



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 303 OF 2016**

*(Before Hon. Justice Mathews N. Nduma)*

**HENRY ISABWA MUTANGE .....CLAIMANT**

**VERSUS**

**MASINDE MULIRO UNIVERSITY OF SCIENCE & TECHNOLOGY.....RESPONDENT**

**J U D G M E N T**

1. The Claimant resigned from the employment of the Respondent by a letter dated 19<sup>th</sup> January, 2015. The resignation was actuated by a failure by the Respondent to comply with a recommendation made by committee on staff discipline on 20<sup>th</sup> August, 2014 to issue the Claimant with a warning letter and reinstate the Claimant to full work pursuant to his suspension pending the disciplinary process by a letter dated 4<sup>th</sup> March, 2014.

2. During the period of suspension, the Claimant was on ½ pay. Upon a recommendation for reinstatement, the Claimant was entitled to payment of all unpaid ½ pay during the period of suspension in the sum of Kshs.237,930 ( ½ salary for March 2014 to January, 2015).

3. This claim is not disputed by the Respondent and is awarded accordingly.

4. The Claimant joined Kibabii University upon his resignation from the Respondent's employment. The employment by Kibabii University was terminated on 6<sup>th</sup> October, 2016 following a letter by the Respondent stating that the Claimant had a pending disciplinary case with the Respondent. Kibabii University then demanded clearance letter from the Respondent to allow the Claimant to continue working for the University. The Respondent declined to issue the Claimant with a letter of clearance and thereby causing the Claimant's employment to be terminated by a letter dated 6<sup>th</sup> October, 2016. The Claimant was paid one salary in lieu of notice by Kibabii University and in lieu of 12.5 untaken leave days.

5. The Claimant states that Kibabii University did not pay him salaries from the period May 2015 to date of filing suit in the sum of Kshs.1,534,410, which he now claims. Claimant further claims loss of expected income from Kibabii University from date of termination till retirement date, terminated contributions for pension; terminated medical care; General damages for suffering and loss occasioned by the Respondent and costs of the suit.

**Determination**

6. The circumstances leading to the resignation of the Claimant from the employment of the Respondent are not in dispute. What is in dispute is whether the Respondent may be held liable in respect of matters that occurred whilst the Claimant was not in its employment with the exception of the uncontested claim for ½ salary during the period of suspension.

7. The court notes that a claim for constructive dismissal has not been brought by the Claimant against the Respondent.

8. There are no averments in the memorandum of claim nor evidence to the effect that Kibabii University, which employed the Claimant after his resignation and whose conduct is challenged in this suit is the same legal entity as the Respondent Masinde Muliro University of Science and Technology.

9. This being the case, no cause of action exists against the Respondent with regard to the employment and termination of employment of the Claimant by the said Kibabii University.

10. Accordingly all the monetary claims made against the Respondent by the Claimant with regard to the period after his resignation from the employment of the Respondent are misconceived and the claims are accordingly dismissed.

11. There is evidence that the Claimant was given a certificate of service by the Respondent though belatedly. The claim for grant of a release letter has no merit and is equally dismissed.

12. Accordingly, judgment is entered in favour of the Claimant as against the Respondent as follows:-

a) Payment of Kshs.237,930 being unpaid ½ salary for the period March 2014, (date of suspension) till January 2015 (date of resignation).

b) The amount is payable with interest at court rates from the date when the same became due and payable on 20<sup>th</sup> August, 2014, when the committee on discipline of the Respondent recommended reinstatement of the Claimant to his job till payment in full.

c) The Respondent to pay costs of the suit.

**Judgment Dated, Signed and Delivered this 6<sup>th</sup> day of December, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Ongoya for Claimant

Mr. Ouma for Respondent

Chrispo – Court Clerk