



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 11 OF 2016**

***(Before D. K. N. Marete)***

**ELKANA KIPRUTO TALLAM.....CLAIMANT**

**VERSUS**

**MOI UNIVERSITY.....RESPONDENT**

**JUDGEMENT**

This matter was originated by a Memorandum of Claim dated 29th January, 2016. The issue in dispute is there in cited as;

*Unfair termination of the claimant's employment by the respondent. Refusal to reinstate the claimant to his employment by the respondent.*

The respondent in a Respondents Defense dated 22nd February, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that at all material times to this cause and between 1990 and 2015, he was an employee of the respondent as a Clerical Officer. He earned a gross salary of Kshs.55,891.00 or Kshs.47,123.00 after statutory deductions.

It is his further case that his termination was unfair and untenable and based on grounds that he admitted mature students irregularly to the respondent's institution which was not the case as vetting of students admission was not his job.

The claimant's other case is that in september 2014, he was placed on leave pending investigations and in december, he was suspended. In february, 2015, his employment was terminated for misconduct. On appeal, he asserts, this was unprocedurally upheld.

He prays as follows;

- i. A declaration that the termination of the claimant's employment with the respondent is unfair*
- ii. Reinstatement of the claimant into his employment with the respondent*
- iii. Payment of the claimant's pay/salary for the period between December 2014 to the date of reinstatement*

iv. *Alternative payment of the claimant's salary between 2014 and 2019 when he will have retired Kshs.2,400,253*

v. *Costs of the claim*

vi. *Interest*

The Respondent's case is a denial of the claim

7. *The Respondent denies the contents of paragraph 9 and avers that the Claimant was terminated lawfully after an audit was conducted, a full hearing of the claimant's case and his appeal which established there were cases of irregular mature admissions which he was involved. The Claimant and other staff members involved in the irregular admissions were all sent on leave to pave way for investigations which led to the accusation against the claimant hearing and was lawfully terminated for misconduct.*

8. *The Respondent further avers that after the investigations revealed the Claimant had participated in the irregular admissions of mature students at the Respondents institution, and after hearing the Claimant and his union representatives, and having been found guilty, the Respondent terminated his services in accordance with the law.*

9. *The Respondent admits the contents of paragraph 10 save to state that the procedure followed and/or adopted in the Appeal process was proper, lawful and transparent as evidenced by the correspondence and minutes of the Appeal's Board.*

She therefore denies liability and vouches for a case of fair and lawful termination of employment of the claimant.

The issues for determination in this cause 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 suit?

The 1st issue for determination is whether the termination of the employment of the claimant wrongful, unfair and unlawful. The claimant in his written submissions dated 3rd February, 2017 reiterates his case of unlawful termination of employment which is denied by the respondent.

The respondent in her written submissions dated 22nd February, 2016 also reiterates her case of lawful termination of employment due to gross misconduct on the part of the claimant for irregularly admitting mature students in contravention of the Moi University Statutes, the Employment Act, the Public Officers Act, the Penal Code and the Collective Bargaining Agreement *inter partes*.

It is the respondent's submission that the claimant was taken through all due disciplinary process before termination and therefore does not have any case for unlawful termination as claimed.

I agree with the respondent's case. The claimant does not, on a balance of probabilities bring out a case of unlawful termination of employment. I therefore find a case of lawful termination of employment and hold as such. And this answers the 1st issue for determination.

The 2nd issue is whether the claimant is entitled to the relief sought. He is not. Having lost on a case of unlawful termination of employment, he is disentitled to the relief sought.

I am therefore inclined to dismiss the claim with costs to the respondent. And this answers all the issues

for determination.

Delivered, dated and signed this 26th day of April 2017.

**D.K.Njagi Marete**

**JUDGE**

Appearances

4. Miss Gerald holding brief for Mr. Momanyi instructed by Annasi Momanyi & Company Advocates for the Claimant.

5. Mr. Isiji instructed by Nyairo & Company Advocates for the Respondent.