



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 237 OF 2014

GILBERT ATSIAYA.....CLAIMANT

VERSUS

LE PIC SCHOOL LIMITED.....RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent in the year 2000 as a librarian at a monthly salary of kshs.25,700/=.
2. On 3rd July, the respondent school broke for half-term and was to resume on 8th July, 2013. While the school was on half term a theft occurred at the school involving books from the school library. On 9th July, 2013 the respondent requested the claimant to explain how the theft occurred and if he knew anything about.
3. By a letter dated 11th July, 2013 the respondent once again called upon the claimant to show cause why he should not be dismissed in connection with the loss of the books and was at the same time sent on compulsory leave. The claimant responded to the accusation by a letter dated 26th July, 2013 denying having anything to do with the loss of the books as he was away on half term and requested the respondent to investigate those who were actually in the school when the theft occurred.
4. By a letter dated 30th July, 2013 the claimant was informed that his position with the respondent had been made redundant and his employment terminated with effect from 31st July, 2013. The respondent paid him some Kshs.179,900/= as terminal dues.
5. The respondent on the other hand pleaded that it was forced to close the secondary school section owing to a fire incident that not only led to loss of life of its students and staff but also loss of property.
6. According to the respondent, the termination of the contract of employment was an act of necessity and was not in any way malicious, unfair or unreasonable. As at the time of filing the proceedings the respondent did not maintain a library nor did it have the position of a librarian. At the hearing the claimant further stated that he was never notified in advance of the intended redundancy.
7. In cross-examination he admitted that he was terminated on account of redundancy and that the termination letter does not mention any theft. He further stated that he was aware of the going-ons at the school.
8. The respondent's witness Mr John Kingori stated that he worked for the respondent. It was his evidence that the fire incident affected the secondary school side and it was decided that it be closed and employees in that section including the claimant be declared redundant. It was further his evidence that the claimant was not initially in the list of those to be declared redundant. The student population dropped and the audited accounts revealed serious drop in revenue.
9. In cross-examination he stated that there was theft of books worth Kshs.500,000/= and that the claimant was the one in charge of the library. He further stated that the redundancy was not discussed with the Labour Ministry.
10. The services of the claimant herein was terminated on account of redundancy. Although initially there was the issue of text books that was not the reason contained in the termination letter.
11. Termination on account of redundancy is provided for under section 40 (1) of the Employment Act. The section states that an employer shall not terminate a contract of employment on account of redundancy unless where the employee is a member of a union, the union and the labour office has been notified one month in advance of the intended redundancy and the reason for such redundancy. Where an employee is not a member of a union the notice shall be to such employee as well as the labour office. These provisions are couched in mandatory terms.

Failure to adhere to these provisions will lead to a finding that the termination was unfair in terms of section 45 of the Act.

12. The letter declaring the position of the claimant redundant is dated 30th July, 2013 to take effect the next day, 31st July, 2013. The letter was neither copied or no similar letter was produced notifying the labour office of the intended redundancy. This was obviously in contravention of the section 40 (1) of the employment Act. The court therefore finds and holds that the termination of the claimant's services was for that reason unfair.

13. Under section 40 (1) of the Act, the claimant was entitled to be paid accrued leave, one month's salary in lieu of notice and service pay at the rate of 15 days pay for each completed year of service. That is to say:

a. One month's salary in lieu of notice 25,700

b. Service pay as above:-

(2000 to 2012) – (12 years) 10,284

35,985

c. The claimant did not claim leave.

14. Considering the circumstances of termination as discussed above the court awards the claimant Kshs.257,000 being ten months' salary as compensation for unfair termination of service. The total award shall be Kshs. 292,984. This award shall be less Kshs.179,900 which was paid to the claimant upon being declared redundant. The court therefore enters Judgment for the claimant against the respondent for Kshs. 113,084. The claimant shall further have costs of the suit and interest on the decretal sum at court rates from date of Judgment until payment in full.

15. It is so ordered.

Dated at Nairobi this 24th day of May, 2019

Abuodha J. N.

Judge

Delivered this 24th day of May, 2019

Abuodha J. N.

Judge

In the presence of:-

.....**for the Claimant and**

.....**for the Respondent**