



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 1580 OF 2017**

**BETWEEN**

**JAMES MAINA MWAI.....CLAIMANT**

**VERSUS**

**AMBOSELI INSTITUTE OF HOSPITALITY AND TECHNOLOGY LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Emmanuel Kiprono*

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*Mulandi Kisabit & Associates, Advocates for the Claimant*

*McKay & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 10<sup>th</sup> August 2017.
2. He states, the Respondent employed him as a Tutor for 1 year, commencing 1<sup>st</sup> October 2010 to 31<sup>st</sup> December 2010. The contract was subsequently renewed.
3. His last contract was for 3 years, running from 31<sup>st</sup> December 2014 to 31<sup>st</sup> December 2017. He was suspended without reason, on 16<sup>th</sup> January 2017. His contract was terminated on 30<sup>th</sup> January 2017. His last salary was Kshs. 53,000 monthly.
4. He was not issued letter to show cause why his services should not be terminated. He was not heard.
5. He prays the Court to grant Judgment in his favour as follows: -
  - a. Salary for remainder of the contract period of 12 months at Kshs. 501,936.
  - b. Severance pay
  - c. Pending leave of 14 days and leave allowance for 2016.
  - d. Costs.
  - e. Interest.
  - f. Certificate of Service.

g. Any other suitable order.

6. The Respondent filed its Statement of Response on 18<sup>th</sup> September 2017. It is not disputed that the Claimant was employed by the Respondent as a Tutor. He was suspended upon realization that he was performing his duties carelessly and improperly. His contract was summarily terminated in accordance with the Employment Act, 2007. His prayers are without merit. The Respondent prays for dismissal of the Claim.

7. Hearing was slated for 2<sup>nd</sup> July 2021. The Respondent's Advocates filed an Application to be allowed to cease acting for the Respondent. On the hearing date, the Respondent's Advocate informed the Court that it had been agreed, between the Respondent and its Advocates, that the Respondent's Advocates continue acting for the Respondent. The Respondent's Advocate sought adjournment and leave to file its documents. The Court granted a last adjournment to the Respondent, rescheduling hearing for 23<sup>rd</sup> July 2021.

8. On 23<sup>rd</sup> July 2021, the Respondent once again sought adjournment, asking for more time to file witness statements and documents. The Claimant strongly objected to adjournment, but the Court bent backwards, and allowed the Respondent a period of 14 days to file the witness statements and documents. Costs of Kshs. 4,500 were granted to the Claimant and his Advocates, with the hearing date pushed to 21<sup>st</sup> October 2021.

9. On 21<sup>st</sup> October 2021, there was no appearance for the Respondent. The Claimant testified, restating the contents of his Statement of Claim, as summed up above. He exhibited 10 documents. He adopted his witness statement. The Respondent's case was closed, and Parties granted 14 days each to file their Closing Submissions. Although served with the Claimant's Submissions, the Respondent did not file its Submissions. The matter was last mentioned in Court on 17<sup>th</sup> December 2021, when the Claimant confirmed filing and service of his Submissions.

**The Court Finds: -**

10. This Claim is undefended.

11. The Court gave the Respondent more than adequate opportunity to respond to the Claim. The Respondent rebuffed that opportunity.

12. The Claimant has established that he was employed by the Respondent as a Tutor. He was on various limited- term contracts. The last one was for 3 years, commencing 31<sup>st</sup> December 2014 to 31<sup>st</sup> December 2017. His last salary was Kshs. 53,000 monthly.

13. His last contract was terminated by the Respondent prematurely, 12 months before its due date, on 30<sup>th</sup> January 2017.

14. There was no notice, and there was no hearing. The Respondent made allegations about the Claimant's careless and improper discharge of role. These generalized accusations were not reduced to charges and presented to the Claimant. He was not asked to show cause why he should not be disciplined. He was not given a hearing. The Respondent just suspended the Claimant, then terminated his contract prematurely and summarily. The Respondent, at paragraph 7 of its Statement of Response, alleges that termination was in the true spirit of the Employment Act, 2007. Nothing could be farther from the truth. The Employment Act does not contemplate at-will termination, without notice or justification. The Court is satisfied that termination was not in accordance with Sections 41, 43 and 45 of the Employment Act.

15. Where a limited-term contract is terminated prematurely, and the remainder period does not exceed 12 months, there is hardly any justification for the Court, not to base compensation on the remainder period. The Court is mandated to consider the period the Employee expected to go on working, had premature termination not happened, while observing the ceiling of 12 months' gross salary in compensation, set under the Employment Act. If the remainder period exceeds 12 months, the Court does not have discretion in exceeding the ceiling, but must consider all the facts, including other awards made on the Employee, in coming up with a fair and satisfactory Judgment. Where the remainder period is within the ceiling, the Court ought to base its award on the remainder period, taking into account other factors also, pertaining to the circumstances of the dispute. In this dispute, the Claimant had served various limited-term contracts for 7 years. That they were renewed unflinchingly, for 7 years, would lead the Claimant to legitimately and reasonably expect, that he would have seen out his last contract, and been granted further renewals. He was not given valid reason why, his contract was terminated prematurely, and further renewals placed beyond him. He did not contribute to premature termination. ***He merits compensation equivalent of 12 months' salary, which is allowed at Kshs. 636,000.***

16. The Claimant did not leave employment on account of redundancy. The prayer for severance pay is misplaced.

17. He has not quantified annual leave days, or leave allowance. The prayers are declined.

18. ***Certificate of Service to issue.***

19. ***Costs to the Claimant.***

20. ***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 compensation for unfair termination, equivalent of the Claimant's 12 months' gross salary at Kshs. 636,000.*

*c. Certificate of Service to issue.*

*d. Costs to the Claimant.*

*e. Interest allowed at court rates 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 16<sup>th</sup> day of March 2022.

**JAMES RIKA**

**JUDGE**