



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 227 OF 2017

BETWEEN

GIDEON INZAYI MADAHANA.....CLAIMANT

VERSUS

1. SESSION CLERK

2. BOARD OF TRUSTEES, P.C.E.A..... RESPONDENT

Rika J

Court Assistant: Benjamin Kombe.

Cootow & Associates, Advocates for the Claimant

Mburu Kariuki & Company, Advocates for the Respondents

JUDGMENT

1. The Claimant filed his Statement of Claim on 21st March 2017. He states, he was employed by the Respondents as Head Teacher P.C.E.A Makupa Academy on a 2-year renewable contract, on 4th March 2014. It was renewed for 2 years, starting 4th January 2016, ending 30th December 2017. On 13th December 2016, the Claimant received a letter from the Respondents, purporting to redeploy him as an ordinary Teacher. On 16th December 2016, the position of Head Teacher was advertised by the Respondents, while the Claimant was still the Head Teacher. There was no written agreement on varying of the Claimant's contract. He wrote to the 2nd Respondent on 4th January 2017, declining redeployment. He received a notice to show cause, why he should not be disciplined, based on allegations which had not been communicated to the Claimant earlier. He was summarily dismissed on 14th January 2017. His last salary was Kshs. 52,800 monthly.

2. The Claimant prays the Court to grant Judgment against the Respondents as follows:-

a. Declaration that termination was unfair.

b. 1 month salary in lieu of notice at Kshs. 52,800.

c. Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 633,600.

d. Salary for the balance of the contract period of 1 year at Kshs. 633,600.

Total...Kshs. 1,320,000

e. Costs.

f. Interest.

g. Any other suitable relief.

3. The Respondents filed their Statement of Response on 20th June 2017. They concede to have employed the Claimant as the Head Teacher. He was redeployed following careful review of his performance. It is true that the Respondents advertised for the position of Head Teacher. This was not in breach of the Claimant's contract. It is conceded that the Claimant was taken through a disciplinary process, and a decision made to terminate his contract. He breached his contract by: failing to follow Respondents' instructions; failing to act in a professional manner; failing to display high integrity and loyalty; failing to inform the Management about negligence and misconduct affecting the School; failing to act in the best interest of the School; refusing to teach; and underperforming. The Claim is misconceived. The Respondents pray the Court to dismiss the Claim with costs.

4. The Claimant gave evidence on 6th March 2018 and 5th June 2018 when he rested his case. Board of Trustees Secretary, Jane Irene Wairimu, gave evidence on 11th March 2019. Board Member Joseph Kamau gave evidence on 8th July 2019, closing the hearing. The Cause was last mentioned on 27th September 2019, when the Parties confirmed the filing of their Closing Submissions.

5. The Claimant adopted his Pleadings and Witness Statement in his oral evidence. He reaffirmed that he was employed by the Respondents on the terms and conditions of service enumerated in the Pleadings. He was called by the Board Chairman and the Secretary to a hotel on 5th December 2016. They asked the Claimant to relinquish his position. They told the Claimant that the School wanted to restructure. He was later called by the Board and advised by the Session Clerk to keep away from the School and ruminate over the proposal to have him vacate office. He was then served with a notice to show cause, dated 10th January 2017, with a potpourri of accusations, some as captured at paragraph 3 of this Judgment. He was asked through e-mail dated 14th January 2017, to attend disciplinary hearing scheduled for the same date. He was not adequately prepared but presented himself nonetheless. The Board had already determined that the Claimant must vacate office, by advertising his position earlier, on 16th December 2016. He had not completed his contractual period at the time of his dismissal. He did not have warnings. He had scored the highest mark in work appraisal. He was commended by the Respondents. He was paid nothing on termination. The Claimant's contract designated him as the Head Teacher.

6. Cross-examined, the Claimant told the Court he was told by the Respondents about restructuring. He was to report as an ordinary Teacher on 3rd January 2017. He had met the Board Chair on 5th December 2016. He received short notice of the disciplinary meeting. He was asked by the Panel if he was comfortable with the proceedings. He was affirmative. He signed the minutes. He scored highly in evaluation of 2014/2015. There was reduction in the number of Students. It was not a mass exodus from the School. It was caused by a hike in school fees by more than Kshs. 10,000 a term. The Claimant was not reluctant to teach. He did not oversee double exam registration for some Students. He did not have control over where Parents opted to register their Children. Redirected, the Claimant told the Court he did not ask to be redeployed. He was being demoted. 2 years had not ended at the time of redeployment. There was no warning on performance. He did not have the agenda for the disciplinary meeting.

7. Wairimu found the Claimant already in employment when she joined the School. There were plenty of issues surrounding Claimant's performance. The Claimant was advised to improve. He registered 2 candidates from the School at other exam centres. Student numbers plummeted. It was not because of increase of fees. The School increased its fees after a long time, which remained the lowest in the market. The Claimant was given adequate time to explain himself at the disciplinary hearing. He opted to go on with the hearing. The Respondents were redeploying him. His contract was not being terminated.

8. Wairimu told the Court on cross-examination that the Claimant was employed as the Head Teacher. The Respondents did not write to him a letter detailing the complaints mentioned by Wairimu in her evidence. Alterations in the contract had to be by agreement of the Parties. The Claimant was given time to think about his redeployment. He informed the Respondents, he was not willing to work as an ordinary Teacher. He had worked as Head Teacher for 2 years, and received renewal of his contract in the same position. Redeployment was a demotion. Wairimu agreed in part, that school performance depended on collective effort of the school community.

