



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 406 OF 2017

(Before Hon. Justice Mathews N. Nduma)

PAUL K. MARU.....CLAIMANT

VERSUS

BOMET TEACHERS TRAINING COLLEGE

(THE BOARD OF DIRECTORS.....1ST RESPONDENT

BERNARD C. MUTAI

(PRINCIPAL BOMET TEACHERS' TRAINING COLLEGE).....2ND RESPONDENT

JUDGMENT

1. The claimant filed suit on 17th October 2017, seeking maximum compensation for unlawful termination of employment and payment of terminal benefits to wit:

- (a) One month salary in lieu of notice Kshs. 25,000.
- (b) Salary arrears from June 2012 to October 2013, Kshs. 97,000.
- (c) Refund of unremitted deductions to NHIF Kshs. 86,700.

Facts of the claim.

2. The claimant testified as CW1 that he was employed by the respondent as a P.E Lecturer by a letter dated 6th January 2008 which employment commenced on 12th January 2009. The claimant worked continuously and by a letter dated 19th January 2011, he was promoted to the position of Head of Games Department of the college with effect from 9th January 2011 and was entitled to Departmental Head allowance of Kshs. 2,000.

3. The claimant coordinated students gaming activities and worked well until June 2012 when the respondents started paying the salary of the claimant in bits and pieces remaining with arrears until October 2013 which money the respondent has not settled to date.

4. The claimant and his colleagues were affected by non and/or late payment of salaries and they wrote several letters to the respondents and ministry of labour demanding payment of arrear salary.

5. The claimant served the respondent for about 9 years from 12th January 2009 until 3rd March 2017 when the employment was in the words of the claimant unlawfully and unfairly terminated by the respondents.

6. On 1st March 2017, the respondent wrote a notice of termination to the claimant which stated the termination date to be 3rd March 2017, two days after.

7. The parties had by consent dispensed with oral testimony and relied on the pleadings including witness statement of the claimant, list of documents and written submissions. The claimant prays to be awarded for unlawful declaration of redundancy. The letter of termination was produced as annexure 10 to the statement of claim.

Response

8. The respondents filed statement of response to the claim on 20th November 2017 in which it states that the claimant was employed on temporary basis. That there were no pending salary arrears or deductions at all. That all final dues were paid to the claimant. That the termination was proper in that a proper notice was issued and claimant was paid one month salary in lieu of notice. That the claim lacks merit and be dismissed.

9. The respondent relied on witness statement of Bernard Chepkwony Mutai, however the witness was not called to testify. The respondent submitted that the college was experiencing serious financial problems attributed to low students enrollment which resulted in the bank's attempt to auction the college. That the claimant and others were declared redundant as there was no more work for them hence the termination notice dated 1st March 2017. The respondent prays the suit be dismissed with costs.

Determination

10. The issues for determination are:

(a) Whether the termination of employment of the claimant was for a valid reason and if a fair and lawful procedure was followed in effecting the termination.

(b) Whether the claimant is entitled to the reliefs sought.

Issue (a)

11. It is common cause that claimant was employed by the respondent. That the respondent started experiencing financial difficulties and was unable to pay the salary of the claimant and other employees regularly and on time.

12. It is common cause that the claimant was served with a letter terminating his employment dated 1st March 2017. The letter of termination stated the effective date of termination to be 3rd March 2017 two days later. The reason given in the letter for the termination was financial constraints experienced by the respondent. The respondent had declared the claimant redundant within the meaning of *Section 2 and 40 of the Employment Act, number 11 2007*.

13. In terms thereof, the respondent was mandated to give at least one month termination notice to the claimant to allow him time to prepare for the job loss. The respondent was also bound to notify the ministry of labour of the termination by reason of redundancy at least one month to the date of termination. Evidently, the respondent did not give the claimant at least one month termination notice nor was the ministry of labour notified at all.

14. The respondent further violated the provisions of *Section 40(1) of the Employment Act* in that it did not indicate to the claimant the criteria for his selection. The respondent did not pay the claimant any terminal benefits including payment in lieu of leave days not taken and severance pay for the 9 year period served by the claimant. Accordingly, the declaration of redundancy of the claimant was for a valid reason but the procedure followed by the respondent in terminating the employment of the claimant was unlawful and unfair. The respondent violated *Sections 36, 40, 41 and 45 of the Employment Act* therefore.

15. The claimant is entitled to payment of all terminal benefits provided under *Section 40(1) (a) to (f) of the Employment Act*, and to compensation for the unlawful and unfair termination in terms of *Section 49(1) (c) and (4) of the Act*.

16. Accordingly and in answer to issue (b) above the claimant had served a period of 9 years. The claimant was paid salary in bits and pieces and was owed salary arrears up to the time of filing suit. The claimant did not contribute to the declaration of redundancy. The claimant was not paid any terminal benefits upon termination. The claimant wished to continue working. The claimant lost his employment without any lawful notice and suffered loss and damage.

17. Therefore, the court enters judgment against the respondent in favour of the claimant being equivalent of six (6) months salary in compensation for the unlawful and unprocedural declaration of redundancy. In addition the court finds that the claimant has proved on a balance of probabilities that he was not paid the terminal benefits set out in the memorandum of claim and awards the claimant as follows:

(a) One month salary in lieu of notice Kshs. 25,000.

(b) Unpaid arrear salary for the period June 2012 to October 2013 Kshs. 97,000.

(c) Refund of unremitted NHIF dues Kshs. 86,700.

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

(a) Equivalent of six (6) months in compensation for unlawful termination Kshs. 150,000.

(b) Other terminal benefits Kshs. 208,700.

Total award Kshs. 358,700.

(c) Interest at court rates from date of judgment in respect of (a) above and from date of filing suit in respect of (b) above.

(d) Costs of the suit.

Judgment Dated, Signed and delivered this 5th day of December, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Kirui for Claimant

Mr. Ng'eno for Respondent.

Chrispo – Court Clerk