



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CASE NO. 381 OF 2017**

**HILLARY GATHUKU KIRUNYU.....CLAIMANT**

**VERSUS**

**B.O.M NYARIBO PRIMARY SCHOOL.....RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent seeking to recover for unlawful dismissal and asserted that his services were terminated on 8<sup>th</sup> February 2017. He was employed as a watchman on 11<sup>th</sup> November 2015 earning Kshs. 6,000/- which was raised to Kshs. 7,000/- at the time of the dismissal. He averred that his services were terminated prematurely. He thus sought payment of compensation for the unlawful dismissal by way of damages, salary arrears for the month of January 2017 and 8 days worked in the month of February 2017, unpaid leave for one year and one months salary in lieu of notice. He also sought costs of the suit.

2. The Respondent averred that the Claimant worked on contract basis from 11<sup>th</sup> November 2015 and that the Claimant voluntarily resigned vide his letter of 6<sup>th</sup> February 2017 and on receipt the Respondent sought that he writes another letter which he did on 8<sup>th</sup> February 2017 confirming that he had resigned without any coercion from anyone. The Respondent averred that he reported the existence of a dispute to the Labour Office and in the report indicated that he had left employment due to insecurity surrounding his job. The Respondent asserts that the Claimant was paid his dues on 15<sup>th</sup> February 2017 and he acknowledged receipt on the voucher.

3. The Claimant testified and the Respondent having allowed its witness to sit through the proceedings when the Claimant testified was disallowed to testify. The Claimant testified that he was dismissed via SMS one evening and that he was told not to report to work the next day. He was cross examined and stated that he was called by the headteacher who is the Secretary to the BOM and told not to report to work the next day.

4. The parties filed submissions and in his submissions, the Claimant submitted that it was clear the Respondent had dismissed the Claimant summarily from employment without affording him the safeguards under Section 41 of the Employment Act. The Claimant submitted that the letters he is alleged to have written are in two different handwritings and that he therefore cannot be the author of the said letters. The Claimant urged the grant of the prayers in his claim.

5. The Respondent submitted that the Claimant resigned from his employment as a watchman at the Respondent and that he had even admitted that fact in his pleadings under paragraph 4 thereof. The Respondent submitted that upon resignation the Claimant was paid his terminal dues which he acknowledged.

6. The Claimant is a liar who seemingly thinks that just because he can make a claim against the Respondent he will succeed. He went to the Labour Office at Nyeri where he indicated that he left his employment due to insecurity surrounding his employment. He came to court knowing full well he was not dismissed by the Respondent. He resigned as indicted in his letter of 6<sup>th</sup> February 2017. The second letter dated 8<sup>th</sup> February 2017 was written for him and he signed it as well. Whereas it was superfluous to have the Respondent insisting that he pens another letter, the Claimant testified that he was dismissed by SMS and later in cross-examination said he was called. He was either called or sent an SMS dismissing him, not both. He gave testimony that did not accord with his pleadings as he never mentioned a call or SMS from the Respondent's Secretary as the mode of termination. The suit was not proved as he was even paid his terminal dues as evidenced by the payment voucher on which he acknowledged payment of the sums he was seeking in his claim as terminal benefits. The suit is dismissed with costs to the Respondent.

It is so ordered.

**Dated and delivered at Nyeri this 4<sup>th</sup> day of March 2019**

**Nzioki wa Makau**

**JUDGE**

I certify that this is a true copy of the Original

**Deputy Registrar**