9. Kamau told the Court that the Claimant was questioned about his failure to assume the role of ordinary Teacher. He consented to proceeding with the disciplinary hearing. He was aware of the accusations against him. He was heard, and verdict against him made. He had 14 days' right of appeal which he did not utilize. Cross-examined, Kamau told the Court he was aware Claimant's contract could be renewed if there was a request made, backed up by good performance. His contract was renewed, to expire in December 2017. He was still the Head Teacher, when the Respondents advertised his position in December 2016. Nothing had been predetermined by the time the Claimant was heard in January 2017. There was fee increment. The Claimant had bad attitude with Parents. There were no documents exhibited in Court to support this. The Claimant's contract was downgraded. Notice of the hearing issued on the same date the Claimant was heard, and decision made on 14th January 2017. There were no letters of warning, but the Claimant had many defects. Redirected, the Witness told the Court that the Claimant's contract was renewed because the Claimant promised to change. His salary would stay the same on redeployment.

The Court Finds:-

10. The Claimant was first employed by Presbyterian Church of East Africa [P.C.E.A] Makupa Parish, represented by the Respondents, as Head Teacher, P.C.E.A Makupa Academy, effective from 1st January 2014.

11. His contract was to run for 2 years, ending in December 2015. It was renewed in another contract which commenced on 4th January 2016. The 2nd contract was to expire in December 2017. The contract was terminated by the Respondents before it matured, on 14th January 2017.

12. There are multiple reasons given by the Respondents for their decision in their Evidence, Pleadings and Documents.

13. The Respondents have not shown that any of the multiple reasons stated in justifying termination, had validity.

14. 3 reasons are stated in the letter of termination: partial registration of 2016 exam candidates; failure to assume the role of an ordinary Teacher; and failure to be part of the teaching Teachers [what are teaching Teachers] for K.C.P.E Class of 2016.
15. The record does not have any evidence, substantiating these 3 allegations, and other omnibus allegations given in the evidence of the 2 Witnesses of the Respondents.
16. The main reason which is to be gleaned from all the allegations, is that the Claimant refused to step down from the position of Head Teacher, and take up the position of an ordinary Teacher. The Board Chairman and the Secretary first attempted a soft approach, taking the Claimant to a hotel, and sweet-talking him to relinquish his Head Teacher position.
17. When he declined, the Respondents became exasperated. They generated a potpourri of accusations. They in haste, advertised for the position of Head Teacher, while the rightful holder was still in office. Advertisement was placed in December 2016.
18. What was the sense in calling the Claimant to a disciplinary hearing in January 2017, if advertisement for his position had already been made?
19. The urge to have the Claimant out of the School was so intense, that on 14th January 2017, he was notified there was going to be a disciplinary hearing, he was heard, and a decision made the same day, summarily dismissing the Claimant.
20. The Respondents were wrong in redeploying the Claimant from the position of Head Teacher, to an ordinary Teacher.
21. His 2 contracts designated the Claimant as the Head Teacher. This was a fundamental term in both contracts. Kamau told the Court renewal was based on Claimant's request for renewal, and positive evaluation of his performance. There can be no weight attached to the assertion that termination was for poor performance. The Claimant was interviewed at the point renewal was made, and found suitable. If his performance was at any undisclosed point in time evaluated, and found wanting, he was not placed under a Performance Improvement Plan (PIP). The last contract stated in clear terms, that: "*the provisions of this contract of employment may only be varied by agreement in writing...*" This clause is in agreement with Section 10[5] of the Employment Act 2007, which requires that where the terms and conditions of employment change, the Employer shall, in consultation with the Employee, revise the contract to reflect change, and notify the Employee. The Respondent neither consulted the Claimant as intended in this law, nor revised the contract. There was no written agreement between the Parties, to have the Claimant take the position of an ordinary Teacher, and cease heading the School. It did not matter under the law and the contract, that his salary would be unaffected. Terms and condition of employment comprise much more than money.
22. Termination was unfair for want of valid reason or reasons, and for lack of a fair procedure. It was in stark violation of Sections 41, 43, and 45 of the Employment Act 2007. The Claimant merits compensation for unfair termination under Section 49 of the Employment Act.
23. He was the Head of the School. He told the Court, and this was not disputed by the Respondents, that he had been evaluated highly, and commended by the Respondents. His contract was renewed based on good performance. Parties however opted to engage in 2 year fixed term contracts. The Claimant would reasonably have expected to work to the end of his contract, December 2017. He was treated shabbily, and deprived of at least 12 months of service with the Respondents. He was paid nothing upon termination, after 3 years at the helm of the School.
24. **He is granted equivalent of 12 months' salary in compensation for unfair termination at Kshs. 633,600.**
25. **The prayer for notice is allowed at Kshs. 52,800.**
26. The Court has considered, in granting the prayer for compensation at the ceiling amount of Kshs. 633,600, that he would have been expected to work for a period of 12 months, had his contract not been prematurely terminated. It is not therefore appropriate for the Claimant to demand he is paid an additional amount of Kshs. 633,600 in anticipatory salary, for the remainder of the contract period.
27. **He is allowed the prayer for costs.**
28. **Interest allowed at 14% per annum from the date of Judgment till payment is made in full.**

IN SUM, IT IS ORDERED:-

- a. **Termination was unfair.**
- b. **The Respondent shall pay to the Claimant equivalent of 12 months' salary in compensation for unfair termination at Kshs. 633,600 and notice at Kshs. 52,800 – total Kshs. 686,400.**
- c. **Costs to the Claimant.**
- d. **Interest allowed at 14% per annum from the date of Judgment till payment is made in full.**

Dated and delivered at Mombasa this 5th day of December 2019.

James Rika

Judge