



Chege v Amboseli Institute of Hospitality & Technology Ltd (Cause 840 of 2016) [2023] KEELRC 208 (KLR) (31 January 2023) (Judgment)

Neutral citation: [2023] KEELRC 208 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 840 OF 2016
J RIKA, J
JANUARY 31, 2023

BETWEEN

DAVID GITHENYA CHEGE CLAIMANT

AND

AMBOSELI INSTITUTE OF HOSPITALITY & TECHNOLOGY LIMITED RESPONDENT

JUDGMENT

1. This claim was heard without the participation of the respondent.
2. In a ruling made on April 28, 2022, the court found that the respondent had failed to participate in the hearing of the claim twice, and that it was unhelpful to the administration of justice, to have the kind-of-back and forth, that the respondent had imposed on the proceedings. A second application to set aside *ex parte* proceedings was therefore declined, and parties directed to file their closing submissions, with the matter slated for mention on June 17, 2022, when a date for judgment would be granted.
3. The claimant filed his statement of claim on May 12, 2016. He gave evidence and rested the claim on July 8, 2021, in the absence of the respondent. His evidence is that he was employed by the respondent on January 14, 2011 as a tutor. He was later promoted to the position of Sports Administrator. He was contracted to work Monday to Friday, but was compelled to work on Saturdays. He was a tutor, and also coordinated events. He was not compensated for the extraneous work. He was earning a basic monthly salary of Kshs 27,000 as of the date of termination, March 26, 2015. He worked for 4 years and 2 months.
4. He had been asked by the respondent to upgrade his academic qualification from diploma to degree. He asked for time to secure finances to comply with the instructions. He went for annual leave. While on annual leave, on March 23, 2015, he was called by the respondent and advised that his services were no longer needed. He was issued certificate of service on April 16, 2015.



5. He was not heard. He was not availed valid reason to justify termination. Termination was not in accordance with sections 41, 43 and 45 of the *Employment Act*.
6. The claimant seeks the following orders: -
 - a. Declaration that termination was unfair and unlawful.
 - b. A month's salary in lieu of notice, at Kshs 27,000.
 - c. March 2015 salary at Kshs 27,000.
 - d. Annual leave accrued for 4 years at Kshs 37,800.
 - e. Service gratuity at Kshs 54,000.
 - f. Saturdays worked at Kshs 398,784.
 - g. Compensation for unfair loss of job at Kshs 324,000
Total Kshs 868,584
 - h. Costs.
 - i. Interest.
 - j. Any other relief.
7. The respondent filed a statement of response dated August 4, 2016. It is conceded that the claimant was employed by the respondent. His contract was lawfully terminated through a notice dated April 1, 2015. The reasons for termination was given in the notice. He failed to upgrade his academic qualifications to meet the Standard Guidelines of 2014 for Technical and Vocational Education and Training Authority. He was paid notice, while other terminal dues sought, and compensation for unfair termination, have no foundation. The respondent prays for dismissal of the claim.
8. The issues are whether termination of the claimant's contract, was fair under sections 41, 43 and 45 of the *Employment Act*; and whether he merits the remedies sought.

The Court Finds

9. The claimant was employed by the respondent Institution for 4 years and 2 months, between January 14, 2011 and May 26, 2015. His last salary was Kshs 27,000 monthly.
10. He was issued a notice of termination dated April 1, 2015. There are various reasons given in the notice, to justify termination. They include that: -Your integrity as a tutor is questionable. This is backed-up by the *muratina* saga in December, just before the cultural day. [*Muratina* is fermented alcoholic beverage traditionally associated with the Kikuyu community] Irresponsibility. Failure to upgrade academic qualifications.
11. The above reasons were not established. What is one to make of an accusation simply stated as 'muratina saga'? It is not stated why the claimant's integrity was questionable. Irresponsibility was not substantiated. There are no facts to go with the allegations concerning questionable integrity and irresponsibility. These are broad accusations that were just thrown at the claimant by the respondent. Failure to upgraded from diploma to degree, while it may have been a requirement of the regulator, was not dealt with fairly. A degree certificate is not obtained on a walk-in, walk-out basis. There are finances involved. It takes time to secure a suitable University, and to secure resources to finance the course. The claimant was earning a salary of Kshs 27,000, and it was unreasonable for the respondent to demand



that he avails a degree certificate, within a very limited period. The claimant had been working from 2011, and it was not shown that the regulator, had placed any demands on the respondent, to have the claimant avail a degree certificate, to continue teaching.

12. The claimant was not presented with the above allegations in a letter to show cause, and required to explain each allegation rationally. There were no charges put to him. There was no hearing as required under section 41 and 45 of the *Employment Act*.
13. Termination did not meet the statutory minimum standards of fairness, under sections 41, 43 and 45 of the *Employment Act*, 2007. It was unfair.
14. The prayer for notice pay is allowed at Kshs 27,000.
15. Salary for the month of March 2015 is granted at Kshs 27,000.
16. Although the respondent did not participate in the hearing, it denies the prayer for annual leave in its statement of response. The documents filed by the respondent, contain annual leave forms filled by the claimant. Institutions of learning in any event do not work round the year. There are vacations. There is similarly no evidence about work done on Saturdays. If any was done, it would be compensated during the Institution's vacations. The role of a tutor would include coordination of events at the Institution, and would not justify compensation, outside the contracted monthly salary. The prayer for service pay is not supported by the claimant's contract of employment or the law. These prayers are rejected.
17. The claimant worked for 4 years and 2 months. He did not contribute to the circumstances leading to termination. His contract was term-unlimited. He expected to work until retirement. He told the court that he is currently a salesperson. He mitigated his loss of employment. He is granted equivalent of 4 ½ months' salary in compensation for unfair termination, at Kshs 121, 500.
18. Costs to the claimant.
19. Interest allowed at court rates from the date of judgment, till payment is made in full.

In Sum, It Is Ordered

- a. Termination was unfair.
- b. The respondent shall pay to the claimant: notice at Kshs 27,000; salary for March 2015 at Kshs 27,000; and compensation for unfair termination at Kshs 121,500 – total Kshs 175,500.
- c. Costs to the claimant.
- d. Interest allowed at court rate from the date of judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

JAMES RIKA

JUDGE

