



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CASE NO. 26 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**PETER WANYAMA MAKOKHA.....CLAIMANT**

**VERSUS**

**PRINCIPAL FRIENDS SCHOOL, KAMUSINGA.....1<sup>ST</sup> RESPONDENT**

**THE BOARD OF MANAGEMENT FRIENDS SCHOOL KAMUSINGA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The claimant prays for the following reliefs:

- (a) One month salary in lieu of notice Kshs. 20,289.
- (b) Half salary arrears withheld from April 2014 to November 2016 in the sum of Kshs. 669,537 whilst the claimant was under suspension.
- (c) Service pay in the sum of Kshs. 185,982.
- (d) Compensation for wrongful dismissal.
- (e) Costs and interest.

2. CW1 testified that he was employed by the respondent on 1<sup>st</sup> September 1987 in the position of clerical officer. That CW1 did Bank Keeping. The claimant worked continuously until 20<sup>th</sup> February 2014, when CW1 received a letter from the Principal alleging insubordination for failing to receive fees by Mpesa and obstructing installation of internet at the school. CW1 denied the allegation. Indeed parents had paid fees by Mpesa. CW1 testified that he was not familiar with Mpesa at the time. CW1 said he was not opposed to such payment and explained the issue to the Principal on 18<sup>th</sup> April 2014.

3. The Principal suspended the claimant on 19<sup>th</sup> April 2014. CW1 testified that he remained on suspension for a period of three years. That he started receiving half salary in September 2014 but was not paid any salary from the month of May to August 2014.

4. On 1<sup>st</sup> November 2016, CW1 received a letter terminating his employment. CW1 testified that he was not invited to a disciplinary hearing. The letter of termination did not disclose the reason for termination.

5. CW1 testified that his last monthly salary was Kshs. 24,996. That the termination of his employment was unlawful and unprocedural. The claimant remained firm under cross examination and his evidence was candid and consistent.

6. The respondent did not call any witness to rebut the testimony by CW1. The evidence by CW1 is thus uncontroverted and the reliefs sought not denied.

7. The respondent had however filed a statement of defence and lists of documents. The respondent had made bare denial of the claim by CW1.

## **Determination**

8. The suit by the claimant remains undefended the respondent having failed to rebut the oral testimony by the claimant adduced under oath.

9. In this regard the court finds the following matters to have been proved on a balance of probabilities:

(a) The claimant worked for the respondent as a clerical officer doing banking from 1<sup>st</sup> September 1987 up to 11<sup>th</sup> November 2016 when his employment was terminated. At the time of termination, the claimant earned a monthly salary of Kshs. 20,289.

(b) The claimant was kept under suspension from April 2014 to November 2016, a period of 33 months he did not receive salary for the month of May to August 2014 and was paid half salary from August 2014 to November 2016.

(c) The claimant's employment was terminated on 1<sup>st</sup> November 2016 without notice and was not paid in lieu of notice.

(d) The claimant was kept under suspension for an inordinately long period, which was unlawful and unfair to the claimant.

(e) The termination of employment of the claimant was not for a valid reason and a fair procedure was not followed by the respondent.

(f) The respondent violated *Sections 36, 41, 43 and 45 of the Employment Act 2007*.

(g) The claimant is entitled to payment of terminal benefits except severance pay as claimed and compensation for the unlawful and unfair termination of employment in terms of *Section 49(1) (c) and (4) of the Act*.

10. In the final analysis judgment is entered in favour of the claimant against the respondent as follows:

(a) Kshs. 20,289 in lieu of one month termination notice.

(b) Kshs. 20,289 arrear salary for the month of May to August 2018 in the sum of Kshs. 81,156.

(c) Half salary for the month of September 2014 to November 2016 in the sum of Kshs. 263,757.

(d) Compensation:

11. The claimant had diligently served the respondent for a period of 30 years before he was unlawfully and unfairly placed under suspension for a period of over two years on half pay. This in itself was unfair labour practice which negated the entire disciplinary process. The claimant did not contribute to the termination as there was no valid reason to terminate his employment. The claimant was not paid terminal benefits nor compensated for the loss of employment. The claimant suffered loss and damage. The claimant has no good prospects of getting any alternative employment. He had no formal employment as at the time of hearing the suit in the year 2018 but was doing some farming at home.

12. This is appropriate case for the claimant to be awarded maximum compensation equivalent to 12 months salary for the unlawful and unfair termination of his employment in the sum of Kshs. 243,468. Total award Kshs. 608,670.

(e) Interest at court rates from date of filing suit till payment in full in respect of the award save in respect of compensation which will attract interest from date of judgment.

(f) Costs of the suit.

**Judgment Dated, Signed and delivered this 24<sup>th</sup> day of October, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Muwango for the Claimant

Mr. Ombito for Respondent

Chrispo – Court Clerk