



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NO 1662 OF 2013

PATRICK MBAU KARANJA.....CLAIMANT

VERSUS

KENYATTA UNIVERSITY.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was employed by the respondent in May, 1992 as an accountant earning a gross salary of Kshs 140,760 per month. He worked for the respondent until 19th October, 2011 when according to him, he was sent on early retirement on allegations that he had misused his office for his own benefit. According to the claimant were it not for the said early retirement he could have worked for the respondent until 30th June, 2013 when he was due to retire.

2. He therefore claimed his salary for the period between 19th October, 2011 when he was retired and 30th June, 2013 when he would have lawfully retired. Prior to retirement, the claimant was put on suspension on half pay. He there sought an order that he be paid the balance of his salary during suspension up to the time the respondent retired him.

3. The respondent on the other hand pleaded that the claimant's services were lawfully terminated on grounds that the claimant engaged in an act of misconduct by registering for MBA degree program before paying fees. Concerning payment of salary until retirement age, the respondent pleaded that termination of contract was possible at the instance of either party in accordance with the contract and further that employees were only entitled to salary for actual performance of their duties.

4. Regarding due process the respondent pleaded that the claimant was suspended from duty pending the hearing and determination of his disciplinary case before the Senior Board of Discipline on abuse of office charges. Under clause 1 of Statute XX of the Kenyatta University Statutes read together with section 10 of the Public Officer Ethics Act and Section 41 of the Employment Act the respondent was obligated to constitute a board to conduct a disciplinary hearing to look into the claimant's alleged misconduct. The claimant was given an opportunity to be heard and he defended himself accordingly. On 9th October, 2011 the Senior Board of Discipline found the claimant guilty of the offence of registering for an MBA degree prior to the payment of required fees. The committee recommended that the claimant be retired early.

5. The respondent further pleaded that the claim was *res judicata* since the cause of action, facts of the case and issues to be addressed were substantially similar to those of constitutional petition number 181 of 2012 between the claimant and respondent. In his oral evidence in court the claimant additionally stated that on 7th December, 2010 he was suspended over accusation of registering for MBA without clearing fees. He was suspended from the course as well but the court ordered that he be reinstated to the course. These were the same grounds for which he was retired prematurely. It was his evidence that he was ready to continue working until his actual retirement age. He was therefore claiming salary up to retirement date. He further stated that during suspension he was earning half salary which was Kshs 40,000/= per month and asked the court to order the respondent to pay the other half unpaid.

6. In cross-examination he admitted that he was aware of the University's Financial policy for students but stated that not everybody was required to clear fees before registering for a semester. He denied registering before clearing fees and stated he had authority to pay fees through check-off system. He however admitted that he did not have before the court a written authority for check-off system. It was further the claimant's evidence that he was never called to discuss his retirement before the decision was made. He however stated that he attended the disciplinary hearing and gave his defence. He further stated that he appealed against the decision of the disciplinary committee contending that if he was found guilty of the charges he could have been summarily dismissed.

7. The respondent's witness Mr Nderitu Gikaria stated that he was the respondent's Human Resource Manager. It was his evidence that the claimant was working as an accountant and at the same time a student. The claimant pursued his Bachelor of Commerce and later MBA. It was his evidence that students pay fees at the point of registration and that the claimant paid his undergraduate fees through check-off system. The check-off was approved by the Vice Chancellor. It was his evidence that the claimant was not absolved from the accusations

against him and that the retirement was a softer landing for the claimant since the issue he was accused of warranted summary dismissal.

8. It was not in dispute that the claimant herein enrolled for a Master Degree Course without first paying fees. The bone of contention from the claimant's view point was that as an employee he could enroll for the degree program but pay through check-off system. The respondent on the other hand stated that no registration could be done before payment of fees unless exempted by the Vice chancellor. Both the claimant and the respondent were in agreement that the claimant had previously while studying for his Bcom degree paid fees through check-off system and this was authorized in writing by the Vice Chancellor. In the second case, whereas the claimant claimed he was allowed to enroll before payment of fees, unlike the previous case he did not produce any evidence of such authorization. The respondent considered this abuse of office by the claimant for which he was suspended and later retired prematurely. According to the respondent, the retirement was a soft landing for the claimant since the accusation against him merited summary dismissal.

9. The respondent has exclusive control of how it runs its programs and fees policies. It is not for the court to replace its views and feeling of what may be just in the circumstances. Further, if enrolment into a degree course by an employee without payment of fees or exemption from the Vice Chancellor constitutes gross-misconduct for which an employee can be dismissed the court cannot question that if there is evidence that an employee did so without first paying fees or seeking authority from the Vice chancellor as per the policy. Further still, the court cannot unless for good cause shown question the penalty or sentence meted out for a disciplinary offence.

10. In this case, the claimant disputes his early retirement claiming he was never guilty of the charges against him yet he failed to produce evidence of authority to enroll for the degree course before paying the requisite fees. The claimant further gave evidence that he attended the disciplinary hearing and gave his defence and further that he appealed against the decision of the disciplinary panel to retire him early.

11. In conclusion the court therefore finds the claimants case without merit and the same is hereby dismissed with costs.

12. It is so ordered.

Dated at Nairobi this 9th day of August, 2018

Abuodha J. N.

Judge

Delivered this 9th day of August, 2018

Abuodha J. N.

Judge

In the presence of:-

..... for the Claimant

..... for the Respondent