



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 234 OF 2016

(Before Hon. Justice Mathews N. Nduma)

ANSELMUS ONYANGO OBUMBA.....CLAIMANT

VERSUS

MAURICE ONGONYA.....1ST RESPONDENT

VOICE OF SALVATION & HEALING INTERNATIONAL.....2ND RESPONDENT

JUDGMENT

1. The suit was filed on 11th August 2016, the claimant seeks damages for unlawful and unfair termination of employment and payment of terminal benefits set out in the statement of claim.
2. The suit was defended by a memorandum of defence filed on 7th September 2016 in which the claim is denied.
3. The claimant testified under oath. The claimant was employed as Principal of the respondent college by a letter dated 15th March 2015 which spelt out his responsibilities. The claimant commenced work on 1st April 2015. He supervised four staff and former principal handed over to him in July 2015. That the school had an administrator through whom he made requisitions and who prepared financial reports.
4. An Audit report dated 25th February 2016, led to the suspension of the claimant and was removed from the office by the Board. The claimant was given a show cause letter to which he responded on 15th March 2016. The claimant was given a further show cause letter dated 23rd March 2016. The claimant was to appear before a disciplinary hearing on 29th March 2016. A further letter of suspension dated 30th March 2016 was given to the claimant.
5. On 29th June 2016, the claimant got a letter of termination.
6. During the suspension, the claimant was on half pay and charges leveled against him was poor performance as the college principal.
7. RW1 Morris Otieno Ayako testified for the respondent. He was the administrator of the college between 2006 to 2015. RW1 said he knew the claimant. That the claimant was given money to develop curriculum on 2nd April 2015 in the sum of Kshs. 32,500 but he did not develop it to date.
8. That as the principal of the college, the claimant was in-charge of the finances and supervised staff. That he failed in his duties hence the termination. That the claimant failed to account for various funds given to him including Kshs. 25,000 given to him on 28th April 2015 to prepare college brochures. He made sub-standard brochures and failed to revise the job. That on 4th May 2015 the claimant was given a float of Kshs. 13,500 and was unable to account for it. That he was supposed to consult the Board before recruiting teachers but did not.
9. That the claimant was called to a disciplinary hearing but his explanation was not satisfactory. The Board decided to terminate his services. The claimant told the board that the administrator and not himself was in-charge of finances yet this duty was in his contract of employment.
10. The claimant was called to two meetings by the Board. The termination followed the 2nd meeting.
11. The claimant was paid Kshs. 70,000 in lieu of notice upon termination. RW1 prayed the suit be dismissed with costs.

Determination

12. The issues for determination are:

- (i) Whether the termination of the claimant was for a valid reason and if a fair procedure was followed in arriving at the decision.
- (ii) Whether the claimant is entitled to the reliefs sought.

Issue I

13. The claimant bears the onus under *Section 107 and 108 of the Evidence Act, Cap 80 laws of Kenya read with Section 47(5) of the Employment Act* to demonstrate that the termination was wrongful on a balance of probabilities. Conversely, the respondent bears the onus of rebuttal under *Sections 41, 43(1) and (2) read with 44, 45(1) and (2) and 47(5) of the Employment Act*, that it had a valid reason to terminate the employment of the claimant and that it followed a fair procedure in terminating the employment of the claimant.

14. From the totality of evidence before court, the court is satisfied that the claimant was faced with disciplinary case of failure to perform his duties properly as the principal of the respondent college and failure to account for monies entrusted to him for various purposes in the course of his employment.

15. The claimant was given opportunity to explain himself on the alleged offences. The Board was not satisfied with the explanation given by the claimant.

16. The court is satisfied that the respondent had a valid reason to terminate the employment of the claimant as the principal of the college. The claimant was paid Kshs. 70,000 in lieu of termination notice. The claimant received half salary during the period of suspension. The respondent followed a fair procedure in terminating the employment of the claimant.

17. The claim for unlawful and unfair termination of employment lacks merit and is dismissed.

Issue II

18. With regard to the claim for overtime worked. The claimant has failed to prove on a balance of probabilities that he had worked overtime that was not paid for. The claimant has equally failed to prove that he was entitled to payment of gratuity upon termination of employment. The letter of appointment does not provide for the two reliefs sought by the claimant. The claimant was to work for 8 hours for a five (5) day week and no evidence shows that the claimant had exceeded this contractual obligation.

19. The claimant was on a five year contract from 25th March 2015. The claimant did not complete the term due to his own fault. The claim for payment of the remainder of the contract is untenable and is equally dismissed.

20. In the final analysis, the entire suit by the claimant against the respondents is dismissed with no order as to costs since the respondent is a religious organization to whom the claimant had rendered service for a while before his performance became wanting.

Judgment Dated, Signed and delivered this 16th day of September, 2019

Mathews N. Nduma

Judge

Appearances

M/S Ayata for claimant.

Mr. Omondi for Respondent.

Chrispo – Court Clerk