



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO 2048 OF 2015

INNA ANATOLIEVNA WERE.....CLAIMANT

VERSUS

THE NAIROBI ACADEMY

(HOLDINGS) LIMITED.....RESPONDENT

JUDGMENT

1. The claim herein seeks the following reliefs:

- a) A declaration that the claimants' employment was unfairly terminated by the Respondent
- b) Payment for unpaid leave days
- c) Service pay for the years worked.
- d) Compensation for loss of earning
- e) 1 month salary in lieu of notice
- f) Certificate of service
- g) Any other relief that this court deems fit to grant
- h) Costs of the suit.

2. The salient facts of the case are that the claimant was employed by the respondent as a teacher for 2 years contract effective from 1.9.2014 and expiring on 31.8.2016. The contract was however terminable before then with a notice of 3 months by either party but the employer reserved the right to dismiss the claimant summarily for a cause. The contract was also renewable upon the claimant expressing her desire, 14 days before the commencement of the penultimate term of his contract. Her gross salary was KShs. 180000/- per month.

3. On 8.7.2015, the claimant was served with a warning memo citing insubordination by failing to submit her appraisal form. On 7.9.2015, she was suspended by another memo and on 11.9.2015; she was invited to a disciplinary hearing. Thereafter she was dismissed for gross misconduct.

4. In the claimant's view, the termination was unfair and wrongful because the reasons cited for the termination were not true and the procedure followed to dismiss her was unfair and skewed against her. She therefore prayed for compensation and other accrued terminal dues as set out in her suit.

5. The Respondent entered appearance after service of summons but filed no defence to deny the averments by the claimant. Accordingly, the suit proceeded by way of formal proof. On 9.7.2019 the claimant basically reiterated the facts set out in her claim. After the hearing, the claimant filed written submissions.

6. After careful consideration of the pleadings, evidence and submissions, there is no dispute that the claimant was employed by the respondent between 1.9.2014 and 14.9.2015 when she was summarily dismissed. The issues for determination are:

(a) Whether the dismissal was unfair and wrongful

(b) Whether the reliefs sought should be granted.

Unfair and wrongful dismissal

7. Under section 45 (2) of the Employment Act, termination of employment contract of an employee is unfair if the employer fails to prove that it was grounded on valid and fair reasons related to the employees conduct ,capacity and compatibility or based on the employer’s operational requirements; and that a fair procedure was followed. In this case, the employer never filed defence to dispute the alleged unfair dismissal by the claimant. I therefore, return that the employer has failed to discharge the said burden of proof. Consequently, the dismissal for the claimants on 14.9.2015 was unfair and wrongful within the meaning of section 45 of the Employment Act.

Reliefs

8. In view of the foregoing, I award the claimant one month’s in lieu of notice as proved plus 6 months’ salary compensation for the unfair termination dint of section 49 (1) of the Act. This said award is awarded considering that the claimant had reasonable expectation to continue working for another 12 months before her contract term expired on 31.8.2016.

9. The claim for service pay fails because the claimant is a beneficiary of NSSF as per the payslip produced as an exhibit.

10. The claim for accrued leave is also dismissed for lack of particulars and evidence.

11. Finally, the claim for its remainder of the contract term fails because the compensation award above caters for the unfair termination under section 49 of the Act.

12. In conclusion I enter judgment for the claimant against the respondent for:

(a) Notice180,000

(b) Compensation1,080,000

Total1,260,000

The claimant is awarded costs and interest at court rates from the date hereof. However, the sum awarded is subject to statutory deductions.

Dated, signed and delivered in open court at Nairobi this 7th day of February, 2020.

ONESMUS N. MAKAU

JUDGE