



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**  
**CAUSE NO. 28 OF 2017**

**KENYA PRIVATE UNIVERSITIES WORKERS UNION.....CLAIMANT**

**VERSUS**

**KENYA METHODIST UNIVERSITY.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 15<sup>th</sup> December, 2017)

**JUDGMENT**

The claimant filed on 03.02.2017 the statement of claim dated 10.11.2016. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination of employment of Jonah Muriithi Mutuma (the grievant) was unprocedural, unfair, illegal, null and void.
- b) The grievant be reinstated in the employment of the respondent without loss of seniority, continuity, benefits and privileges forthwith.
- c) The claimant be paid due back salaries and allowances with effect from 17.09.2015 to the date of the judgment.
- d) In alternative the respondent to pay the claimant Kshs.1,930, 974.85 being salary underpayments, unpaid salary and allowances for September 2015, two months pay in lieu of notice, accrued leave for 11 days, service gratuity at 20 days for each of the 6 years of service, 12 months compensation, and general damages or emoluments or contingencies calculated at the discount of 15%.

The response to the statement of claim was filed on 29.03.2017 through Patricks Law Associates. The respondent prayed that the statement of claim be dismissed with costs.

The grievant testified that he was employed by the respondent in December 2011 as a Higher Clerical Officer, Job Group MU5. Prior to that employment she worked for the respondent as a casual worker from February 2007 to 16.12.2011 and without a break. It was his further testimony that in July 2015 he joined the claimant trade union and started recruiting other union members. The respondent's Vice Chancellor summoned the grievant on 11.09.2015 at 9.00pm to go and admit some new student. A van was assigned to pick the grievant from his residence to the office. The grievant was asked to switch on the computer assigned for his use and he complied. The Vice Chancellor then took over and operated the computer and opened certain files containing templates for certificates or certificates. The Vice Chancellor asked the grievant if he had some certificates in his desk and the grievant replied that he did not have them in his drawer as at the time he left work that day. The Vice Chancellor pulled the drawers

on the grievant's desk and some blank certificates were taken out. He then told the grievant that the grievant had been selling certificates but the grievant testified that he denied the allegations. The episode of denial took about 2 hours.

The grievant then testified that one Professor Peter Magetto forced him to admit that he had been doing such kind of work – meaning selling of fake certificates. The grievant testified that he then admitted the allegations at around midnight. The grievant was arrested by the police that night and detained until the following day at 4.00pm.

On Monday 14.09.2015 the grievant reported at work as usual. He was given a show-cause letter and required to reply in 24 hours. The allegations included being in possession of certificates, accessing student academic records, and improper use of the university seal.

The disciplinary hearing took place on 16.09.2015. The record of proceedings shows that the grievant had made confessions at the statement given to the police on the day he was arrested but he denied such confessions and the allegations at the disciplinary hearing. The respondent decided to dismiss the grievant by the letter dated 17.09.2015.

**First**, the court returns that the grievant was accorded due process of a notice and a hearing as provided in section 41 of the Employment Act, 2007. There was no evidence that the grievant had informed the respondent that he was a member of the union and therefore the respondent would be excused that the disciplinary hearing took place without the grievant being accompanied by his union representative. The omission is more so especially that the parties had not concluded a recognition or collective agreement.

**Second**, the claimant confessed at the police that he had committed the misconduct as was alleged. He also testified that he admitted the allegations on the night he was summoned and as requested to do so by Professor Peter Magetto. The court returns that for the two times, the grievant had admitted the misconduct. There was no evidence of duress or undue influence or coercion. Accordingly, the court returns that as at the time of the termination, it has been established that the respondent had a valid or genuine reason to terminate the employment and as envisaged in section 47(5) and 43 of the Employment Act, 2007.

Thus, the court return that the termination of the grievant's employment was not unfair because the respondent followed due process and the reason was valid.

There was no evidence or submissions to support the other claims of accrued leave, underpayment, service gratuity and general damages. The prayers in that regard will be declined.

The court has considered all the circumstances of the case including that the respondent had opted not to vigorously pursue the police report towards criminal prosecution of the grievant and the failure by the respondent to attend or cooperate during the statutory conciliation stage. The court returns that the suit will be dismissed with orders that each party shall bear own costs of the suit.

In conclusion the suit is hereby dismissed with orders that each party shall bear own costs of the suit.

**Signed, dated and delivered** in court at Nyeri this **Friday, 15<sup>th</sup> December, 2017.**

**BYRAM ONGAYA**

**JUDGE**