

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 352 OF 2017

PETER NDERI MUYA.....CLAIMANT

VERSUS

MS. RUTH NYAMBURA T/A OAKRIDGE ACADEMY.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent seeking to recover for the alleged unlawful dismissal from employment. He averred that he was employed as an untrained primary school curriculum development officer at the Respondent's academy located within PCEA Kianjogu Parish Church premises. He averred that he was earning Kshs. 9,500/- which was below the applicable minimum salary for the lowest paid Teachers Service Commission registered teacher which stood at Kshs. 16,692/- as of the year 2016. He averred that his services were terminated via an SMS without justification or cause. He averred that his dismissal was arbitrary, mischievous and therefore manifestly illegal, unlawful, irregular, oppressive, malicious, unprocedural, unfair, dishonest and invalid. He averred that he was entitled to recover severance pay – Kshs. 200,304/-, underpayment for the days worked – Kshs. 35,960/-, payment in lieu of notice – Kshs. 16,692/-, unremitted statutory dues – Kshs. 1,800/- for NSSF and Kshs. 1,250/- for NHIF as well as a certificate of service, costs of the suit plus interest.

2. The Respondent filed a defence in which it averred that the Claimant's terms and conditions of work were as per the employment contract signed between the parties. The Respondent averred that the suit was defective as she was sued in her personal capacity when she is only a director of Oakridge Academy Limited a limited liability company which was the Claimant's employer. She sought the dismissal of the Claimant's suit with costs.

3. The Claimant as well as the Respondent testified. He stated that he was a casual labourer at present and reiterated his averments as above. He stated that when he was employed he did not know that the Respondent was a limited company. He testified that he went to the Labour Office, given letters to take to her and the Respondent did not pay. He was cross-examined and he testified that he was employed through the letter of appointment. He stated that he was employed by Ruth Nyambura Waweru as director of Oak Ridge Academy Limited. He stated that appeared on the letter of appointment. In re-exam he testified that she did not incorporate the company.

4. The Respondent's witness testified and reiterated the averments made for the Respondent above. She was cross-examined and she stated that the Claimant dealt with her from the start to end of his service. She stated that Oak Ridge Academy was no longer in business as the school closed in 2017. She said the other director was Elizabeth Nyokabi. She testified that she was sued in her personal capacity and she responded but the Claimant was not interested in suing the school or company. She stated that she went to the Labour Office and they agreed that the Labour Office was to write back to her on the proceedings and the decision on the discussion. She stated that the Labour Office did not write back to her and that later she received suit papers. She denied receiving the letter of demand and sought to know how it was delivered. She stated the address on the letter was incorrect and therefore the demand letter did not reach her. She testified that the documents the Respondent produced in court were the documents she took to the lawyer. That marked the end of oral testimony and parties were to file submissions.

5. The Claimant is the only party that filed submissions. The Claimant submitted that he had proved his case and the case turns on only 2 issues only. Firstly, whether the Respondent was non-suited and secondly, whether the termination was lawful. He submitted that his constitutional rights under Article 41 were violated and also that the employer-employee relationship and/or contract as governed by the labour laws such as the Employment Act. The Claimant submitted that he testified and produced his documents as per the record and the Respondent testified merely shifting blame to her co-director(s) but admitted she is the one who dealt with the Claimant all through. She denied receiving any legal letter before the suit was filed but admitted attending the conciliation meetings at the Labour Office. The Claimant submitted that the Respondent never issued a third party notice to the other director nor applied to join any other party she knew or believed to be the right party. It was submitted that apparently she did not raise any preliminary objection on the suit's competence or propriety as being non-suited, albeit pleading it. The Claimant submitted that the legal letter was under a certificate of posting and that the Respondent denied non-receipt to suit her convenience. He submitted that on the whole he was despised and subjected to unfair labour practices and he felt unwanted resulting in his economic hardships. He thus sought a grant of the relief sought as he deserved the declarations and terminal benefits pleaded.

6. The Claimant sued the Respondent in her personal capacity yet the employer was a limited liability company. In that regard, the Respondent was non-suited. Be that as it may, in any termination for the misconduct alleged as against the Claimant, he was entitled to be heard. Had he sued the correct party he perhaps may have recovered the sums awarded by the Labour Officer or the compensation for an unlawful termination. He proceeded in his suit against the wrong entity and the inevitable conclusion is that the suit was not well founded therefore untenable. The suit is dismissed but each party will bear their own costs.

It is so ordered.

Dated and delivered at Nyeri this 14th day of November 2019

Nzioki wa Makau

JUDGE