



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

ELRC CASE NO 375 OF 2017

JOHN KIPKURGAT SANGCLAIMANT

VERSUS

BOARD OF MANAGEMENT KEROTET

GIRLS HIGH SCHOOL.....RESPONDENT

J U D G E M E N T

1. The Claimant averred that he was 8th may, 2016 to 4th, May,2017 employed by the respondent as a cook. On 4th may, 2017 the respondent terminated his service and refused to pay his terminal dues. He further alleged that the termination did not follow the provisions of the Employment Act in that his union was not informed prior to the termination nor was he heard before. Upon termination he was not paid for Leave and one month's pay in lieu of notice.
2. The Claimant further averred that during his employment he was grossly underpaid having regard to the applicable wages order. The respondent on it part denied the Claimant's averments and pleaded that it engaged the Claimant as a cook on casual basis for 7 months with effect from 6th October, 2016 while awaiting interviews by the Board that was to take place in April, 2017.
3. The respondent averred that on 10th April, 2017 the Claimant was among other applicants who attended and participated in the interviews and emerged second after one Henry Bureti who was finally employed by the respondent. The Claimant was subsequently released in good faith and with a commendation. The respondent therefore stated that its was not true that the Claimant was unlawfully terminated.
4. The respondent denied the Claimant was entitled to leave for the 7 months he worked and that he worked overtime. The respondent further denied the Claimant was entitled to housing allowance.
5. At the hearing the Claimant adopted as his evidence in chief the statement filed on 4th November, 2017. According to him he was employed on 5th may, 2016 at a salary of Kshs. 7,000 per month. He used to report to work at 3.00 a.m and leave at 8.00 p.m. It was his evidence that he worked for one year before he was terminated. He was told work was over. According to him he was not paid the last two months.
6. In cross -examination he stated that he had nothing to show his actual date of employment. He denied the knowledge of letter of temporary employment contained in respondent bundle of documents when the same was showed to him.
7. According to him he was given the letter upon termination. He further stated that he was employed as a kitchen -hand and was never told his employment was temporary. He denied attending the interview on 10th April, 2017 never signed the list of interviewees.
8. The respondent's witness, one Joan Too stated that she was the respondent's principal and recorded a witness statement on 5th March, 2018 which she sought to adopt as her evidence and chief. It was her evidence that the Claimant was employed as a casual staff due to staff shortages pending interviews however did not take place in October due to proximity to national exams. They were deferred to April, 2017. Applications were invited at the Claimant applied to be a cook.
9. It was her evidence that the interview panel was interested in academics, church and recommendation from the Chief. All these areas were scored. The Claimant scored zero in academics and recommendation from the chief. He emerged number 2 but the respondent only needed one person.
10. According to her, the Claimant's employment was temporary pending interviews and this was stated in his letter of temporary

employment.

11. In cross-examination she stated that the Claimant applied for a job and was hired initially as a kitchen help. The terms of engagement were fixed term. His salary was Kshs. 7,000/= per month. The interviews were conducted seven months after the Claimant had been hired. It was her evidence that she could not tell how many hours the Claimant worked.

12. Under Section 37 of the Employment Act, where a casual employee works for a period in the aggregate to the equivalent of not less than one month the contract of service shall be deemed to be one where wages are paid monthly and section 35(1) (c) shall apply to that contract of service.

13. Section 35(i) (c) provides that where the contract is to pay wages or salary periodically at intervals of or exceeding one month, the contract shall be terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.

14. Under subsection (4) an employee whose services have been terminated under the section has the right to dispute the lawfulness or the fairness of the termination in accordance with section 46 of the Act.

15. Further under section 45(4) (b) a termination shall be unfair where it is found that in all circumstances of the case the employer did not act in accordance with justice and equity in terminating the employment of the employee.

16. The Claimant herein worked for the respondent for seven months. His letter of temporary appointment stated that he was to work in the kitchen as a help hand while awaiting interview from the Board which was to be conducted in April, 2017. These interviews were eventually conducted and according to the respondent, the Claimant emerged 2nd hence was not taken since only one post was available. The reason for the Claimant not scoring well was because he never met the academics and recommendation from Chief criteria.

17. The Claimant was already in respondent's employment and had reasonable expectation to continue working. His contract was terminated because he failed to meet the needed academic and recommendatory criteria set by the respondent. He had however prior to this performed his duties without any complaints. His termination was therefore not out of any disciplinary reason. It was through no fault of his own. The reasons for termination may have been justifiable however he ought to have been notified of those reasons and compensated as an employee rendered redundant. This was not the case. In that regard the Court will hold that the termination was unfair within the meaning of Section 45 of the Act. Taking into account the Claimant worked for only seven months, the court will award him as follows: -

Kshs

(a) One month's salary in lieu of notice	7,000
(b) 14 days (pro rata) leave pay	3,270
(c) Two months' salary as compensation for Unfair termination	<u>14,000</u>

24,270

(d) Costs of the suit

18. It is so ordered.

Dated at Eldoret this 13th day of February 2020

Abuodha Jorum Nelson

Judge

Delivered this 13th day of February, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge