



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 150 OF 2014

ELIZABETH NJERI MARUBU..... CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT MARAGUA SECONDARY SCHOOL..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 13th May, 2016)

JUDGMENT

The claimant filed on 24.11.2014 the statement of claim through J.N. Mbuthia & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Underpayment of wages during the period of suspension Kshs.7, 933.00.
- b. Underpayment of one month wages in lieu of notice Kshs.7, 933.00.
- c. Compensation for loss of employment being salary for 12 months 15, 866 x 12 =190, 392.00.
- d. Total claim Kshs. 206, 258.00.

The respondent's statement of defence was filed on 10.02.2015 through Kirubi, Mwangi Ben & Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs. On 24.09.2015 the respondent filed a notice of change of advocates to F.O. Makori, Litigation Counsel, for the Attorney General.

The respondent employed the claimant as an accounts clerk effective 04.02.1994. The claimant's employment was terminated by the letter dated 30.05.2014 per the respondent's decision at the meeting held on 16.05.2014. The letter stated that the claimant had orally and in writing admitted to the allegations as levelled against the claimant. The materials on record are clear that the claimant was given a letter dated 02.04.2013 setting out the allegations. The letter alleged that the claimant had continued to neglect duty. The allegations were as follows:

- a. In 2011 the claimant delayed to deliver NHIF and NSSF cheques on time and the school was penalised for remitting the dues late and the claimant had been verbally warned and advised to take the issue of statutory deductions seriously.
- b. On 29.10.2012 the claimant had prepared a cheque for Kshs.2, 400.00 for NSSF whereas the account lacked sufficient funds for honouring the cheque and the school was penalised for remitting the dues late and paid bank charges for the bounced cheque.
- c. On 20.11.2012 the claimant had prepared a cheque for Kshs.2, 400.00 for NSSF and deposited it at the bank whereas one of the signatories had not signed and the school was penalised for remitting the dues late and paid bank charges for the bounced cheque.

The letter stated that the 3 issues had led to the school losing a lot of funds which were difficult to get and were to be used prudently. Further the allegations showed serious negligence of duty as the accounts clerk and the letter invited the claimant to reply in writing within 7 days showing why disciplinary action was not to be taken against her.

The claimant received a further letter dated 14.03.2014 on negligence of duty and requiring her to reply within 7 days showing why disciplinary action was not to be taken against her. The letter made several wide ranging allegations including the following:

- a. Collecting cash from students and parents against school instructions that all monies be deposited at the bank (and a list of cash collections was stated in the letter as per the bank slips showing the deposits of the cash at the bank).
- b. Failure to disclose such cash collections to the school principal.
- c. Improper financial record keeping so that students could produce receipts showing they had paid monies otherwise demanded from them as owing to the school. The letter also listed cases of inaccurate figures on receipts when reconciled with bank slips.
- d. Accepting copies of bank slips instead of the originals, and, taking faint bank slips that were as good as blank.
- e. Lack of due diligent in revenue collections as per details set out in the letter.
- f. Failure to update the cashbook on daily basis as per relevant regulations.

The claimant testified that she did not reply the letter dated 14.03.2014 because the principal had locked up the books of accounts. Nevertheless, she attended the disciplinary hearing before the respondent on 11.04.2014. The minute's show that the claimant attended the meeting and admitted that she had received the invitation to the meeting as well as the letter on negligence of duty dated 14.03.2014 setting out the allegations. The claimant was taken through the allegations and the following comes out of the minutes:

- a. The claimant admitted that cash collections were made and the money was spent up in the school but relevant payment vouchers were not available.
- b. The claimant admitted that there had been improper financial record keeping.
- c. The claimant admitted that she copies of bank slips were taken and originals were inaccessible.
- d. The claimant stated that bank slips faded overtime.
- e. The claimant admitted that there may have been omissions in making entries in the cash book.
- f. The claimant admitted failing to prepare the monthly trial balance by 15th of every month as was required.

The minutes state that some financial documents with serious irregularities were tabled before the meeting.

The **1st and main issue** for determination in this case is whether the termination was unfair. The evidence is clear that the claimant was given a notice of allegations and a hearing as envisaged in section 41 of the Employment Act, 2007. The court further finds that the claimant substantially admitted the allegations as was levelled against him so that the termination was founded upon valid or genuine reasons as envisaged in section 43 of the Act. The court has specifically considered the claimant's subsequent written reply dated 11.04.2014 and the court finds that the claimant substantially admitted the allegations as per that replying letter in which she stated that she would correct her mistakes in view of some of the allegations. Thus the court returns that the termination was not unfair. While making that finding the court has considered and found that though at the meeting of 11.04.2014 the respondent gave the claimant a chance to further respond in writing, the meeting had established the claimant's culpability and the decision to terminate did not yield any manifest injustice in the circumstances of the case taking into account the claimant's replying letter of 11.04.2014 which came after the meeting.

The **2nd issue** for determination is whether the claimant is entitled to the remedies as prayed for. The court returns that the claimant is not entitled to the 12 months' compensation because the termination was not unfair. The underpayment as claimed has not been established and the claimant is not entitled as prayed for.

In conclusion, judgment is hereby entered for the respondent against the claimant and the claimant's suit is dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 13th May, 2016**.

BYRAM ONGAYA

JUDGE