



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 99 OF 2017

HARUN ROBERT.....CLAIMANT

VERSUS

PRINCIPAL SECRETARY B.O.G SANG'ALO

INSTITUTE OF SCIENCE & TECHNOLOGY.....1ST RESPONDENT

CHAIRMAN B.O.G SANG'ALO INSTITUTE

OF SCIENCE & TECHNOLOGY.....2ND RESPONDENT

J U D G M E N T

The Claimant was employed by the Respondent in the position of Bursar on 30.8.2007. He worked continuously until May 2016 when the Claimant was dismissed from employment. At the time of dismissal, the Claimant earned Kshs 44,460 per month.

The dismissal was preceded by a suspension by a letter dated 29.1.2016 on allegation of financial irregularities against the Bursar and the Finance department which was headed by the Claimant.

It was alleged Kshs 819,906 had gotten lost and a forensic audit was to take place in the absence of the Claimant. The suspension was on half salary.

Following investigations, the Claimant was given a show cause letter dated 5.4.2016 to respond within 7 days on four (4) charges of misappropriation of funds listed therein.

The Claimant was then summoned to appear before the Board on 18.4.2016 by a letter dated 5.4.2016.

The hearing proceeded as scheduled in which the Claimant presented his defence to the allegations.

The Board on 29.4.2016 deliberated the report of the disciplinary committee and summarily dismissed the Claimant. The investigators had found out that Kshs 744,800 had been misappropriated under the watch of the Claimant.

The Claimant stated that there was no Audit Report before the disciplinary committee and he was not served with any. The Claimant testified that he could not withdraw funds from the school account alone without the cosignatories who included the principal of the school and Board Members.

Claimant denied having received funds directly from the students. The Claimant stated he was not charged with any criminal offence and was wrongly implicated in the theft. The Claimant states that the dismissal was unjustified and that he be reinstated to work or he be compensated for the unlawful dismissal.

The Claimant further claims gratuity for 10 years served. He was registered with NSSF and NHIF. He had already collected NSSF payment.

RW1 Testified for the Respondent. He was the Principal of the 2nd Respondent. He relied on a written statement dated 31.8.2016. He told court that a sub-committee of the Board investigated the loss of school funds. The Claimant was found culpable after being given opportunity to defend himself.

RW1 told the court that on 26.6.2015, the Board had adopted a recommendation of BOG Audit and Risk Management Subcommittee to collapse the number of bank accounts maintained by the college from six (6) to four(4).

The decision was communicated to the finance department headed by the Claimant. The Claimant did not effect the decision of the Board and continued to secretly ran two (2) bank accounts marked for closure.

The Board conducted an audit into the finances of the college and discovered a large loss of college funds. The Claimant was directly linked to the loss of Kshs 819,906. This led to the Claimants suspension on 29.1.2016.

On 5.4.2016, he received a notice to show cause. On 18.4.2016, the Claimant appeared before the Board to defend himself. He was accompanied by a Union Official. The Board found that Kshs 744,800 had been misappropriated by the Claimant and that he had insubordinated the Board by his failure to collapse the accounts as directed.

The full Board adopted the findings of the Board's disciplinary committee on 29.4.2016 and decided the Claimant be summarily dismissed. The Claimant received a letter of summary dismissal dated 3.5.2016.

The Respondent did not pay the Claimant any terminal benefits as he was directly connected to the loss of Kshs 744,800. The Respondents did not counterclaim the amount.

The Claimant had received money and failed to bank on many occasions as the Audit Report had revealed.

PW1 prays that the suit be dismissed with costs.

Determination:

The issues for determination are:

- i. Whether the summary dismissal of the Claimant was for a valid reason and in terms of a fair procedure
- ii. Whether the Claimant is entitled to the reliefs sought.

Issues 1.

The Claimant bears the onus of proving on a balance of probabilities that his summary dismissal was not for a valid reason and that the Respondent did not follow a fair procedure. This is in terms of Sections 107 and 108 of the Evidence Act Cap 80 Laws of Kenya as read with Section 47(5) of the Employment Act, 2007.

The Respondent bears the evidentially burden of rebuttal once sufficient evidence has been adduced by the Claimant in terms of Section 41, 43, 45 and 47(5) of the Employment Act.

Upon a careful analysis of the evidence before court set out in this judgment, the court is satisfied that the Claimant was summarily dismissed for a lawful reason and a fair procedure was followed in effecting the dismissal.

The Claimant has therefore failed to discharge the burden of proof on a balance of probabilities and the Claim for wrongful and unfair dismissal is dismissed.

Issue II.

The Claimant has equally failed to prove on a balance of probabilities that he is entitled to any of the terminal benefits prayed for in the Memorandum of Claim. With regard to the claim for gratuity, the Claimant admitted that he was registered with NSSF and the Respondent had remitted all deductions. In fact the Claimant had already collected his NSSF dues as at the time of the hearing of the case. No other viable claim has been prayed for in the Statement of Claim dated 5.7.2016 and filed on 6th July, 2016.

In the final analysis, the entire suit is dismissed. In recognition of 10 years service rendered by the Claimant to the Respondent, each party to pay their own costs of the suit.

DATED, SIGNED and DELIVERED at BUNGOMA this 29TH day of MARCH, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearances:

Mr. Kituyi for Claimant

Mr. Amani for Respondent

Chrispo: Court Assistant.