



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 114 OF 2015

ANNABELL MUTHONI WAGURACLAIMANT

VERSUS

BOARD OF MANAGEMENT, DR.KAMUDIA HIGH SCHOOL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 13th October, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 10.07.2015 through Michael, Daud & Associates. On 08.03.2017 the claimant changed her advocates to Kariuki E & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Damages for unfair and wrongful termination of employment.
- b) Salary underpayment of Kshs.88, 085.00 being for June 2011 to May 2014 Kshs. 74, 685.00; and house allowance for 3 years Kshs. 13, 400.00.
- c) Interest on (a) and (b) above at court rates until payment in full.
- d) Certificate of service.
- e) Costs of the claim.

The memorandum of response was filed on 24.08.2015 through A.M. Njagi, Litigation Counsel, for Attorney General. The respondent prayed that the claim be dismissed with costs. The reply to response was filed on 30.09.2015.

The respondent admitted owing the underpayment of Kshs. 88, 085.00 and the court ordered on 23.10.2015 that the same to be paid in 7 days. The court finds that the claimant is entitled to the statutory certificate of service. Thus, the only pending issue is whether the termination was unfair.

The claimant testified to support her case. It is not disputed that the respondent employed the claimant as a housekeeper or matron effective October 1992. The claimant's employment was terminated by the letter dated 30.05.2014 on the basis of an earlier letter dated 29.05.2014. The earlier letter of 29.05.2014 had required the claimant to proceed on one month leave and to vacate the house provided for her accommodation. The letter stated as follows:

“RE: PAID LEAVE

This is in reference to your job designation and your qualifications. Due to the above you were given a letter dated Ref.11/11/2010 where it was required that you upgrade your skills according to your job status. To this date you have not managed to fulfil the same.

The school board of management has managed to get a personnel (school nurse) with the qualifications due to the sensitiveness of the job.

You are therefore required to proceed for one month leave and forthwith vacate the institution house to give room to the person joining in, awaiting the board decision on the matter.

Mrs. Kanyi

Signed

Principal/ B.O.G Secretary”

The claimant testified that on 29.05.2014 she was informed that the school had hired a nurse in place of the office of matron, the office she held. Accordingly she was to proceed on one month leave and to vacate school housing accommodation. As a matron in the school and consistent with her duties she had upgraded her qualifications by obtaining Diploma in Counselling Psychology as per certificate of 10.11.2012 issued by Outspan Medical College. Thus her case was that the termination of her employment by the termination letter delivered on 30.05.2014 was unfair because the reasons were not stated in the termination letter and she was fit to continue in the respondent's service as a housekeeper and school matron. It was her testimony that the retirement letter of 01.07.2014 was an afterthought and she had never been asked to retire. At the time of termination the claimant earned Kshs.7, 950.00.

The respondent's witness (RW) was the school's Principal one Jane Njeri Kanyi. She confirmed that the claimant's employment was terminated by the letter dated 30.05.2014 and reasons for termination were not stated in the letter. She confirmed that the school had no intention of retiring the claimant and the claimant had ceased to be the respondent's employee on 30.05.2014. RW stated that the letter to retire in public interest dated 01.07.2014 had been authored by the claimant's union and brought to her by union officials.

The court has considered the material on record. It is clear that the respondent did not state the reason for termination of the claimant's employment and the court returns that the termination was unfair for want of a genuine reason as envisaged in section 43 of the Employment Act, 2007. Even if the respondent desired to establish the office of a school nurse and to abolish the office of the school matron and housekeeper, then the situation would have amounted to redundancy as against the claimant; and the court returns that the respondent acted outside section 40 of the Employment Act, 2007. Accordingly the termination was unfair.

The court has considered the long clean service by the claimant. The court has considered that the claimant did not contribute to her termination. The court returns that the claimant is entitled to 12 months' salaries for unfair termination making **Kshs. 95,400.00**.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) The declaration that the termination of the claimant's employment was unfair and the respondent to pay the claimant **Kshs. 95, 400.00** by 01.12.2017 failing interest at court rates to be payable thereon at court rates from the date of this judgment till full payment.
- b) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 13th October, 2017.

BYRAM ONGAYA

JUDGE