



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2531 OF 2012

(Before Hon. Lady Justice Hellen S. Wasilwa on 29th October, 2018)

CECILIA MARTHA NJERI NDUATI.....1ST CLAIMANT

RACHEAL MUTHONI MWANGI.....2ND CLAIMANT

VS

THE PRESBYTERIAN UNIVERSITY OF AFRICA.....RESPONDENT

JUDGEMENT

1.The Claimants herein filed their Claim on 19/12/2012 through the firm of J. N. Namasake and Company Advocates alleging wrongful termination of their employment.

2.The Claimants' case is that they were employed by the Respondent on 1.3.2008 and 11.11.2008 respectively as Cateress and Executive Secretary to the Vice Chancellor respectively.

3.Their salaries were 20,000/= and 45,000/= basic and house allowance of 5,000/= and 35,000/= per month respectively.

4. The Claimants aver that they served the Respondents diligently and with dedication and even earned promotions and salary rises.

5. The 1st Claimant aver that on 14.6.2012 without any warning, she received a termination letter. The 2nd Claimant avers that she was terminated on 31.5.2012 without any warning.

6. At the time of termination, the 1st Claimant was servicing a loan of 1,520,000/= with National Bank of Kenya. The 2nd Claimant avers that she had a loan of 2,200,000/=.

7. The Claimants aver that they were not paid any terminal dues.

8. The 1st Claimant's case is that on 31/5/2012, she was issued with a show cause letter to explain why disciplinary action should not be taken against her on matters of negligence of duty and inefficiency in her administration as a Catering Manager.

9. She responded to the show cause letter on 5/6/2012. On 13/6/2012, she was invited to a Disciplinary Committee hearing where she avers that she was not given a proper hearing. She was then terminated on 14/6/2012 without any option of Appeal.

10. The 2nd Claimant on her part contends that she was issued with a show cause letter dated 24.5.2012 indicating that she should explain why disciplinary action should not be taken against her for inefficiency in the administration of the Human Resource Office. She too responded to the accusations on 29.5.2012 and appealed before the Disciplinary Committee on 29.5.2012. She was accused of leaving the office early to which she denied.

11. She also avers that the committee was not fully and properly constituted as no member of the University Council nor the Chaplain nor her representative were present as was the usual practice. She was terminated on 31/5/2015. She appealed against the termination but received no response.

12. The Claimants contend that their termination were unfair and unlawful as there were no valid reasons for terminating them and they were not accorded fair procedures. They seek to be paid compensation for unlawful termination, their terminal benefits, gratuity, half salary for 15 months from October 2009 to December 2010, issuance of a certificate of service plus costs of this suit.

13. The Respondents filed their Memorandum of Response on 2/7/2012 through the firm of P.M Kamaara and Associates Advocates.

14. The Respondents admit the employment relationship between the Claimants and the Respondents. They however deny that the Claimants worked with diligence and dedication as averred. They aver that the 1st Claimant had frequent periods of unexplained and unresolved absence from duty particularly on the 28th May 2012.

15. They also deny the 1st Claimant was commended for her good work and state that the letters in paragraph 1.2.1.6 of the claim were in appreciation for her participation in selected occasion when she participated in university functions.

16. They deny they were part of the Claimants' borrowing strategies with the bank but that the Claimants were given letters as proof that they were employees of the Respondent.

17. The Respondents also deny that the 2nd Claimant worked with dedication or with a clean record. They aver that she also had various instances of unexplained absences from duty particularly on 28/5/2012. They aver that upon terminating the Claimants' services, they paid them all their terminal dues.

18. The Parties filed their respective submissions. I have considered the evidence and submissions of both parties. The issues for determination are as follows:-

1. Whether there were valid reason to terminate the service of the Claimants.

2. Whether the Claimants were subjected to due process before termination.

3. Whether the Claimants are entitled to the prayers sought.

19. On issue of valid reasons, the 1st Claimant was said to have been in charge of Catering and under her watch, some items went missing. The Claimant was asked to explain this loss and she explained. This loss was under 1st Claimant's watch. There is however no report from the police. She was never charged with any theft charges. Another complaint against 1st Claimant was on absenteeism. She was asked to explain this and she did not. Even during her evidence in Court, she was asked in cross-examination, she admitted that she did not respond to the absenteeism.

20. It is my finding therefore that there were some reasons to warrant some action against the 1st Claimant but this was not good reason to warrant termination.

21. As for 2nd Claimant, she was accused of poor performance and absenteeism. No record of her performance was produced in Court. The records of attendance were also not availed. I do not find there being a valid reason to warrant termination.

22. On the 2nd issue, the Claimants were both invited for a disciplinary hearing. They both admitted to being called to attend a disciplinary hearing, which they did. They were then accorded a fair hearing.

23. However, for reasons above, I find that there being no proper reasons to warrant a termination, the termination was unfair in terms of Section 45(2) of Employment Act 2007 which states as follows:-

2. "A termination of employment by an employer is unfair if the employer fails to prove:

a. that the reason for the termination is valid;

b. that the reason for the termination is a fair reason:-

i. related to the employee's conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

c. that the employment was terminated in accordance with fair procedure.

24. In view of the fact that Claimants partly contributed to their termination, I will award each 3 months salary as compensation for unfair termination.

25. I also award each Claimant ½ salary withheld for 15 month from October 2009 to December 2010.

26. Each Claimant will also be entitled to leave as follows:-

1st Claimant 1 month – 67,000/=

2nd Claimant 2 months – 2 x 98,000 =196,000/=

Totals

1st Claimant

1. 3 months salary as compensation = 67,000 x 3 = 201,000/=

2. ½ salary for 15 months = 15 x 67,000 x ½ = 502,000/=

3. 1 month salary as leave payment = 67,000/=

TOTALS = 770,500/=

4. Issuance of a Certificate of Service

2nd Claimant

1. 3 months salary as compensation = 98,000 x 3 = 294,000/=

2. ½ salary for 15 months= 15 x 98,000 x ½ = 735,000/=

3. 2 months salary as leave payment = 2 x 98,000=196,000/=

TOTALS = 1,225,000/=

4. Issuance of a Certificate of Service

27. The Respondent will also pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 29th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Gatore for the Claimants

Mungania holding brief Kamaara for Respondent – Present