



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NO 2058 OF 2014

ROGERS NYANDUSI NYANGWARA.....CLAIMANT

VERSUS

KENYA MEDICAL TRAINING INSTITUTE.....RESPONDENT

JUDGEMENT

1. The claimant averred that he was employed by the respondent on 9th July, 2007 and worked until 16th May, 2013 when he claimed he was unfairly dismissed by the respondent. According to the claimant, the dismissal was unjustified because the respondent did not follow the rules of natural justice and equity in dismissing him.

2. The claimant averred that on 5th April, 2012 he received a letter from the Principal Kilifi Medical Training College in response to his letter dated 24th February, 2012 and that in that letter the Principal gave a time frame of one month from the date of that letter for the claimant to pay Kshs 20,381.80 to the respondent. Before the expiry of the period the claimant received a letter dated 3rd May, 2012 interdicting him from employment.

3. The claimant further alleged that on 4th April, 2012 the respondent alleged that the claimant had gained access to the respondent's accountant office and tampered with the student ledger. The claimant complained that he was never given an opportunity to be heard in order to explain his side of the story. The respondent on its part pleaded that the termination of the claimant's services was proper and lawful.

4. In his evidence in chief the claimant additionally stated he worked for the respondent as an account's clerk and was issued with a letter of appointment marked as RNN 1 in his bundle of documents. It was his evidence that when he was dismissed he used to receive money from students and issue receipts and this was in the course of his duties. He further stated that he used to receive money from students on Mpesa as well. He stated that there was discrepancy on the money he received. It was Kshs 31,781/=. He was asked to explain. According to him, the actual deficit was actually kshs 20,381.80 which the claimant was asked to refund within a month but before he could do so he was issued with interdiction letter on 3rd May 2012.

5. According to his evidence, he was never taken through any disciplinary hearing and that he did not know what the case against him was about. In cross examination he stated that he was asked to balance the books but did not do so hence was asked to refund the money within a month within a month. It was his evidence that the money he was sent by the student was accounted for and that the money unaccounted for was Kshs 20,381.80.

6. The respondents first witness Mr John Isaac Obiye informed the court that between 2007 and 2012 the claimant had no issues with work and that issues arose in 2012 and the claimant advised on the issues. The advice was contained on page 10 of the respondent's bundle of documents. According to Mr Obiye, the claimant was given time to respond to these issues but the response was not satisfactory.

7. On 5th April, 2012 the claimant was issued with a warning letter and was expected to sort out the issue but more issues emerged as was shown on page 12 of the respondent's bundle of documents. The Staff Advisory Committee members agreed to have investigations conducted. The preliminary report showed that the claimant was altering the ledgers. According to the witness, the claimant in response to the show cause letter admitted to the allegations and this could be found at pages 26 and 27 of the respondent's bundle of documents. The witness further stated that the claimant was not supposed to receive money or issue receipts. According to Mr Obiye the claimant was heard twice in Kilifi before dismissal.

8. The respondent's second witness Mr Simon Kariuki Gachoka stated that he worked for the respondent since 2009 as deputy internal auditor. Around April 2012 they received communication from management on allegations of fraud and misappropriation of funds at Kilifi Campus and that the claimant was the suspect. A team of auditors was set up to go and verify the issue. According to him, this was a special

audit only concerned with the allegations against the claimant. In cross-examination he stated that special audit relates to specific issues which they wanted to verify. They did not have a predetermined mind.

9. Under section 43(1) in any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination. Subsection (2) further states that the reasons for termination are matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.

10. The claimant in his statement of claim does not deny that there were discrepancies that the respondent's money which came into his hands in the course of his duties. He further did not refute the fact that he was unable to reconcile his books when called upon to do so by the respondent. The claimant in his pleadings and evidence further stated that when the discrepancy was discovered he was asked to refund within a month Kshs 31,781/= which according to him was actually kshs 20,381.80 but before expiry of one month he was interdicted and later dismissed.

11. Exhibits J10-8 and J10-9 attached to the respondent's list of documents were claimants own letters on the issue of financial discrepancy. Therein he makes admission of ledger alteration and receiving cash from parents. He consequently authorizes the deductions of the sums concerned from his salary. Admission of embezzlement or theft of employers property is a ground for summary dismissal and the employer need not prove more. Further, once an employee unequivocally admits to an act or omission which amounts to gross misconduct what is there to hear before a disciplinary committee?

12. Whereas the Employment Act provides that before an employee is dismissed or terminated a disciplinary hearing ought to be conducted such a hearing would not be necessary whereas in the case here the employee unequivocally admits the disciplinary offence.

13. The court in the circumstances finds the claim without merit and dismisses the same with costs.

14. It is so ordered.

Dated at Nairobi this 29th day of June, 2018

Abuodha J. N.

Judge

Delivered this 29th day of June, 2018

Abuodha J. N.

Judge

In the presence of:-

..... for the Claimant

..... for the Respondent