



Kenya Union of Domestic, Hotels, Education, Hospitals and Allied Workers v BOM Mary Hill High School (Cause 91 of 2020) [2025] KEELRC 674 (KLR) (26 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 674 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 91 OF 2020
DKN MARETE, J
FEBRUARY 26, 2025**

BETWEEN
KENYA UNION OF DOMESTIC, HOTELS, EDUCATION, HOSPITALS AND ALLIED WORKERS CLAIMANT
AND
THE BOM MARY HILL HIGH SCHOOL RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated 12th February, 2020. It does not disclose any issue in dispute on its face.
2. The matter is not defended, or at all. This is despite all persuasion and service on the Respondent.
3. The Claimant’s case is that he Claimant was employed by the Respondent vide a letter of appointment dated 1st December 1996. This was as a cook and he had earned Kshs.3,700.00 per month.
4. The Claimant in support of his case adduced the following documents as evidence; Letter of summary dismissal dated 21st January, 2015. Union’s letter of request for review of summarily dismissal decision by the Respondent dated 16th February, 2015. Letter by the BOM upholding summary dismissal dated 18th March, 2015. Letter reporting a trade dispute to the minister dated 27th July, 2015. Letter of request for a conciliation dated 3rd May, 2015. Letter of issue of a certificate to proceed to industrial court by conciliation. Letter of invitation to conciliation meeting on 9th September, 2016 dated 19th August, 2016. Partial contract of CBA on clause 31 on service gratuity. Evidence of service to the Respondent scrutinize service.
5. These are part and parcel of the Claimant list of documents enlisted with the claim as follows;

List of Documents

1. Memorandum of Claim



2. The Claimants list of witnesses
3. Claimant's Verifying Affidavit
4. Witness statement of Bernard Kuria Kiboko
5. Claimant's Questionnaire
6. List of Issues
7. Letter of a appointment dated 1st December 1996
8. Pay slip of January 2011
9. Membership receipt
10. Bernard Kura Pay slip
11. Summary dismissal letter dated 21st January, 2015
12. Branch Secretary's letter dated 22nd February 2015
13. Board of management response letter dated 18th March 2015
14. Branch secretary's letter to Secretary General dated 27th July, 2015
15. Secretary General's letter to Cabinet Secretary dated 3rd August, 2015
16. Chief Industrial Relations officer dated 30th September, 2015
17. Conciliators letter 19 August 2016
18. Certificate of disagreement dated 13 September 2016
19. Service gratuity Clause
20. Alternative Dispute Resolution letter dated 24 May, 2018 and 26th June, 2018.
21. Any other document with the leave of the Court

6. The Claimant further case is that he had a blemish free a stint of service and was never issued with a warning letter whatsoever. This was until 21st January, 2015, when he was served with a letter of summary dismissal.
7. The balance of the Claimant's case is narration of the Claimant's union entangles with the minister and search for a conciliation which failed because of the Respondent's non co-operation and reactance to participate.
8. The Claimant's plea to the conciliator was to reconsider and mitigate his summary dismissal and the least reduce this to a normal termination so as to facilitate a payment of terminal dues including service gratuity to him.
9. The matter came to court variously but all this time without the participation of the Respondent. This was despite service and various verbal and telephone persuasion for her attendance.
10. On 5th February, 2025 the matter came for hearing whereas the union submitted that a determination be made on the merit of the claim and the documents filed in court.

The issues in dispute therefore are;



1. Whether the claimant is entitled to the relief sought.
 2. Who bears the costs of this suit
11. The 1st issue for determination is whether the claimant is entitled to the relief sought. The Claimant in support of his case has adduced variously documentary evidence of her claim on behalf of the grievant. She has further demonstrated her futile attempts at conciliation where the minister appointed a conciliator but this refused to work because of the intransigence of the Respondent. Nothing would come out of these proceedings because the Respondent refused to co-operate and attend conciliation meeting. The conciliator was ultimately forced to issue a certificate for the Claimant to pursue the dispute in this court.
 12. The Respondent did not issue a defence to this suit. This as earlier pointed out is despite service. She did not find it necessary to comp up and give her side of story or even her feeling on the same. I therefore find that the Claimant is entitled to the relief sought and hold as such. And this answers the 1st issue for determination.
 13. There being no other salient issue for determination, I hereby move on to sum up the matter to a logical conclusion.
 14. I am therefore inclined to allow the claim and order relief as follows;
 - i. Twenty-one (21) days salary for the month of January, 2015. 21/30xKshs.8,938.00
.....Ksh6,256.00
 - ii. Service gratuity 1/12xKshs.8,938.000x12x18.....Kshs.160,884.00
Total of claimKsh.6,256.00+Kshs.160,884.00..... Kshs.167,140.00
 - iii. Each party shall bear their costs of the claim.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF FEBRUARY 2025.

D. K. Njagi Marete

JUDGE

Appearances:

1. Miss Mwendwa for the Claimant Union.
2. No appearance for the Respondent.

