

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 130 OF 2019

GEOFFREY IMBAYI..... CLAIMANT

-VS-

TANGAZA UNIVERSITY COLLEGE.....RESPONDENT

JUDGMENT

Introduction

1. By a letter of appointment dated 24th September 2006, the Claimant was employed by the Respondent as a part-time/visiting lecturer. He worked in various positions, culminating with Assistant Director for Technical Affairs in the Institute of Social Communication.
2. In his Memorandum of Claim dated 18th February 2019, the Claimant alleges that his employment was unlawfully terminated. The Respondent denies the Claimants claim by a Memorandum dated 4th April 2019.
3. At the trial, the Claimant testified on his own behalf and the Respondent called Father Lennovie Lusabe.

The Claimant's Case

4. The Claimant states that he was employed by the Respondent on 1st July 2006. He worked until 14th June 2018, when his employment was terminated. At the time of separation, the Claimant earned a monthly salary of Kshs. 162,056.43.

5. On 5th February 2018, the Claimant received a letter from the Deputy Vice-Chancellor-Finance and Administration, Father Caramazza, informing him of structural changes to be implemented in the institution.
6. The Claimant was further notified that his position as Assistant Director for Technical Affairs in the Institute of Social Communication had been rendered redundant. He was therefore advised to apply for new positions, which would be created and advertised.
7. The Claimant applied for the position of Assistant Director and Production Support. He was thereafter invited to sign a new contract but he was dissatisfied with the terms, because the new job entailed more responsibilities but a lower salary.
8. The Claimant asked to meet Father Caramazza, the Deputy Vice-Chancellor to negotiate the terms of engagement. He complains that a meeting held on 20th May 2018 did not offer him an opportunity to negotiate. He claims that Father Caramazza was hostile to him, stating that he had no time and demanding that the Claimant takes the salary offered.
9. The Claimant held another meeting on 8th June 2018, with the Vice-Chancellor, Father Mbugua where he reiterated his concerns. According to the Claimant, Father Mbugua promised to get back to him within a period of three months.
10. On 11th June 2018, the Claimant received a phone call from the Human Resource Department, summoning him to attend a meeting with Father Caramazza. The Claimant claims that Father Caramazza was once again,

hostile to him. The Claimant was subsequently dismissed by letter dated 14th June 2018, on allegations of gross misconduct.

11. The Claimant's case is that his dismissal was wrongful and unfair. He therefore pursues the following remedies:

- a) 1 month's salary in lieu of notice.....Kshs. 162,056,43
- b) Severance pay @ 1 month's salary per year.....1,944,677.16
- c) 12 months' salary in compensation.....1,944,677.16
- d) Leave pay for 21 days.....113,439.50
- e) 12 months' salary for unfair labour practices.....;:1,944,677.16
- f) Damages for loss of earnings until retirement.....25,280,803.08
- g) Certificate of service

The Respondent's Case

12. In its Memorandum dated 4th April 2019, the Respondent states that the Claimant was first employed under an eight-month contract, running from 1st November 2006 to 30th June 2007. The contract was renewed periodically until 30th June 2018.

13. The Respondent avers that due to a planned reorganisation, the Claimant was invited to apply for an alternative position in the Institute of Social Communication.

14. The Claimant applied for the position of Assistant Director and Production Support and was offered a contract, which he did not accept. The Respondent states that the Claimant held two meetings with Father Caramazza, the Deputy Vice-Chancellor-Finance and Administration, to discuss the terms of his new contract. The Respondent avers that at both

meetings, the Claimant accused Father Caramazza of being a '*dictator*' and a '*racist*'. The Respondent considered these utterances as baseless and an act of gross misconduct.

15. On 14th June 2016, the Respondent wrote to the Claimant, withdrawing the new contract, on account of his gross misconduct while discussing the terms of the new contract. The Claimant was notified that as per his obtaining contract, his last working day would be 30th June 2016.

16. The Respondent states that it did not dismiss the Claimant but withdrew his new contract and did not renew his old contract. The Respondent's case is that the Claimant's contract expired on 30th June 2018, upon which he was paid all his terminal dues,

Findings and Determination

17. There are two (2) issues for determination in this case:

- a) Whether the Claimant has made out a case of wrongful dismissal;
- b) Whether the Claimant is entitled to the remedies sought.

Wrongful Dismissal?

