



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/180/2018

CITATION: FAITH LEAH WANJALA VS BOARD OF MANAGEMENT ELDORET TOWNSHIP SECONDARY SCHOOL AND MICAH KOSGEI

JUDGMENT

The Claimant averred that she was employed by the respondent as a storekeeper/Office assistant on 1st October, 2018. Her monthly salary was Kshs. 7,000/= per month which she alleged was gross underpayment. She worked with loyalty and diligence until January, 2017 when the respondent unfairly and un procedurally terminated her service and refused to pay her terminal dues.

2. According to her the 1st respondent issued her with a letter dated 5th January, 2017 which purported to terminate her service as a Kitchen hand yet she had never worked in the kitchen.

3. According to the respondent the Claimant drew her salary from the lunch program which was sponsored by parents but the same was scrapped by the government's policy on extra levies hence the Claimant was rendered redundant.

4. The respondent on its part pleaded that the Claimant was employed on 1st November, 2013 as a storekeeper/Officer assistant to perform general duties and was later on 1st September, 2016 redeployed to work in the kitchen because sufficient personnel had been employed to work in the office which the Claimant did until January, 2017 when the government gave directive that parents would not pay for extra levies like lunch charges. The school could therefore no longer afford to continue paying the Claimant her salary which was being drawn from the lunch program sponsored by parents.

5. According to the respondent, the Claimant's employment was therefore terminated on account of redundancy in accordance with section 40 of the Employment Act.

6. The Claimant's union was informed and there was discussion between the School and here union. It was agreed that the school issues the Claimant with certificate of service and a cheque of Kshs. 21,000/= as terminal dues. The Claimant however did not take the cheque but instead filed the current suit.

7. At the oral hearing the Claimant adopted her witness statement recorded on 27th April, 2018 as her evidence in chief. According to her she was on 1st November, 2013 employed by the respondent as a store keeper/ Office assistant. The appointment was on permanent and pensionable basis. On 5th January, 2017 the school principal issued her with a letter terminating her service as a kitchen hand. She denied ever being appointed as a kitchen hand.

8. The Claimant further stated that she was never taken through any disciplinary hearing before termination. She reported her termination to her lawyer who issued a demand letter.

9. In cross-examination she stated that she was employed in 2013 and worked until 2017. She further stated that she went to school up to form 4 and had a certificate in Computer studies. Her work was to keep the administration office clean, running errands and serve staff tea. She denied ever working in the kitchen.

10. The Claimant admitted seeing the letter dated 29th August, 2016 transferring her to the Kitchen but denied ever being transferred to the kitchen.

11. Concerning working hours, she stated that the school was a day school and that they never worked on weekends unless called. On 6th January, 2017 she sought a letter of recommendation stating she was working as a clerk. She was accompanied by a Union Official to the principals' office. The Claimant further denied being told about the offer to pay her Kshs. 21,000/=.

12. In re-examination she stated that she never received the letter of transfer and further that her union discussed her issue in her absence.

