



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 324 OF 2011
OLIVER ODHIAMBO.....CLAIMANT
VERSUS
MBAGATHI VIEW ACADEMY.....RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent as a teacher for a period of one year to wit from January, 2010 to December 2010 at a salary of Kshs.14,400 per month.
2. According to him, his services were terminated without any notice and that upon termination the respondent never paid him his terminal dues. The respondent on the other hand averred that the claimant's services were terminated for gross misconduct and after being afforded an opportunity to be heard.
3. The matter proceeded ex parte on 19th April, 2016 after the Court had been persuaded that despite being served the respondent never turned up in Court.
4. The claimant in his brief evidence repeated the allegations in his memorandum of claim. In the claim he attached a salary voucher which showed his pay was Kshs.14,400/=. He further attached a copy of his termination letter which accused him of unacceptable conduct. The details of the conduct was not given in the letter.
5. In termination of employment cases the burden is usually placed on the employee to show that his dismissal was wrongful or termination unfair and it is for the employer to show that the dismissal was not wrongful and or the termination was fair or justifiable.
6. The letter of dismissal does not on the face of it give reasons for which the claimant was dismissed. All it said was that the claimant was guilty of unacceptable behavior without giving any details of what the respondent considered as an unacceptable behavior to warrant his dismissal. The respondent further pleaded that the claimant was dismissed after being given an opportunity to be heard but does not provide any evidence of such hearing.
7. The Court is therefore inclined to agree with the claimant that there were no good reasons for his dismissal and hereby award him as follows:-

Kshs.

(a) One month's salary in lieu of notice.....	14,400.00
(b) Pay in lieu of leave.....	14,400.00
(c) Six month's salary for unfair termination of Services.....	<u>86,400.00</u>
	<u>115,200.00</u>

(d) Costs.

8. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge