



**Omwoyo v Maasai Mara University (Cause 1078 of 2018)
[2023] KEELRC 1447 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1447 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1078 OF 2018**

B ONGAYA, J

JUNE 16, 2023

BETWEEN

SAMSON OMWOYO CLAIMANT

AND

MAASAI MARA UNIVERSITY RESPONDENT

JUDGMENT

1. The claimant is Samson Omwoyo. He filed the memorandum of claim on 27.06.2019 through Momanyi and Associates Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the respondent is in breach of supplementary collective bargaining agreement, labour laws, and employment provisions and employment contract.
 - b. An order reinstating the claimant back to work and therefore payment of full salary together with all withheld salary. Or, in alternative and without prejudice to the foregoing terminal dues pending salary, pending pension and any other pending dues.
 - c. General damages.
 - d. Costs and interests above.
2. The respondent employed the claimant as Associate Professor and Dean of the School of Arts and Social Sciences since December, 2012. He served as the Dean from 2014 to 13.05.2016. On 31.05.2016 the claimant was suspended on half pay and subsequently terminated him on 12.06.2017 The claimant alleged he was unemployed but at the hearing stated that he was employed at Kabarak University.
3. The claimant allege that the respondent failed to comply with clause 6.4.1 of the CBA that suspension is for not more than 90 days unless the matter is pending in court or under police investigation or other statutory law enforcement agency; clause 6.4.3 that the employee is informed within 90 days about the suspension unless the unless the matter is pending in court or under police investigation or other



statutory law enforcement agency; and, clause 6.4.5 that a letter of suspension shall be copied to the national UASU Secretary General.

4. The claimant alleges that the respondent did not adhere to the provisions and the termination was without reasonable or justifiable cause.
5. The respondent filed the memorandum of response on 05.09.2018 through Professor Tom Ojienda & Associates Advocates. The respondent admitted employing the claimant effective 12.10.2012. Further, it was admitted that the claimant was Dean School of Arts and Social Sciences since 14.03.2014 until suspension on 13.05.2016.
6. The respondent pleaded that the claimant was suspended and subsequently the contract of employment terminated on account that he used abusive, libellous and insulting language to the person and office of the Vice-Chancellor, Maasai Mara University and his colleagues which violates the rule of decorum and respect to authority.
7. The respondent denied that it had harassed, embarrassed, and, humiliated the claimant as alleged. Further, it was the respondent's Vice-Chancellor who had been harassed and intimidated by the claimant's letters dated 18.05.2016 and 06.06.2016. Mbaru J had found as much in her ruling in Samson Omwoyo-Versus- Maasai Mara & Another ELRC Cause 2367 of 2016 and the ruling found that the claimant's suspension had been lawful.
8. The respondent states that the claimant did not want to participate in internal dispute proceedings and instead filed Samson Omwoyo-Versus- Maasai Mara & Another ELRC Cause 2367 of 2016 and which hampered the respondent making a decision on the suspension within the CBA 90 days.
9. The respondent denied breach of the supplementary collective bargaining agreement. The respondent denied that claimant was entitled to the claims and prayers made.
10. The respondent prayed that the suit be dismissed with costs. The Court has considered all the material on record and returns as follows.
11. To answer the 1st issue, the Court finds that the parties were in a contract of service as agreed in their pleadings.
12. To answer the 2nd issue the Court returns that the parties are in agreement that the claimant's contract of service was terminated by the respondent's letter dated 13.06.2017 following the claimant's appearance before the staff disciplinary committee of council On 07.06.2017 to answer the allegations of using abusive and insulting language to the person and office of the Vice-Chancellor.
13. To answer the 3rd issue for determination, the Court returns that the reason for the termination of the claimant's employment was genuine as at termination as it existed per section 43 of the *Employment Act*, 2007. Further, the Court returns that the reason was fair as it related to the claimant's conduct, compatibility, and, the respondent's operational requirements per section 45 of the Act. The respondent has established as much and the submissions made for the respondent are upheld. The circumstances as admitted by the claimant in his evidence are he had been requesting for frequent permissions to be away from work. The written requests are exhibited for the respondent. On 06.05.2016 he wrote to the DVC-(AR&SA) to be away on that day to attend to a personal issue and on Monday to supervise students on attachment. The permission was not granted as the memo is endorsed that the claimant knew that at his level of Dean he ought to have got the permission from the Vice Chancellor. The claimant admitted as much in his testimony in Court. By memo dated 27.04.2016 the Vice-Chancellor wrote to the claimant conveying that his frequent absenteeism was unacceptable and there would be no alternative but to get him replaced towards continuity of smooth daily operations



in the School of Arts and Social Sciences. That internal memo was reissued on 06.05.2016 because the earlier one had a wrong date. On 10.05.2016 the claimant again wrote to DVC (AR&SA) upon the same reason to be away on that day to attend to a personal issue and on Monday to supervise students on attachment. The memo has been endorsed by the Vice-Chancellor not approving it with remarks that the requests had become too much. The claimant wrote his letter dated 11.05.2016 addressed to the Vice-Chancellor stating, inter alia, that he had been absent without permission once and severally after requesting for permission as enumerated. He promised to minimise his absence with or without permission in the future. He further stated that it would be inevitable not to be absent to externalise examinations in other universities, attend funerals or even to attend to pertinent family issues. He further stated that in any event he would accept whichever option the Vice-Chancellor deemed convenient for smooth running of the school.

14. By an internal memo dated 13.05.2016 the Vice-Chancellor conveyed to the claimant his cessation of appointment as Dean of the School of Arts and Social Sciences and the respondent would stop paying the relevant allowances. The claimant responded with his long letter dated 18.05.2016 addressed to the Vice – Chancellor. He stated as follows, inter alia: The decision to relieve him as Dean had effectively consigned him to the ever increasing list of victims and casualties of the Vice-Chancellor’s tyranny; intolerance and impatience. The letter was long running to 12-pages. In his oral testimony he admitted the letter was abusive with insults to the Vice-Chancellor written at a time of provocation. He was suspended by the letter dated 31.05.2016.
15. The records show that the disciplinary hearing was held on 07.06.2017 before the Staff Disciplinary Committee of Council. The minutes of the proceedings are exhibited. It is stated he was sincerely sorry for using the derogatory language and that he would not repeat the same. A union representative was present.
16. The Court finds that the claimant fully contributed to the termination of his employment when he wrote the abusive letter full of insults. He is undeserving of any of the remedies prayed for.
17. While making that finding and as submitted for the respondent the Court answers the 4th issue for determination that the procedure of a notice and a hearing was complied with per section 41 of the Act. The respondent has shown that failure to comply with the 90 days in communicating about the suspension within 90 contractual days was due to the pending Samson Omwoyo-Versus- Maasai Mara & Another ELRC Cause 2367 of 2016 and the procedural delay in that regard is found excusable.
18. To answer the 5th issue the Court returns that the reliefs prayed for will not be awarded as they are declined. In any event, the 3 years of limitation attached to the relief of an order for reinstatement under section 12 of the *Employment and Labour Relations Court Act*, 2011 have since lapsed. Further, reinstatement and damages were based upon a finding the termination was unfair but the Court has found otherwise and the remedy was unfounded.
19. In conclusion, the suit is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 16TH JUNE, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

