



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 310 OF 2014

(Before Hon. Justice Mathews N. Nduma)

GEORGE JAOKO OGAL.....CLAIMANT

VERSUS

BOARD OF GOVERNORS KANGA HIGH SCHOOL.....RESPONDENT

J U D G M E N T

1. Suit commenced vide statement of claim filed on 13th November, 2014 seeking maximum twelve (12) months compensation for unlawful and unfair termination of employment, provision of certificate of service, costs and interest.
2. The facts of the suit are that the Claimant was employed by the Respondent as a Librarian on 16th January, 2007 at a salary of Kshs.4,000 a month. The letter of appointment was produced as 'exhibit I'.
3. In October 2013, the Claimant was transferred from the Library to the Kitchen as a cook. He served there until 27th March, 2014 when he was summarily dismissed from employment by the Principal Mr. Michael Ogweno. The dismissal was verbal, without notice, notice to show cause or any disciplinary hearing. No reason was given for the dismissal either. The Claimant did not get a letter of dismissal. The dispute was reported to the Ministry of Labour & Social Security Services on 10th July, 2014 and the Ministry wrote to the school to reconsider its position on the matter. This was not heeded and a letter of demand was written to the school on 10th October, 2014 by F. Orengo Advocate and the same was not responded to hence the suit.
4. A certificate of service dated 10th June, 2013 was produced by the Claimant. The said letter acknowledged that the Claimant was an employee of the Respondent from 2007 to 2013 as a librarian. That he carried out his duties promptly and diligently and was recommended to any other employer for employment.
5. The Statement of Claim and Summons to Enter Appearance were served on the Respondent vide the Deputy Principal of the School Mr. Charles by Mr. Chacha Mtundi Barnabas, a certified process server.
6. The Respondent did not enter appearance nor file a statement of defence. The matter proceeded to formal proof on 2nd July, 2018. The Claimant testified under oath in support of his suit and the reliefs sought.
7. The Claimant has proved on a balance of probabilities that he worked for the Respondent diligently from 2007 to 27th March 2014, when the Principal verbally, without notice; notice to show cause or any disciplinary hearing summarily dismissed the Claimant from employment. No reasons were given for the dismissal.
8. The dismissal violated sections 41, 43 and 45 of the Employment Act, 2007.
9. The Claimant is entitled to compensation in terms of section 49(1)(c) as read with 49(4). In this regard the Claimant had served the Respondent for about seven (7) years. He did not contribute to the summary dismissal. He was not paid any terminal benefits upon dismissal. He suffered loss and damage. He was given no notice nor was he paid in lieu of notice.
10. The court awards the Claimant the equivalent of ten (10) months' salary in compensation for the summary dismissal in the sum of Ksh.40,000.
11. Judgment is entered in favour of the Claimant as against the Respondent as follows:-

(a) Kshs.40,000 in compensation.

(b) With interest at court rates from date of Judgment till payment in full.

(c) Costs of the Suit.

Judgment Dated, Signed and delivered this 18th day of October, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Obach for the Claimant

Mr. Odhiambo for Respondent

Chrispo – Court Clerk