



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO 1944 OF 2015

MAURINE IGAMBI.....CLAIMANT

VERSUS

RIRUTA BAPTIST CHURCH.....RESPONDENT

J U D G E M E N T

1. The Claimant averred that she was employed by the respondent on 22nd May, 2009 as a teacher on one-year contract renewable. She performed her duties diligently under her contract with the respondent and the same was renewed until September, 2015 when the same was terminated.
2. According to the Claimant in 2014 there were administrative problems in the running of the school which split the management into factions and this affected the staff as well.
3. On 14th August, 2015 the Claimant received a letter from one of the members of the church Council in which she was removed from her class to another yet the class teacher was still available. By a letter dated 2nd September, 2015 the respondent suspended her indefinitely from duties and on 3rd September, 2015 when her advocate wrote to the respondent about her suspension and unfair treatment, she was summarily dismissed.
4. According to the Claimant at the time of her dismissal she was being paid Kshs. 10,400/= per month yet teachers in government were paid Kshs. 16,000/=.
5. The respondent on its part stated that at the beginning of the academic year 2015 the Claimant in blatant dereliction of duty willfully neglected to perform her work i.e to teach the class assigned to her contrary to terms and conditions of her contract of employment. The respondent further stated that on 14th August, 2015 the Claimant was issued with a letter directing on specific duties but she knowingly and willfully refused to undertake the duties assigned.
6. According to the respondent on 1st September, 2015 the head teacher called for a meeting with the Claimant and the deputy head teacher to explain why she had refused to take up the duties but instead the Claimant became hostile and conducted herself in a disrespectful manner. On 2nd September, 2015 after failing to attend the meeting purposely to give her an opportunity to explain herself, the Claimant was in writing lawfully suspended from her duties pending deliberations by the Church Council.
7. On 7th September, 2015 after a full meeting of the school administration and the Church Council to deliberate the Claimant's conduct, she was legally and lawfully summarily dismissed on account of dereliction of her duties, insubordination and gross-misconduct and paid all her terminal dues upon dismissal.
8. In her oral evidence the Claimant further stated that on 2nd September, 2015 when schools were closed, she was called and told she would be re-designated to teach at the Nursery section from class one. She reported and found the teacher in charge still there. She informed the head teacher about it. Later she was suspended.
9. According to the Claimant she was accused of lateness and incitement of parents to demonstrate against the respondent. She consulted a lawyer over the suspension and her lawyer issued a demand letter. She was one week later issued with a letter of dismissal.
10. It was her evidence that there was no disciplinary hearing and that she was not issued with Show Cause letter, warning or notice of dismissal.

11. In cross-examination she stated that she was employed in 2nd May, 2008 but was issued with a letter of appointment in 2009. Her contract was renewable after one year. She denied being pleaded with to take up her new duties and further that she refused to report to the new class. She was paid kshs. 11,000/= upon termination.

12. The respondent's witness Mr. Elikana Ndirangu informed the Court that he was the respondent's chair of the Church Council. According to him the Claimant was given an opportunity to be heard. She was called to the Board to be heard but she became aggressive and banged the table and left. The Council therefore decided to suspend her and later summarily dismissed her. It was her evidence that the Claimant was to relieve a teacher on maternity leave but refused.

13. According to him the respondent followed due process in terminating the Claimant's service. In cross-examination he stated that the Claimant was verbally called for hearing before the Church Council. She was called by the head teacher but refused to appear before the Council and that she knew about the accusations against her.

14. Termination of employment requires that before the same is done, the employee is given a chance to be heard with regard to accusations for which termination was being considered. Failure to do so would lead to a finding that the termination was unfair.

15. The Claimant herein was suspended from duties on 2nd September, 2015 on accusation that she refused transfer to another class. On September, 2015 the Claimant's Counsel issued a demand letter in which it was stated that the suspension was in breach of the Claimant's constitutional rights in that the Claimant was condemned unheard.

16. On 7th September, 2015 the Claimant was issued with a summary dismissal letter. The respondent although alleged that the Claimant refused attend a disciplinary hearing, did not produce any letter of invitation to a disciplinary hearing. In any event the rapidity of events could have possibly allowed any hearing.

17. The accusations against the Claimant may have been true and warranted dismissal however she ought not only to have been heard but accorded a reasonable opportunity to be heard in her defense. The rapid sequences of events could not be said to have afforded the Claimant an opportunity to be heard before dismissal.

18. The Court therefore returns a finding of unfair termination of service and awards the Claimant seven months' salary that is to say Kshs. 72,800/= as compensation for unfair termination. The Claimant shall further have costs of the suit.

19. It is so ordered.

Dated at Nairobi this 13th day of March, 2020

Abuodha Jorum Nelson

Judge

Delivered this 13th day of March, 2020

Byram Ongaya

Judge

In the presence of:-

.....for the Claimant and

.....for

the

Respondent.