



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 256 OF 2015

JAMES PHILIP SUDHE.....CLAIMANT

VERSUS

BRIDGE INTERNATIONAL ACADEMIES LIMITED.....RESPONDENT

JUDGMENT

1. This suit was filed on 15/7/2015 by the claimant praying for payment of: -

- (a) Terminal benefits set out under paragraph 12 of the Statement of Claim.
- (b) Compensation for unlawful and unfair dismissal.
- (c) Costs and interest.

2. C.W.1 the claimant testified that he worked as a teacher for the respondent for a period of three (3) years from 1/1/2012 to March, 2015.

3. That in 2014, C.W.1 was promoted to the position of Academy Manager at a salary of Kshs. 7,400 per month. That he received a letter of appointment accordingly. That his salary was increased to Kshs. 10,500 per month.

4. That C.W.1 was dismissed verbally by Academy Territory Manager Mr. Ipalei who was in-charge of a group of Academies.

5. That C.W.1 served under one Seth Otieno.

6. That no other communication has been made to the Claimant to-date.

7. That C.W.1 claims the reliefs set out in the statement of claim including one-month salary in lieu of notice; Kshs. 50,000 being payment for holiday days worked; one-month salary in lieu of leaves days not taken and compensation for unlawful termination of employment.

8. C.W.1 stated that he did not receive any letter for summary dismissal produced before Court by the respondent.

9. C.W.1 stated that he would receive fees from parents vide Mpesa or direct payment to the account. That if any payment was made by cash, he issued a receipt to the parent.

10. C.W.1 testified further that he was not subjected to any disciplinary hearing. C.W.1 denied having misappropriated any fees paid to him.

11. C.W.1 admitted having signed a training agreement with the respondent. C.W.1 stated that he was not told how much he was to be bonded for training.

12. C.W.1 stated that cash received by him from parents was credited to fees account.

13. C.W.1 denied having generated fictitious receipt books. C.W.1 denied having been arrested by police but he went to the police station where he was questioned and released after two hours.

14. C.W.1 denied having started working in 2014. C.W.1 said he signed a copy of company policy. C.W.1 denied having defrauded the

parents. C.W.1 said he was employed on 2/1/2012. C.W.1 denied any children in respect of whom he received fees were sent home.

15. R.W.1 Kelvin Ipalei testified for the respondent. R.W.1 stated that he was a financial analyst presently and was previously a regional manager for the respondent. R.W.1 stated that he knew C.W.1 and that C.W.1 was the academy manager of one of the academies in Kisumu. R.W.1 stated that he was the supervisor of C.W.1.

16. R.W.1 testified that he received a complaint from parents that the claimant had asked them for cash. That investigations were conducted since receipt of cash was not allowed by the respondent. That receipt of cash was a breach of company policy.

17. R.W.1 stated that investigations revealed that C.W.1 was collecting cash from parents and was not remitting the same to the respondent's account. R.W.1 testified that the matter was reported to the police and C.W.1 was summarily dismissed. That C.W.1 was arrested. R.W.1 did not know if C.W.1 was charged for fraud. That parents recorded statements with the police. That many parents came forward after the arrest. R.W.1 stated that the summary dismissal was lawful. R.W.1 produced exhibits '1' to '10' in support of the case filed on 8/6/2018. R.W.1 stated that claimant was summarily dismissed on 3/3/2015. R.W.1 stated under cross-examination that the claimant issued cash receipts to the parents which were not made by the respondent. That the receipts were not genuine. That C.W.1 was defrauding parents.

18. R.W.1 added that company policy per manager, and staff of respondent was not to receive cash and this was in a policy document issued to C.W.1 and all staff.

19. That the policy document is attached to the contract of employment of the claimant. That the Academy Manager operating Manual was part of the Employee handbook. R.W.1 referred to receipts issued by the claimant. R.W.1 stated that the claimant was not paid anything upon summary dismissal.

Determination

20. The parties filed final submissions and the issues for determination are: -

- (a) Whether the summary dismissal of the claimant was for a valid reason.
- (b) Whether the claimant is entitled to the reliefs sought.

