



**REPUBLIC OF KENYA**

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

**CAUSE NO. 689 'B' OF 2014**

*(Before Hon. Justice Mathews N. Nduma)*

**KENYA UNION OF DOMESTIC, HOTELS,**

**EDUCATIONAL INSTITUTIONS AND**

**HOSPITALS (KUDHEIHA) .....CLAIMANT**

**VERSUS**

**BOARD OF MANAGEMENT**

**MATINYANI SECONDARY ..... RESPONDENT**

**JUDGEMENT**

1. The suit is premised on the memorandum of claim filed on 29<sup>th</sup> April, 2014 seeking compensation for unfair loss of employment and terminal benefits to wit –

i. Service pay calculated at 15 days salary for each completed year of service for four (4) years, 15,903.

ii. Two months salary in lieu of notice Kshs.13,392.

**Facts of the Case**

2. The grievant was employed on 1/1/2007 as accounts clerk. At the time of termination he earned Kshs.6,696 per month.

3. The grievant was given a letter of appointment dated 8<sup>th</sup> December, 2006.

4. On 26<sup>th</sup> March 2011, the Respondent convened a full Board of Governors meeting in which performance of the grievant was reviewed in his absence. By a letter dated 16<sup>th</sup> August 2011, the grievant was sent on compulsory leave pending investigations on finances of the school.

5. By a letter dated 29<sup>th</sup> September, 2011 the grievant was suspended from the school with effect from 1<sup>st</sup> October, 2011.

6. The union intervened on behalf of the grievant in vain and the dispute was reported to the minister of labour.

7. The Minister appointed a conciliator by a letter dated 13<sup>th</sup> September, 2012.
8. The matter was not resolved and the conciliator issued a certificate of unresolved dispute.
9. The grievant remained in suspension indefinitely and was not issued a letter of termination. He was not given a notice to show cause nor given a hearing in terms of section 41 of the Employment Act. The claimant seeks compensation for the wrongful and unfair termination of employment and payment of terminal benefits as prayed

### **Response**

10. The Respondent was served with Memorandum of Claim. M. M. Kimuli & co. Advocates entered appearance on behalf of the Respondent on 11<sup>th</sup> July, 2014.
11. The Respondent did not file a statement of defence.

### **Formal Proof**

12. The matter proceeded to formal proof and the claimant testified under oath in support of the particulars of claim.
13. The Claimant proved on a balance of probabilities that his employment was terminated wrongfully and unfairly contrary to sections 41, 43, and 45 of the Employment Act. The Claimant was not given notice nor paid in lieu thereof.
14. The Claimant was not registered with NSSF nor was any contribution made on his behalf. He is entitled to service pay for the four (4) years served.
15. The court grants the Claimant service pay as prayed and notice pay equivalent to one month salary as prayed.
16. The court grants the Claimant compensation in terms of section 49(1), as read with sub-section 49(4). The court has considered the four year service. The Claimant was not paid terminal benefits upon termination. The Claimant was kept in limbo for many months while on suspension and was not called to a hearing nor given opportunity to defend himself. The grievant wished to continue serving the respondent. The grievant suffered loss and damage. The Claimant did not contribute to the termination.
17. The court awarded 12 months compensation to the Claimant in **E & LRC Cause No. 1871 of 2014, Ex corporal Elija Kamolo Peter v Attorney General and 2 others**. He had served for 10 years.
18. The court awarded the Claimant, three months compensation in **E & LRC Cause No.969 of 2013 Dennis Kane v Macaib Technologies Limited**. The Claimant had served for 8 months.
19. The court has also considered the meagre salary the grievant was paid and all the circumstances of this case and awards the grievant, equivalent of ten (10) months salary compensation for wrongful and unfair termination of employment in the sum of Kshs.66,960.
20. Judgment is entered in favour of the grievant as against the Respondent as follows –
  - a. Kshs.66,960 being equivalent of 10 months salary as compensation.
  - b. Kshs.6,696 in lieu of one month notice.
  - c. Kshs.15,903 being service pay for four (4) completed years of service. Total amount Kshs.89,556.

d. The amount in (a) above is payable with interest at court rates from date of judgement till payment in full whereas the award in (b) & (c) is with interest from date of filing suit till payment in full.

e. Respondent to pay costs of the suit.

**Dated and Signed in Kisumu this 1st day of February, 2018**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 16th day of February, 2018**

**Maureen Onyango**

**Judge**

**Appearances**

Mr. Tonge Yoya for Claimant

Mr. Kinoti for Respondent

Anne Njung'e – Court Clerk