



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1248 OF 2015

(Formerly Cause 99 of 2018)

Before Hon. Lady Justice Maureen Onyango

CHARLES NGIGI MUIRURI.....CLAIMANT

VERSUS

JOSIAH NGIGI MACHARIA, CHAIRMAN

BOARD OF GOVERNORS/EXECUTIVE COMMITTEE

SABASABA SECONDARY SCHOOL.....1ST RESPONDENT

HEADMASTER/HEADMISTRESS,

SABASABA SECONDARY SCHOOL.....2ND RESPONDENT

JUDGMENT

The Claimant, Mr Charles Ngigi Muiruri filed suit seeking damages for unlawful termination and defamation which arose out of an employment relationship between him and the Respondent. He avers that he was employed by the Board of Governors of Sabasaba Secondary School in 1990 as a Lab Technician.

That he worked diligently without any complaints until around May 1995 when 16 stop watches went missing from the laboratory that he was in charge of and the Respondents accused him of their disappearance. He avers that he acknowledged their disappearance and he pledged to make an effort to recover the said stopwatches failing which the Respondents would recover the cost from his salary.

The Claimant states that on 29th September 1995 at Sabasaba Trading centre he come across the 16 stolen stopwatches at a watch repairer's shop which prompted him to call the police. On the same day they proceeded to Sabasaba Secondary School accompanied by the police and watch repairer to identify the students who sold the stop watches. The students were arrested and taken to Sabasaba Police Cells for further action.

It is Mr. Ngigi's case that the Headmaster requested the police to release the culprits as the matter had been settled at the school. That despite the fact that the items purported to have been stolen were recovered, the Headmaster went ahead to publish and distribute papers referring to him as the 'lab man' which in his opinion was defamatory material.

That this publication exposed him to hatred, contempt, ridicule, shunning and his profession was injured. That as a result he has not been able to secure alternative employment and claims for damages for the same.

Mr Charles Ngigi claims that he was not paid his salary for May, June and July, notice pay and service pay. He prays for the Court to allow the entire claim.

The Respondents' case on the other hand is that the Claimant was in their employ as claimed and that he was terminated but deny that he was arbitrarily terminated. They claim that the Claimant was involved in the loss of 16 stopwatches and he wrote to the school on two occasions taking responsibility for the loss and offered to pay for them. That the Board of Governors sat and found him culpable for the loss and terminated his employment.

The parties made their respective submissions in support of their cases.

Issues for Determination

1. Whether the Claimant was unlawfully terminated
2. Whether the Claimant is entitled to the remedies sought.

The Claimant in his evidence stated that he was terminated after being accused of an offence he did not commit. The Respondent on the other hand states that the Claimant admitted to the loss of stopwatches and offered to pay for the same. This is evidenced by two letters by the Claimant dated 24th May 1995 and 25th May 1995. These letters were not disputed in evidence. The claimant testified that he was taken through a hearing after which the Board held deliberations and it was resolved that the Claimant's services be terminated.

Under the Employment Act, Cap 226 (1976) (now repealed), an employer could terminate an employee for reason or no reason as was held in the case of **Kenya Ports Authority Vs. Festus Kipkorir, Civil Appeal No.1 OF 2004** where the Court acknowledged that:

“Employers were not obliged to give reasons or hear the employee before termination. Employee was-at-will of the Employer. The Employer could terminate the contract of employment for good cause, bad cause or no cause at all. This was the law of wrongful or unlawful termination. The relationship was seen within the 4 corners of the employment contract.”

The claimant having admitted the loss of the Respondent's property, the Respondent had reason to terminate his employment. The law did not oblige an employer to take an employee through a disciplinary process. However in the instant case there seems to have been some sort of hearing as the Board of Governors met for deliberations over the Claimant's conduct where it was decided that he be terminated.

There is therefore nothing irregular about the termination.

The Claimant also avers that he was defamed as a result of the termination. The elements of the tort of defamation are that the words must be defamatory in that they must tend to lower the plaintiff's reputation in the estimation of right minded persons in the society or they must tend to cause the plaintiff to be shunned or avoided by other persons. In other words, the words complained of must be shown to have injured the reputation, character or dignity of the plaintiff. Abusive words are not defamatory per se. The words must be shown to have been construed by the audience as defamatory and not simply abusive. The burden of proving the above is upon the plaintiff to demonstrate that a reasonable man would not have understood the words otherwise than being defamatory. This was stated in the Court of Appeal decision in the case of **Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR**, in which the court set out the ingredients of defamation to be:-

1. The statement must be defamatory.
2. The statement must refer to the plaintiff.
3. The statement must be published by the defendant.
4. The statement must be false.

In the instant case the Claimant has not met the threshold for the tort of defamation. He states that the headmaster of the school caused the circumstances surrounding the termination of his employment to be published in a P.T.A meeting which ruined his reputation. The said publication has not been proved and in any event he admitted to the loss of the items so the reason of termination is true and therefore justified. I find that the claim is further statute barred as it was filed more than 12 months after the alleged defamation. The claim for defamation has thus not been established and therefore fails.

The Claimant prays for terminal dues which the Respondent avers it paid. The letter of termination dated 14th July 1995 reads:

“RE: TERMINATION OF SERVICE

This is to notify you that the B.O.G/Executive Committee has decided with min 1.7.95 to terminate your service with effect from today the 14th July 1995.

NB:

1. The Board will pay you May, June and July up to today the 14th July 1995.
2. The Board will give you 2 months' salary in lieu of notice
3. The Board will recover the property you lost from the above benefits.

Yours Faithfully

Joseph Munyua (Headmaster)”

From the letter it is apparent that the claimant was paid salaries for May to July 1995 and notice pay as well. The service benefits claimed are not clear and therefore the Court is not able to compute the same for payment to the Claimant.

I find the claim to be without merit and dismiss the same with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF JULY 2019

MAUREEN ONYANGO

JUDGE