



Kenya Union of Domestic, Hotel Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) v B.O.M. Kamermeru Sec. School (Cause E008 of 2022) [2022] KEELRC 1400 (KLR) (14 July 2022) (Judgment)

Neutral citation: [2022] KEELRC 1400 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E008 OF 2022
ON MAKAU, J
JULY 14, 2022

BETWEEN

KENYA UNION OF DOMESTIC, HOTEL EDUCATIONAL INSTITUTIONS, HOSPITALS AND ALLIED WORKERS (KUDHEIHA) CLAIMANT

AND

B.O.M. KAMERMERU SEC. SCHOOL RESPONDENT

JUDGMENT

1. The Claimant is a Trade Union and it brings this suit on behalf of its member Mr. Josphat Maritim (grievant). The respondent is a Board of Management for Kamermeru Secondary School situated in Narok County.
2. The suit seeks the following reliefs: -
 - i. That the honourable court compels the respondent to pay Josphat Maritim the following underpayments as per the gazzetted Government's minimum wage orders and in line with conciliator's recommendations.
 - ii. That the honourable court compels the respondent to pay Josphat Maritim relevant house allowance as per the minimum wage guidelines and the conciliator's recommendations.
 - iii. That the honourable court is pleased to compel the respondent to pay Josphat maximum compensation because of the unfair termination.
 - iv. That the respondent issues Josphat Maritim with a certificate of service pursuant to section 51 of the *Employment Act* 2007.
 - v. That the cost of the application be awarded to the claimant.



- vi. Any other relief the court deems fit.
3. The facts of the case are that the grievant by the respondent in 2017 as a groundsman/watchman and the appointment was confirmed on 6/2/2018. His salary was Kshs.5,090 per month. He joined the claimant Union on May 15, 2019 and gave authority for deduction of Union dues by the employer in favour of the Union.
4. In November, 2020 he was accused of several theft instances but he denied. On November 10, 2020, he was summoned to appear before the Board but his Union representative was not allowed to participate in the disciplinary proceedings.
5. On November 13, 2020 the grievant was dismissed from employment. The intervention by the Union did not bear any fruit since the respondent maintained that its decision on the termination was final and irreversible. Finally, the dispute for conciliation and the conciliator recommend for payment of arrears from salary underpayment plus unpaid house allowance at the rate of 15% of the basic pay.
6. The Respondent did not file defence to controvert the foregoing facts as set out by the claimant. The suit then proceeded by formal proof on May 10, 2022 when the claimant adopted the written witness statement and documents as its evidence and filed written submissions.
7. In its brief submissions, the claimant urged the court to award him salary arrears based on the minimum wages under General Wage Order plus arrears of house allowance at 15% of the basic pay as recommended by the conciliator in his report dated August 19, 2021. It further submitted for payment of maximum compensation for unfair termination under section 49 of the *Employment Act*.

Issues for Determination and Analysis

8. Having considered the pleading and evidence presented by the claimant, and more so the conciliator's report dated August 19, 2021 and the termination notice dated November 13, 2020, it is clear that the termination of the grievant employment was deliberately done by the Respondent. The issues for determination are: -
 - i. Whether termination was unfair.
 - ii. Whether the reliefs sought are merited

Unfair termination

9. The termination was by a notice of one and half months. The grievant was invited to defend himself before the Board for four counts of theft, one count of negligence and one count of behaving rude and in disorganized always. The grievant never attended the hearing on November 10, 2020 despite being invited to attend.
10. Under section 45 of the *Employment Act*, termination of employment contract is unfair if the employer terminates without any valid or fair reason or if a fair procedure was not followed. In view of the summary of evidence above, the court finds like the conciliator did, that the termination of the grievant's employment herein met the legal threshold of both substantial and procedural fairness.

Reliefs

11. In view of the foregoing holdings the court finds that the claimant for compensation for unfair termination lacks merits and it is dismissed.



12. As regards the claimant for house allowance i agree with the conciliator the claimant is entitled to the same at the rate of 15% of the basic pay for every month worked. I have considered the tabulation under prayer 3 of the statement Claim and I found that it is accurate and in line with the General Wages Order published on May 8, 2018. Consequently I award the claimant Kshs.33,666 as unpaid house allowance.
13. As regards the claim for salary arrears for the same period, I have also considered the tabulation under prayer 3 of the statement of claim and found the same to be in tandem with the provisions of the 2017 and 2018 General Wage Orders in so far as the minimum wage is concerned.
14. From February 2018 to April 2018 his salary was underpaid by $Kshs.6,896.15 - Kshs.5,090 = 1,806.15$ x 3 months equaling to $Kshs.5,418.45$. From May 2018 to December 2019 the underpayment was $Kshs.7,240.95 - 5,090 = Kshs.2,150.95$ x 20 months equaling to $Kshs.43,019$.
15. From January 2020 the grievant's salary was increased to $Kshs.6,130$ which he received till the date of dismissal in November 2020. The salary underpayment was $Kshs.7,240.95 - Kshs.6,130 = Kshs.1,110.95$ x 11 months equaling to $Kshs.12,220.45$. Therefore the aggregate underpayment of salary for the said period was $Kshs.60,657.90$.
16. In conclusion, I enter judgment for the claimant in the sum of $Kshs.94,323.90$. The claimant is awarded costs for the suit plus interest at court rates from the date of filing suit. The award however is subject to statutory deductions.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 14TH DAY OF JULY, 2022.

ONESMUS N MAKAU

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on April 15, 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the [ELRC Procedure Rules](#) which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