21. The Court has carefully considered the pleadings; the list of documents in support of the respective case; testimony by C.W.1 and that by R.W.1 and the final submissions and has come to the following conclusion of fact-

- a. The claimant was Academy Manager of the respondent. That he worked for the respondent from 1/7/2012 until he was summarily dismissed for fraudulent activities on 3/3/2015.
- b. The claimant was not subjected to any disciplinary hearing before the summary dismissal was effected.
- c. That the respondent received complaints from parents that the claimant was receiving cash payments from them which fees were not credited in favour of their children.
- d. That investigations were done by the respondent and the matter reported to the police. That the claimant did not return to work upon being called by police to explain the matter.
- e. That the claimant was not charged with any offence.
- f. The claimant has admitted that he was in receipt and was aware of company policy that prohibited managers and staff from receiving cash from parents.
- g. The claimant also admitted that he received cash from parents and issued them with receipts contrary to this policy.
- h. R.W.1 has clearly demonstrated that there was a valid reason to discipline the claimant for misconduct. R.W.1 however did not demonstrate that the respondent followed any due process and/or any fair procedure in metting out the discipline on the claimant. The respondent simply summarily dismissed the claimant.

22. Section 41, of the Employment Act, 2007 obliges the employer to give an employee a hearing before determining whether there was a valid reason to dismiss the employee in terms of section 43(1) and (2) of the Employment Act, 2007. In the present case, the respondent clearly deviated from the provisions of Section 41 of the Act.

23. The claimant whilst admitting, receiving cash from parents contrary to the respondent's policy, denies having misappropriated any of the fees received. This is the matter that should have been determined if a fair hearing was conducted.

24. Accordingly, the respondent violated section 41 and 45 of the Employment Act, regarding procedural fairness even though it may have had a valid reason to dismiss C.W.1 summarily. Failure to follow section 41 procedure negates the whole process of dismissal. The Court has no alternative but to hold that the summary dismissal of the claimant was unfair.

25. R.W.1 admitted that the claimant was not paid any terminal benefits upon the summary dismissal. R.W.1 did not rebut the claims for terminal benefits set out by C.W.1 in the statement of claim and in his testimony before Court.

26. Accordingly, the Court finds the following claims to have been proved on a balance of probabilities and award the same accordingly.

(i) Kshs.16,200 being half salary paid during the period of suspension.

(ii) One month salary in lieu of notice Kshs.10,800.

(iii) Kshs.10,800 in lieu of leave days not taken.

The claim in respect of worked holidays was not proved by the claimant and is dismissed.

(iv) Compensation.

27. The claimant was summarily dismissed for misconduct in terms of section 49(1) (c) and (4) of the Employment Act, 2007, the claimant is entitled to compensation for unfair dismissal.

28. In this respect the claimant contributed to the summary dismissal for knowingly flouting company policy by receiving cash fees from parents contrary to the written policy of the school. The claimant was not given opportunity to demonstrate that he remitted to the school account all the monies he received in cash from the parents to mitigate his deviation from policy.

29. The claimant had served the school for a period of 3 years. The claimant earned Kshs. 10,800 at the time of termination. The claimant was not paid terminal benefits upon dismissal. The claimant was reported to the police for fraud which claim was not substantiated. The claimant suffered loss and damage due to the failure by the respondent to give him a fair hearing before summarily dismissing him.

30. The Court finds this an appropriate case to award the claimant two (2) months' salary in compensation for the unprocedural dismissal in the sum of Kshs. 21,000.

31. In the final analysis judgment is entered in favour of the claimant against the respondent as follows: -

a. **Kshs. 16,000 being unpaid ½ salary during suspension.**

b. **Kshs. 10,800 in lieu of one-month notice pay.**

c. **Kshs. 10,800.**

d. **Kshs.21,000 in compensation for the unprocedural dismissal.**

Total award Kshs. 58,800.

e. Interest at Court rates from date of judgment till payment in full.

f. Costs of the suit.

Dated and delivered at Nairobi this 17th day of December, 2020.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. C. Ouma for claimant

Mr. Mungai for Respondent

Chrispo – Court clerk.