



**REPUBLIC OF KENYA**  
**EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO.219 OF 2015**

**(Before D. K. N. Marete)**

**KENYA UNION OF EMPLOYEES OF POLYTECHNICS,**

**COLLEGES AND ALLIED INSTITUTIONS (KUEPCAI).....CLAIMANT**

**VERSUS**

**THE BOARD OF MANAGEMENT**

**ILMOTIOOK SECONDARY SCHOOL.....RESPONDENT**

**JUDGEMENT**

This matter was brought to court by way of a Statement of Claim dated 28th July, 2015. The issue in dispute is therein cited as;

*“unfair compulsory leave for Mr. Mathew Ngetich.”*

The respondent in a Respondent's Defence dated 22nd June, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that the grievant, Mr. Ngetich was engaged by the respondent on 1st August, 2008 as a Storekeeper, Job Group J at a monthly salary of Kshs. 12,240.00. This was without house allowance. He was confirmed on permanent employment on 1st October, 2008 after completion of a three months probation period.

The claimant's further case is that on 15th February, 2012 the respondent transferred the claimant from the main store to the Kitchen Store. They then followed a successful handing over exercise of the main store on 16th February, 2012 between the respondent, grievant and his successor as required. The respondent then reduced the salary in 2008 without due cause and did not act on the grievant's letters on the subject.

The claimant's further case is that the respondent had served the grievant with a letter of compulsory leave dated 9th May, 2014 on unfounded allegations raging from abuse of procurement procedures to unbecoming conduct. Intervention by the claimant did not yield fruit due to the respondent's lack of co-operation.

The claimant's further case is that the respondent extended the grievant's compulsory leave by a letter

dated 23rd June, 2014 on a note that it would communicate the finding and recommendations after internal investigations. By a letter dated 23rd September, 2014, the respondent invited the grievant to defend himself before the Board of Management in a meeting on 25th September, 2014. It is the claimant's case that even this meeting did not bear tangible results for lack of a good spirit by the respondent.

He claims compensation as follows;

i. Unpaid Salaries & Allowances

For; July, September, November 2014,

JanuaryMarch,

2015 (Total 7 Months)

$(16,080+2,300) \times 7 \text{ months} \dots \dots \dots \text{Kshs, 128,660.00}$

ii. Underpayments of Salary/Wage: 6 Years of Service

Based on DPM circular of 2013, Job Group “ F”

$16,080.00(12,260) \times 72 \text{ months} \dots \dots \dots \text{Kshs,275,040.00}$

iii. Unpaid House Allowance:

Based on DPM circular of Ref. No. DPM.SAL.COM 16/1/4A/VOL 11/53 of 1st July, 2001 for 80 months

$(2,300 \times 80 \text{ months}) \dots \dots \dots \text{Kshs,184,000.00}$

iv. Unpaid Medical Allowance:

Based on the DPM Circular of Authority No.

16/1/41/VOL.11/53 of 1st September, 1995.

$495.00 \times 80 \text{ months} \dots \dots \dots \text{Kshs,39,600.00}$

v. Accumulated Annual Leave:

For the last 6 years from the date of entry

@ the rate of 21 working days for each year in service:

$(16,080.00+2,300) \times 2 \text{ months} \dots \dots \dots \text{Kshs,77,196.00}$

vi. Terminal Notice @ Two Months:

2 months gross salary in lieu of Notice

$(16,080+23,000) \times 2 \text{ months} \dots \dots \dots \text{Kshs,36,760.00}$

vii. Service Gratuity

Calculated at 30 days rate based on the last Gross Salary

(16,080.00+2,300) x 6 years.....Kshs,110,280.00

viii. **Compensation for Unfair Termination**

12 months Gross Wage within the meaning of section

49 (1) (c) of the Employment Act, 2007, Laws of Kenya.

