



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 343 OF 2016

BETWEEN

RACHAEL NIBURU KALAMACLAIMANT

VERSUS

MOMBASA LIGHT ACADEMY.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ms. Abondo Ang'awa Advocate instructed by KITUO CHA SHERIA, Advocates for the Claimant

A.A. Said & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed her Statement of Claim on 5th May 2016. She states she was employed by the Respondent, a private school based in Mombasa, as a Nursery School Teacher, on 1st September 2013. Initially she was employed on temporary basis and was confirmed later on 13th May 2013. She received a letter from the Respondent on 11th July 2015, informing her that her contract had expired. She contends that termination was without notice and valid reason. She was not paid her terminal dues. She earned a monthly salary of Kshs. 17,000. She prays for Judgment against the Respondent in the following terms:-

- a) Termination is declared un-procedural and unlawful.
- b) She is paid 2 months' salary in lieu of notice at Kshs. 34,000; annual leave of 26 days at Kshs. 17,000; and compensation for wrongful termination the equivalent of 12 months' salary at Kshs. 306,000- total Kshs. 357,000.
- c) Certificate of Service to issue.
- d) Any other suitable relief.
- e) Costs.

2. The Respondent filed its Statement of Response on 7th June 2016. In general the Respondent denies nearly all the averments made by the Claimant, including the fact that she was employed by the Respondent, and her contract terminated by the Respondent. Alternatively, it is Respondent's position that the Claimant must have been the author of her own misfortune. The Respondent prays the Court to order that the Claim is dismissed with costs to the Respondent; and that the Claimant is ordered to write an apology to the Respondent for instituting this Claim.

3. On 28th June 2017, Parties recorded a consent order to have the dispute disposed of through written submissions, pleadings and documents on record. They confirmed filing of their submissions at the last mention in Court on 20th September 2017.

The Court Finds:-

4. The documents availed to the Court indicate the Claimant was employed by the Respondent as a Kindergarten Teacher. What reads like a Certificate of Service dated 11th July 2015, states the Claimant was employed on 13th May 2013, and left on 11th July 2015. There is another letter dated 1st September 2013, from the Respondent to the Claimant, informing the Claimant that “*temporary employment can be offered to you as of 1st September 2013...*” There is no other written contract showing the Claimant was employed on any fixed term. The document titled ‘Light Academy: Employee Rules & Regulations [For Teachers]’ has 4 different types of contracts of employment. The Parties did not guide the Court on which contract the Claimant served under. The Court is not able to conclude that she had 17 months to expiry, on the date of termination, 11th July 2013.

5. The letter of termination dated 11th July 2015, gave specific reasons for the decision. The Claimant was informed by the Respondent that her responsibilities had been absorbed into other portfolio. Her services would no longer be required. This is what the letter of termination states.

6. The Respondent denies in its Statement of Response, that it issued this letter to the Claimant. Alternatively, it is pleaded that the Claimant was the author of her own misfortune.

7. In his Witness Statement, School Principal Ismael Tumer cites unprofessional tendencies on the part of the Claimant, as the reasons for termination. There is a whole raft of these tendencies given by Tumer. They include: disobedience of administrative instructions; unsafe supervision of Children; and disregard of school transportation protocol. Tumer explains that termination letter was erroneously titled ‘Expiry of Contract.’

8. Section 43 and 45 of the Employment Act 2007 require the Employer to establish valid reason or reasons, in justifying termination decision.

9. The Respondent did not show valid reason or reasons. The reason contained in the letter of termination is at variance with the potpourri of reasons given by the School Principal Tumer. The Statement of Response gives no reason, beyond cryptically charging that the Claimant was the author of her own misfortune.

10. Section 41 and 45 of the Employment Act require the Employee is presented with specific charges and is heard. The Employee must be allowed the company of a shop floor Trade Union Representative or Workmate of her choice. These standards of procedural fairness were ignored.

11. In all, termination did not meet the standards of substantive and procedural fairness under Section 41, 43 and 45 of the Employment Act 2007. ***Termination was unfair.***

12. Her monthly gross salary as shown in her pay slip for May 2015, contained in her bundle of documents, was Kshs. 17,000.

13. ***The Respondent shall pay to the Claimant the equivalent of 9 ½ months’ salary in compensation***

for unfair termination at Kshs. 161,500.

14. Different contracts under the Employee Rules & Regulations gave different notice period. The Claimant as suggested above did not establish under which type of contract she served. She has not established that she merits 2 months' salary in lieu of notice. ***She is granted 1 month salary in lieu of notice under Sections 35 and 36 of the Employment Act 2007, at Kshs. 17,000.***

15. The Claimant did not establish her prayer for annual leave of 26 days. She did not show which period these days relate to. She did not place this claim within the context of Employee Rules & Regulations. The prayer is rejected.

16. The letter issued to her by the Principal dated 11th July 2015 satisfies the prayer for Certificate of Service. She does not complain that any relevant information on her employment history was left out of the letter dated 11th July 2015. An order for Certificate of Service to issue would add nothing to the information already provided through the letter dated 11th July 2015. Lastly, it is absurd for the Court to direct an Employee to apologize to an Employer for filing a Claim. It is the right of an Employee to present such a Claim, and exercise her right to access industrial justice.

17. ***Costs to the Claimant.***

18. ***Interest granted at 14% per annum from the date of Judgment, till payment is made in full.***

IN SUM, IT IS ORDERED:-

a) Termination was unfair.

b) The Respondent shall pay to the Claimant the equivalent of 9 ½ months' gross salary at Kshs. 161,500 in compensation for unfair termination; and 1 month salary in lieu of notice at Kshs. 17,000- total Kshs 178,500.

c) Costs to the Claimant.

d) Interest granted at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 24th day of November 2017

James Rika

Judge