



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 101 OF 2016

(Before D. K. N. Marete)

KENYA UNION OF EMPLOYEES OF POLYTECHNICS,

COLLEGES AND ALLIED INSTITUTIONS – (KUEPCAI).....

.....CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT,

ST. PETERS SANG’ALO SECONDARY

SCHOOL.....RESPONDENT

JUDGEMENT

This matter was originated by way of a Memorandum of Claim dated 26th May, 2016. The issue in dispute is therein cited as;

“Unfair and unlawful termination of employment services of Ms. Jesca Musuya Madete”

This claim is not defended, or at all. This is despite numerous services to the respondent.

The claimant case is that the grievant, one, Jesca Musuya Madete was employed by the respondent on 6th July, 2008 as Cateress/Matron at a salary of Kshs.2,800.00 per month.

It is the claimants other case that the grievant was entitled to salary

increments as follows;

4. THAT, according to the Ministry of Education circular titled “Secondary schools – Schools Accounting Policies” as envisaged under “ Personal Emolument Vote Head” the Grievant herein (Ms Jescah Musuya Madete) deserved categorized at “Job Group G” and each a Basic Starting Salary of Kshs.11,518,00/=, Housing Allowance at Kshs.2,300/= and Medical Allowance on monthly basis at Kshs.750.00/= that qualifies a gross monthly salary of Kshs. 14,568.00/=, and was also entitled to an annual leave allowance in a year at Kshs.4,000.00/=. “Annexed hereto and marked “KUEPCAI-4” is a copy of the circular.

The claimants further case is that the grievant’s employment was unfairly terminated by the respondent

on 20th June, 2014 and efforts to resolve this through a conciliator have failed.

She prays as follows:

a) Unpaid salary and allowances

June 2014

11,518.00 + 2,300.00 +750.00 Kshs.14,568.00

b) Salary underpayment for 6 yrs

(i) July,2008 – August, 2010

14,568.00 – 2,800.00 x 26 months Kshs.305,968.00

(ii) 14,568.00 – 2,800.00 x 30 months Kshs.353,040.00

(iii) 14,568.00 – 2,800.00 x 16 months Kshs.188,288.00

c) Unpaid House Allowance

2,300.00 x 80 months Kshs.184,000.00

d) Unpaid medical Allowance

750.00 x 80 months Kshs.60,000.00

e) Accumulated Annual Leave

14,568.00 x 21 days x 8hrs x 6yrs Kshs.84,734.00

173.33 A.H.P.A

f) Severance pay

14,586.00 x 15days x 8hrs x 6yrs Kshs.60,524.00

173.33 A.H.P.A

g) Compensation for unfair Termination

14,568.00 x 12 months Kshs.174,816.00

TOTAL AMOUNT DUE PAYMENT

Kshs.1,425,539.65

The issues for determination therefore are;

1. Was the termination of the employment of the claimant wrongful, unfair and unlawful?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this cause?

The claimant at the onset establishes a case of termination of employment. In her written submissions dated 6th February, 2017, the claimant submits a case of there having been no notice of termination of

hearing from the respondent to the claimant. Again, the purported letter of termination did not

in any way, indicated the reasons or cause of termination as stipulated in the mandatory terms of section 43 of Employment Act, 2007. In the absence of a defence, I find a case of unlawful termination of employment of the grievant by the respondent. This answers the 1st issue for determination.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is. Having sailed through a case of unlawful termination of employment, the claimant is entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- i. That the grievant be and is hereby reinstated to employment without loss of benefits, promotion or emoluments.
- ii. That the grievant be and is hereby ordered to report back to work on 22nd February, 2017 at 800 hours.
- iii. That respondent be and is hereby ordered to pay twelve (12) month's salary as compensation for unlawful termination of employment to the claimant – Kshs.14,568.00 x 12 months =Kshs.174,816.00
- iv. The parties shall bear their costs of the claim.

Delivered, dated and signed this 21st day of February 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Japheth Anyira Agura for the Claimant Union.
2. No appearance for the respondent.