(16,080.00+2,300)x 12 months.....Kshs,220,560.00

TOTAL AMOUNT Kshs,1,072,096.00

ix. **General Damages Emoluments/Contigencies**

at the discount of 15% of Total Amount

1,072,096.00x0.85%.....Kshs,911,281.60

TOTAL AMOUNT DUES PAYABLE.....Kshs, 1,983,377.60

He prays as follows;

**4. RELIEF SOUGHT**

The Claimant herein prays for a declaration of a judgment against the

Respondent for “**ORDERS:**”

4.1 **THAT**, the Compulsory Leave slapped upon the Grievant by the Respondent was unlawful, illegal and unfair thus, **NULL** and **VOID**.

4.2 **THAT**, the Grievant be “**REINSTATED**” to his position held before in the employment of the Respondent, without loss of seniority, continuity, benefits and privileges, forthwith.

4.3 **THAT**, the Grievant herein be paid his backsalaries and allowances from the month of May, 2014, forthwith.

**“ ALTERNATIVELY ORDERS ”**

4.4 **THAT**, the Respondent owes the Grievant Kshs 1,983,377.60/= as tabulated at paragraph 2.15 hereinabove and the same be paid forthwith.

4.5 **THAT**, the Respondent pay interest on the total amount at Court rates.

4.6 **THAT**, the Respondent pay a twenty percent (20%) interest on the Award every month until settlement is cleared.

4.7 **THAT**, the Respondent issue the Grievant with his “**CERTIFICATE OF SERVICE**” within the meaning of Section 51 of the Employment Act, NO.11 of 2007, Laws of Kenya.

4.8 **THAT**, cost of the suit be provided for by the Respondent.

4.9 Any further and better relief the Honourable Court may deem fit to grant be granted.

The respondent admits having engaged the grievant as a Storekeeper in 2008 but denies having reduced his salary to any extent, or at all. She further admits having removed the grievant from the main store to

the Kitchen Store in order to protect the losses she was undergoing through the grievant who was shrewdly making secret profits to her detriment.

The respondent's further case is that the grievant not only committed illegal and injurious acts of stealing by agent but also apologised and sought pardon. He was given a hearing and an opportunity to physically and orally or in writing defended himself in accordance with natural law, employment law and the International Labour Organisation Convention Number 158. It is the respondent's case that the grievant absconded duty and also failed to act as required and therefore imposed on himself a self inflicted termination.

The respondent further avers that the compulsory leave given to the claimant was reasonable, necessary and desirable for purposes of an independent audit of his misconduct, secret profits, conflict of interest and destruction of evidence necessary for her survival as a government institution.

The matter came to court variously until the 23rd June, 2016 when the parties agreed for a determination on the basis of the pleadings on record.

The issues for determination are;

1. Was the termination of the employment of the claimant was wrongful, unfair and unlawful?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this cause?

The 1st issue for determination is whether the termination of the employment of the claimant was wrongful, unfair and unlawful. The claimant in her Memorandum of Claim forments a case for unlawful termination of employment but this is vehemently opposed by the respondent. The respondent's defence answers all the allegations of unlawful termination by the claimant and indeed offers an overwhelming case for lawful termination of the employment of the claimant. This, it is submitted, was due to the gross misconduct of the claimant in the articulation and performance of his duties at the work place. He was unreliable and untrustworthy leading to loss of materials put in his charge by the respondent. The respondent further submits that a transfer from the main store to the kitchen store was intended to alleviate a total mess in the procurement process for the institution.

In as much as I would not rule out malicious intentions and overtures, I have always wondered why an employer would want to get rid of a diligent worker. Is this normal? Where would one get an equal replacement of a performer worker? My take is that this can only happen in very exceptional and weird circumstances. And this is not the case here.

I agree with the respondent. This was an impossible case of an employee. The evidence of the respondent overwhelmingly outweighs that of the claimant. I therefore find a case of lawful termination of employment and hold as such. This answers the 1st issue for determination.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is not. Having failed on a case of unlawful termination of employment, he has no entitlement to the relief sought. And this answers the 2nd issue for determination.

I am therefore inclined to dismiss the claim with orders that each party bears their own costs of the claim. And this clears all the issues for determination.

*Delivered, dated and signed this 19th day of July 2016.*

**D.K.Njagi Marete**

## **JUDGE**

### Appearances

1. Mr. Japheth Agura for the claimant union.
2. No appearance for the respondent.