



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE 2233 OF 2016**

**(Before Hon. Justice Hellen S. Wasilwa on 28<sup>th</sup> May, 2020)**

**PETER KABAKA OSEWE.....CLAIMANT**

**VERSUS**

**GREEK ORTHOX PATRIATCHATE OF ALEXANDRIA**

**AND ALL AFRICA.....RESPONDENT**

**JUDGMENT**

1. The Claimant herein filed a Memorandum of Claim dated 14<sup>th</sup> September, 2016 and filed in Court on 2<sup>nd</sup> November, 2016, in which he seeks compensation for unfair and unlawful termination of his employment by the Respondent herein as well as its failure to pay his terminal dues & compensatory damages.

2. He states that he was employed by the Respondent on or about 30<sup>th</sup> July, 2008 in the position of a Teacher earning an initial monthly salary of Kshs. 38, 903/- only.

3. The Claimant maintained that he performed his duties diligently and to the Respondent's satisfaction until on or about 25<sup>th</sup> July, 2012 when he was served with a letter dated 25<sup>th</sup> July, 2012 purporting to terminate his employment on the grounds of redundancy.

4. The Claimant further maintained that he had no disciplinary case or prior warning prior to his termination. He therefore averred that the Respondent breached the provisions of the Employment Act, 2007 and the Regulations of Wages and Conditions of Employment Act.

5. Aggrieved by the decision to terminate his services the Claimant filed the instant Claim seeking the following reliefs:-

**a. A declaration that the Respondent's termination/dismissal of the Claimant's employment was illegal, unlawful, unfair and inhumane and that the Claimant is entitled to his due terminal benefits and damages.**

**b. An Order for the Respondent to pay the Claimant his terminal dues and compensatory damages totaling to Kshs. 513,861/- comprising of:-**

**i. Service dues for 5 years x Kshs 627/- x 15 days for each completed year Kshs. 47,025/-**

**ii. Compensation for loss of employment**

**Kshs. 466,836/-**

**TOTALKshs. 513,861/-**

**c. An Order for the Respondent to pay the Claimant's costs of this Claim plus interest thereon.**

6. The Respondent despite being served with the summons as well as the Statement of Claim herein failed to enter Appearance or file an appropriate Response to the Claim. The matter was subsequently certified ready to proceed as an undefended Claim and the Claimant directed to fix the matter for hearing.

## **Evidence**

7. The matter proceeded for hearing on 5<sup>th</sup> February, 2020 with the Claimant, CW1 testifying on his behalf.

8. The Claimant sought and was allowed to adopt his witness statement filed in Court on 2<sup>nd</sup> November, 2016 as his evidence in chief. In his statement, the Claimant reiterates the averments made in his statement of Claim. In brief the Claimant in his statement states that he was served with a letter dated 25<sup>th</sup> July, 2012 purporting to terminate his services on grounds of redundancy. He further maintained that the Respondent failed to pay his terminal dues despite requests to pay the same.

9. CW1 urged this Honourable Court to allow his Claim as prayed.

10. The Claimant was thereafter directed to file his written submissions to the Claim.

## **Claimant's Submissions**

11. The Claimant submitted that his termination on account of redundancy was unlawful and unfair as the Respondent failed to show that it complied with the mandatory provisions as provided under Section 40 of the Employment Act, 2007. To buttress this argument the Claimant cited and relied on the case of **Kenya Airways Limited Vs Aviation & Allied Workers Union Kenya & 3 Others (2014) eKLR** where the Court emphasized on the requirements of Section 40 of the Employment Act, 2007 prior to the termination of an employee on the ground of redundancy.

12. He further submitted that the Respondent's actions were further contrary to the provisions of Article 13 of Recommendation No. 166 of ILO Convention No. 158- Termination of employment convention, 1982 that requires consultation between employers on one hand and the employees on the other hand or their representatives on the other before termination of employment under redundancy.

13. The Claimant maintained that he is entitled to the reliefs sought in his Claim and urged this Honourable Court to allow the same as pleaded. For emphasis the Claimant cited the case of **kenfreight (E.A) Limited Vs Benson K. Ngugi (2016) eKLR** where the Court awarded the Claimant maximum compensation among other reliefs having found that his termination was unlawful and unfair.

14. In conclusion, the Claimant urged this Honourable Court to allow his Claim as prayed.

15. This claim proceeded for Formal Proof since the Respondents though served failed to enter appearance/file defence within the requisite period.

16. From the termination letter issued to the Claimant dated 25/7/2012, she was terminated on account of redundancy. The termination was to be with effect from end of August 2012. The Claimant was thus given ample notice period of over 1 month before being terminated.

17. The Claimant has averred that she was terminated unfairly because the Respondent did not adhere to provisions of Section 40 of Employment Act.

18. Section 40 of Employment Act 2007 envisages that when there is to be termination on account of redundancy, there must be ample notice, there must be payment of severance dues, there must be payment of any other outstanding dues.

19. Whereas the Claimant was given notice, there is no indication that he was paid his redundancy dues. In the circumstances, I find for the Claimant and I award him as follows:-

**1. Severance dues for 5 years =  $\frac{1}{2} \times 38,903 \times 5 = 97,257.2$**

**2. I also award the Claimant 3 months' salary as compensation for the unfair termination =  $3 \times 38,903 = 116,709/=$**

**Total = 213,966.5**

**Less statutory deductions**

**3. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgment.**

**Dated and delivered in Chambers via zoom this 28<sup>th</sup> day of May, 2020.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Parties