



Marangu v Board of Management Mwonge Junior Boys & Girls Boarding (Cause E018 of 2021) [2022] KEELRC 13179 (KLR) (31 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 13179 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E018 OF 2021
DKN MARETE, J
OCTOBER 31, 2022**

BETWEEN

JANICE KAWIRA MARANGU CLAIMANT

AND

**BOARD OF MANAGEMENT MWONGE JUNIOR BOYS & GIRLS
BOARDING RESPONDENT**

JUDGMENT

1. This matter was originated by way of a Statement of Claim dated 18th May, 2021. It does not disclose an issue in dispute on its face.
2. The Respondent by a Respondent's Statement of Response dated 14th June, 2022 denies the claim and prays that the same be dismissed with costs.
3. The claimant's case is that at all material times to this case, she worked for the Respondent as a secretary cum clerk. Her stint of service was seven (7) years as from May, 2013.
4. The claimant's further case is that in the month of March, 2020, on the onset of the Covid-19 pandemic, the Ministry of Education issued a notice of absence of all learning institutions. She was so informed by the Board of Management and further, through a text message, she was sent home on compulsory leave without pay to date.
5. The claimant's further case is that once school re-opened the Respondent called her to re-apply for the position but despite compliance, there has not been any communication to date. On demand and pursuant enquiry the Respondent responded that the claimant was hired on contract basis and not permanent.
6. The Claimant other case is that her termination of Employment by the Respondent was unfair and illegal and avers that she will *inter alia* rely on the following provisions of law: Article 41(1) & (2) (a)



and 47(1) & (2) of *the Constitution* of Kenya 2010, sections 5(3), 7, 8, 9, 43 & 45 of the *Employment Act*, chapter 226 laws of Kenya, sections 12 and 13 of the *Employment and Labour Relations Court Act* number 20 of 2011 and other relevant provisions to this claim.

7. She prays thus;
 - a. Salary arrears for 7 months equivalent to Kshs.53,000/-
 - b. A refund of N.S.S.F deductions not remitted amounting to Kshs.34,000.00
 - c. General damages
 - d. An order compelling the respondent to reinstate the claimant to her employment position with basic minimum employment conditions as set out by labour laws.
 - e. Cost of this claim and interest thereon.
8. The Respondents defence is mainly on admission of the salient features of the claim but only denies the critical aspects of the same.
9. The claimant reinstates her case in her witness statement by Boniface Mwenda Kinyua dated 8th February, 2022 and a Reply to Defence of 14th September, 2021. Mr.Kinyua's testimony related to the issues belying his and the claimant's evidence of compulsory leave without pay as a consequence of the government's directives on closure of schools in accordance with the Covid-19 protocols.
10. The issues for determination therefore are;
 1. Whether the termination of employment of the claimant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
11. The 1st issue for determination is whether the termination of employment of the claimant by the Respondent was wrongful, unfair and unlawful. The claimant in her written submission dated 16th May, 2022 foments and submits a case of unlawful termination of employment.
12. On this she seeks to rely on the authority of Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited Cause No.74 of 2013, the court held that whatever reason or reasons that arise or reasons that arise to cause an employer to terminate an employee, that employee must be taken through the mandatory process outlined under section 41 of the *Employment Act*, Chapter 226 laws of Kenya. These apply in a case for termination as well as in a case that warrant summary dismissal. The section comes out thus;

Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical Incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.



13. It is her further case that the termination of employment violated section 43(2) of the Employment Act, 2007 in that no reasons or even termination notice was issued prior to the events thereby invalidating the said termination. This comes out as follows;

“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”

14. The sequence of events and conduct of the Respondent in terminating the employment of the claimant is appalling and most deplorable. It cannot be countenance in law. I therefore find a case of unlawful termination of employment and hold as such.

15. The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is. Having succeeded on a case of unlawful termination of employment she becomes entitled to the relief sought.

16. So, when did the termination of employment occur? The claimant’s case is that despite a re-application for her position, she has not had any response to date. This was until the 5th March, 2021 when she was informed that she was employed on a contract basis and was never permanent. This letter by the Respondent marked the date of termination and shall be useful in computing compensation for unlawful termination of employment.

17. I am therefore inclined to allow the claim and order relief as follows;

- i. The claimant be and is hereby reinstated to employment without loss of emoluments, benefits and promotion.
- ii. The claimant be and is hereby ordered to report to work on 1st November, 2022 at 800 hours.
- iii. Seven (7) months salary arrears.....Kshs.6,700 x 7
=Kshs.46,900.00.
- iv. Eleven (11) months unpaid salary for the period of March 2020 to February, 2021.....
.....Kshs.6700 x 11=73,700
- v. Twelve (12) months salary compensation for unlawful termination of employment Kshs.6,700 x 12 =.....Kshs.80,400.00.

Total of the claim.....Kshs.201,000.00
- vi. The costs of the claim shall be borne by the Respondent.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Claimant in person
2. No appearance for the Respondent.