13. The respondent's witness Mr. Micah Kosgey informed the Court he was the respondent's principal and had been in that position since 2013. He also adopted as his evidence in chief the witness statement he wrote on 27th June, 2019.
14. According to him the Claimant was employed by the respondent to run errands. She did not have a specific duty assigned to her. She could work in the kitchen, staff room etc. As the school stabilized the school wanted to employ qualified staff. The Claimant was therefore redeployed to the kitchen. She was issued with letter of redeployment.
15. It was his evidence that the Claimant had no discipline issues and that she was terminated because of the Government policy on extra levies. Her salary was from the lunch program sponsored by parents. This was scrapped by the Ministry of Education.
16. Only two employees, the Claimant being one, was affected by the directive by the Ministry. It was his evidence that they never gave the Claimant any notice because the decision by the government was abrupt. The Claimant was however paid in lieu of notice.
17. It was Mr. Kosgey's evidence that the Claimant reported the issue to her union and it was discussed with the union and agreed that it was a case of redundancy. Her dues were calculated and she was offered Kshs. 21,000/=. The Claimant rejected the offer.
18. Regarding working hours, he stated that the school was a day school and whenever closed all teachers and workers except watchmen remained. The school holidays were Claimants leave days.
19. In cross-examination he stated that he looked at the Claimant's letter of appointment and it talked of running errands for the school. He further stated that the Claimant was hired on permanent and pensionable terms. He also stated that letters of appointment did not spell out where salary would be derived.
20. According to Kosgey, the school followed redundancy procedures and further that only kitchen staff were affected.
21. It was common ground that the Claimant was employed by the respondent. According to the respondent, the Claimant was initially employed as a casual worker. She subsequently applied for the post of storekeeper/office assistant and was offered the position through a letter dated 1st November, 2013. The appointment was among other terms on permanent and pensionable basis. By a letter dated 29th August, 2016 the respondent purported to redeploy the Claimant to the kitchen as a kitchen hand.
22. Although the Claimant denied knowledge of this letter, it states among other things that the Claimant's terms of service were contained in the earlier letter dated 1st November, 2013. The letter however informed the Claimant that circumstances had changed and more personnel had been hired for her position.
23. The burden of proof of reasons for termination of employment is upon an employer, where an employer fails to do so, the termination will be considered unfair within the meaning of section 46 of the Act. The respondent has sought to justify the termination of the Claimant service on the ground that the Claimant was deployed to work in the kitchen as a kitchen hand.
24. Her service became redundant when the government prohibited extra levies in schools thereby bringing to an end the lunch program which was funded by the extra levies paid by parents. The Claimant has denied she was employed as a kitchen hand. She has maintained that she was employed as a storekeeper/Office assistant. Her letter of appointment dated 1st November, 2013 states as much. It may well be that the Claimant was deployed to the kitchen subsequently but her appointment was not specific to the kitchen which was supported by the extra levies paid by the parents towards the lunch program. The Claimant was as stated in her letter of appointment dated 1st November, 2013 an employee of the respondent on permanent and pensionable basis.
25. Her salary and emoluments could not therefore be said to be pegged on a temporary program such as the school lunch program which the government scrapped. The respondent stated that the position to which the Claimant was hired had been taken over when more personnel were hired for the same. If this were so, this could have been a more valid reason to declare the Claimant redundant than a claim that her services could not continue due to scrapping of the School Lunch program by the government. To this extent the Court finds and holds that the termination of the Claimant's service on account of redundancy occasioned by the scrapping of the lunch program was unfair.
26. On the issue of underpayment, the Claimant never furnished the relevant wage order to enable the Court compare with the salary the respondent was actually paying to make out a case for underpayment. Further, the claimant did not produce any proof her skills to compare with the relevant wage order to see if there was any underpayment.
27. On the issue of leave the Claimant conceded that she never worked during school holidays. The respondent further stated during school holidays everyone went away except security guards. For this reason, the claim for leave will be disallowed.
28. On the issue of gratuity, the Claimant stated that she was enrolled to NSSF and NHIF hence she is not entitled to claim service gratuity.
29. The Claimant had worked for the respondent for approximately five years. She initially started as a casual worker and later appointed as storekeeper/office assistant. She did not exhibit any special skills or training for the position she held. Her prospects of getting a similar job elsewhere would be difficult considering she had no special skills.
30. For those reasons a six-month salary as compensation for unfair termination would be reasonable.
31. In conclusion the Court awards the Claimant as follows: -

KSHS

(a) One month's salary in lieu of notice 7,000

(b) Six month's salary as compensation

For unfair termination 42,000

49,000

(c) Costs of the suit.

32. Items (a) and (b) shall be subject to taxes and statutory deductions where applicable.

33. It is so ordered.

Dated at Eldoret this 22nd day of March, 2021

Delivered at Eldoret this 22nd day of March, 2021

SIGNED BY: HON. JUSTICE J. N. ABUODHA

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-03-22 12:03:08+03