated July 15, 2013. The reason for suspension was that a standard 8 pupil in the respondent's school affirmed in presence of the claimant, the pupil's parents and the school administration that the claimant sexually assaulted the pupil on the morning of Tuesday June 11, 2013 at 5.50am while the pupil was on her way to school. The respondent had met on Tuesday July 9, 2013 and resolved that the claimant be suspended from rendering duties to the school with effect from the date of the letter being 15.07.2013.

In his testimony the claimant stated that on 19.06.2013 the head teacher had summoned him and conveyed a complaint by one of the parents. According to the claimant's evidence, on 24.06.2013 the concerned parent had come to school and reported that her daughter, the pupil in issue, had a romantic love relationship with one of the teachers. On that 24.06.2013 the claimant further testified that the pupil's parent told the claimant at a meeting in the school that the pupil had reported to the parent that the claimant had defiled the pupil on 11.06.2013 by sleeping with the pupil early in the morning of that date and then letting the pupil proceed to school. After receiving the suspension letter of 15.07.2013, the claimant testified that he had not received any further communication from the respondent. At time of termination, the claimant earned Kshs.4, 000.00 per month and he had worked for 12.5 years. He testified that he worked 7 days per week without a rest day and he was paid every year in lieu of taking his 21 days' annual leave. The claimant testified that he considered himself fired because the head teacher had conveyed to him that he would not be paid terminal dues.

The respondent's witnesses included the school committee chairperson one Samuel Wanjohi King'ori (RW1); the respondent's head teacher Francis Kamau Muigai (RW2); and the pupil's mother (RW3).

RW 1 testified that before the suspension decision there had been investigations and the suspension was to pave way for further investigations. He confirmed that police officers were not involved in the investigations. He testified that the claimant had not been fired and had the court case not been filed, the claimant would have been taken back at work. If reinstated, the claimant would be paid all withheld salaries. RW1 admitted that the suspension was indefinite and the respondent did not stipulate the next

steps in the matter.

RW2 testified that there had been rumours that the pupil in issue went out with men and misbehaved after school hours. At the material time, RW2 was the deputy head teacher for the respondent. RW 2 interrogated the girl on 17.06.2013, she started to cry and said the claimant had assaulted and defiled her on the morning of 11.06.2013 on her way to school at about 5.50am. RW2 testified that the girl said she feared to report the incident to her parents because they would have punished her. At the meeting, RW2 testified that the claimant admitted that he knew the girl but denied that he had assaulted and defiled the pupil. RW2 stated that before the meeting of 24.06.2014 the pupil had denied the rumours that she had love affairs and relationships with men after school hours. RW2 further stated that the pupil's parents had never mentioned about the claimant. Thus, RW2 testified that it was possible that the pupil might have had ulterior motive by implicating the claimant. RW 2 confirmed that the case was not investigated by the police. RW2 further testified that the claimant was to be paid throughout the period of suspension.

RW3 testified that at a meeting in the school she asked the pupil to explain the alleged love affairs and the pupil said that the claimant had defiled her on 11.06.2013

After the indefinite suspension the claimant filed the statement of claim on 20.01.2014 through C.M. King'ori Advocates. He prayed for underpayment for 13 years; severance pay for 13 years; unpaid leave for 13 years; overtime worked for 13 years; and 9 holiday days worked per year. The conclusive prayers were for a declaration that the termination of the claimant's employment was unfair; payment of the benefits as enumerated; and costs and interests.

The respondent filed the response to claimant's claim on 12.03.2014 through A.M. Njagi, state counsel, for the Attorney General. The respondent prayed that the claimant's claim is dismissed with costs.

The court has considered the pleadings, the evidence and the submissions. The court's findings on the issues in dispute are as follows:

1. The respondent's evidence shows that the suspension was indefinite and there were no steps for further investigations or conclusion of the disciplinary process. In view of that terminal conduct on the part of the respondent, the court finds that the claimant was entitled to consider himself terminated. The court finds that the alleged defilement as per the respondent's own evidence was not investigated and was not established. The reason for the termination was not established and the court finds that the claimant was constructively and unfairly terminated. The claimant earned Kshs. 4, 000.00 per month and the court awards him 12 months gross salaries for the unfair termination making **Kshs. 48, 000.00**. In making the award the court has considered the claimant's long service and the fact that the claimant did not contribute to his termination in any manner.
2. The claimant did not make submissions on the amount of money to be paid under all other claims and prayers for payment as enumerated. The court finds that the prayers were deemed abandoned or not justified.
3. The court finds that the claimant is entitled to costs of the suit.

In conclusion, judgment is entered for the claimant against the respondent for:

1. **The declaration that the claimant was constructively and unfairly terminated from employment.**
2. **The respondent to pay the claimant Kshs. 48, 000.00 by 1.01.2015 in default interest at court rates to be payable from the date of the judgment till the date of full payment.**
3. **The respondent to pay claimant's costs of the suit.**

**Signed, dated and delivered in court at Nyeri this Friday, 28<sup>th</sup> November, 2014.**

**BYRAM ONGAYA**

**JUDGE**