18. On 14th June 2018 the Respondent wrote to the Claimant as follows:

"Dear Jeff

REF: INSUBORDINATION

It has been brought to our attention that on two occasions you used abusive language and behaviour to Fr. Joseph Caramazza, the DVC Administration and Finance.

The first instance was at the end of May when you went to discuss about your new contract which has new terms, you stormed out of his office and called him a "dictator". The second occasion was on 11th June 2018 when again you went for a discussion with the DVC regarding the same terms of employment and yet again walked out after calling him a "racist".

Please note that this amounts to gross misconduct. The College therefore regretfully wishes to inform you that we have withdrawn the proposed new contract. Your last working day remains as 30th June 2018.

All matters related to your pension will be referred to ICEA. You will be required to also return all College property in your possession and complete the clearance process with the Human Resource Office as required.

We take this opportunity to thank you for the services rendered and wish you well in your future endeavors.

(signed for)

Fr. Stephen Mbugua

Vice-Chancellor Designate"

19. This letter cites the Claimant for gross misconduct particulars being; alleged abusive language and behaviour towards Fr. Joseph Caramazza, the Respondent's Deputy Vice-Chancellor; Finance and Administration. According to the Respondent; the aforesaid misconduct by the Claimant led to withdrawal of the new contract offered to him.

20. On his part; the Claimant gave a different account of the events leading to the

termination of his employment. He testified that all he did was to seek audience with his employer regarding the terms of employment offered in the proposed new contract; which he termed as inferior to those contained in the retired contract. The Claimant further testified that his concerns were not addressed and he was informed that the terms in the new contract would not be revised.

21. The parties' pleadings and evidence on record are explicit that the Claimant's employment was terminated on the ground of gross misconduct; and the procedure for handling such cases is well known. The benchmark is codified in Section 41 of the Employment Act; which provides as follows:

(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.

22. In his final submissions dated 29th April 2025, the Claimant cited the decision

in *Cooperative Bank of Kenya Limited v Yator* [2021] KECA 95 (KLR) where the Court of Appeal stated the following:

"...even where an employee has committed gross acts of misconduct, which acts warrant summary dismissal, the law requires that before such sanction is undertaken, an employer must ensure procedural fairness to the employee by allowing the employee to give his defence. Where the employer is unable to hear the employee in defence, such must only be in exceptional circumstances which the employer must demonstrate."

23. In *Duncan Mbathi Mulevi v Wanandegge Cooperative Savings & Credit Society Limited* [2018] KEELRC 281 (KLR) it was held that:

"Under section 45(2) of the Employment Act, termination of an employee's contract is unfair if the employer fails to prove that it was grounded on a valid and fair reason(s) and that it was done after following a fair procedure. A valid and fair reason is one that relates to the employee's conduct, capacity and compatibility or based on the

employer's operational requirements. Fair procedure on the other hand is one that accords justice and equity and basically it relates to according the employee a fair hearing before terminating his services."

24. In the present case, the Claimant was given no opportunity to respond to the serious allegations of gross misconduct levelled against him. The said allegations were therefore not proved and the resultant termination was substantively and procedurally unfair.

Remedies

25. Pursuant to the foregoing findings, I award the Claimant twelve (12) months' salary in compensation. In making this award, I have considered the Claimant's long service, the finding that he did not contribute to the termination and his testimony that he has not secured alternative employment.

26. I have further taken into Account the failure to address the Claimant's grievance; regarding, downgrading of his terms of service, as well as denial of an opportunity to defend himself against the allegations of gross misconduct levelled against him.

27. I also award the Claimant one (1) months' salary in lieu of notice.

28. The Respondent did not produce any leave records to counter the claim for leave pay, which therefore succeeds and is allowed.

29. No evidence was led to support the claims for severance pay, unfair labour practices and damages for loss of earnings. These claims therefore fail and are disallowed.

30. There is evidence that the Claimant was issued with a certificate of service and the claim thereon is moot.

31. Finally, I enter judgment in favour of the Claimant as follows:

- a) 12 months' salary in compensation.....Kshs. 1,944,672
- b) 1 month's salary in lieu of notice..... 162,056
- c) Leave pay for 21 days ($162,056/30 * 21$).....113,439
- Total.....2,220,167**

32. This amount is subject to statutory deductions and will attract interest at court rates from the date of judgment until payment in full.

33. The Claimant will have the costs of the case.

34. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025

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JUDGE

Appearance:

Dr. Khaminwa for the Claimant

Mr. Ndegwa for the Respondent