



**Makworo & another v Academy & another (Cause 332 of 2023)
[2023] KEELRC 3137 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3137 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 332 OF 2023
DKN MARETE, J
NOVEMBER 22, 2023**

BETWEEN

GEORGE WESLEY ONGAGA MAKWORO 1ST CLAIMANT

GEORGE WESLEY ONGAGA MAKWORO 2ND CLAIMANT

AND

PREMIER ACADEMY 1ST RESPONDENT

PREMIER ACADEMY 2ND RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated 20th April, 2023. The issue in dispute is herein cited as;

Unfair/unlawful/illegal/wrongful Termination

2. The Respondent in a statement of Response dated 19th May, 2023 denies the claim and prays that it be dismissed with costs.

The Claimant’s case is that the Respondent is a co-educational day school for students offering an adapted British National Curriculum.

His further case is that he joined the Respondents employment on 22nd August, 2022 in the position of a secondary school teacher at a salary of Kshs.165,000.00.

The Claimant’s other case is that he attended a training prior to his formal engagement with the Respondent.

The Claimant’s further avers that despite diligent service, he suffered unfair, unlawful, illegal and wrongful termination from employment on 1st December, 2022 upon which the Respondent deactivated his email address. This was done without being awarded an opportunity to be heard,



to rebut, explain or render explanatory response and to have and another employee or a union representative of his choice availed during the explanation.

3. The Claimant's other case is that the Respondent has arbitrarily and obstinately failed and or neglected to perform its part of the bargain. The Claimant has resultantly suffered opportunity cost, mental stress, anxiety and perilous loss of livelihood and claims general and exemplary damages in respect thereof.

He prays as follows;

- a. A declaration that the Termination of the Claimant is wrongful, unfair, unlawful and illegal.
- b. Twelve (12) months' salary in Compensation for unfair termination @ Kshs.165,000.00=Kshs.1,980,000.00.
- c. One month Notice pay @ Kshs.165,000.00.
- d. Leave pay 4/30 days x Kshs.165,000.00 =Kshs.22,000.00
- e. Issue the Claimant Certificate of Service.
- f. Costs of the cause.
- g. Interest on b, c and d above from the time of filing this cause.
- h. Any other relief deemed reasonable in the circumstances of this Honourable court deem it.

4. The Respondent's case is a denial of the claim.

It is his further case that the termination of the employment of the Claimant was lawful and procedural in that he was employed on a six months probationary contract extendable for a further six months if he was found wanting. A contract of employment was only issuable upon successful completion of the probation period.

The Respondent's further case is that the claimant's performance was reviewed and so extended on 29th September, 2022, 28th October, 2022 and 29th November, 2022 where the following concerns were raised on his performance;

- i. The claimant's explanations in class were vague.
- ii. The quality of the claimant's class notes were poor.
- iii. The claimant's mastery of the content was not very good.
- iv. The claimant's conduct in class was very casual.
- v. The claimant had been posting the whole textbook without explanations on what students should focus on.
- vi. The claimant allegedly kicked a student during a computer lesson on 8th November, 2022.
- vii. The claimant's punctuality in class was wanting.
- viii. The claimant's lesson planning was poor.

5. The Respondent ultimately terminated the claimant's employment having realised that there were no prospect of improvement. This was effective on 31st December, 2022 on a written notice with effect from 1st December instant.



The Respondent again denies that the claimant is entitled to any of the reliefs sought in the claim or at all and states that:

- a. There is no basis for the declaratory order sought as the claimant's termination was lawful, fair and procedural;
 - b. The termination of the claimant's employment was lawful, fair and procedural. The claim for 12 months's salary as compensation for unfair termination is denied;
 - c. The claimant was issued with one month's notice prior to termination of his employment and is therefore not due any pay in lieu of notice;
 - d. The claimant worked for three complete months (September 2022 to November 2022) when he accrued 2 days per month. The claimant utilised 5 days' leave and is only entitled to 1 days' pay for accrued leave and not taken. This would have been computed and remitted to the claimant upon clearance with the respondent.
 - e. The claimant has not cleared with the respondent to enable the respondent issue his certificate of service. Failure by the claimant to clear is not attributable to the respondent.
6. This matter came to court variously until the 25th October, 2023 when the parties decided that it be determined on the basis of the pleadings and case on record.

The issues for determination therefore are;

1. Whether the termination of employment of the Claimant by the Respondents was wrongful, unfair and unlawful
 2. Whether the Claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
7. The 1st issue for determination is whether the termination of employment of the Claimant by the Respondents was wrongful, unfair and unlawful. The parties hold opposed position on this.

The parties respective cases bring out a case of termination of employment by the Respondent during probation. This was due to the incompetence and therefore non performance of the Claimant in his teaching duties and assignments. Despite various assessment and warnings and instructions to improve on his performance, he was unable to cope.

8. The Respondent awarded time and space to the Claimant to up his game but this was not forthcoming and therefore termination of employment. I therefore find a case of lawful termination of employment and hold as such.

The 2nd issue for determination whether the claimant is entitled to the relief sought. He is not.

Having lost of a case of unlawful termination of employment, he becomes disentitled to the relief sought.

I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 22ND DAY OF NOVEMBER 2023.

D. K. NJAGI MARETE

JUDGE

Appearances:



Miss Onyiego instructed by Mr. Onyiego Hellen & Company Advocates for the Claimant.

Mr. Makori instructed by Hamilton Harrison & Mathews Advocates for the Respondent.

