



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 162 OF 2015

JUSTUS MUTWIRI RUKARIA.....CLAIMANT

VERSUS

MERU HIGH SCHOOL'S BOARD OF MANAGEMENT....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 15th July, 2016)

RULING

The claimant filed the statement of claim on 22.09.2015 through Igweta Muriithi & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the termination of employment of the claimant was unfair, unprocedural, wrongful, and illegal.
- b. Damages for wrongful, unlawful termination of employment.
- c. Cost of the claim.
- d. Any other relief the honourable court may deem necessary to award.

The respondent filed the statement of defence on 14.10.2015 through Gikunda Anampiu & Company Advocates. The respondent prayed that the suit be dismissed with costs.

The respondent employed the claimant to serve as a cook effective 6.06.2008.

On 4.08.2014 the claimant received the respondent's letter dated 4.08.2014 suspending the claimant from duty for being uncooperative in the school. The letter stated that the claimant had been caught with school items that were stolen from the kitchen and that the claimant did not cooperate with his workmates and he had threatened to harm them by stabling them and getting them sacked for his mistakes. He was therefore directed to leave the school compound. On the same date the claimant testified that he received another letter titled "**Third and Last Warning**" referring to a warning letter of 30.08.2011 about stolen bag of "**Ndengu**" and warning letter of 27.01.2014 about stolen rice and other foodstuffs and that on 24.07.2014 the claimant had stolen meat from the kitchen in presence of other members of staff. The letter suspended the claimant from his job effective 4.08.2014.

The claimant appeared before the respondent for a hearing on 4.10.2014 when he pleaded that he was not

guilty as was alleged. On 14.11.2014 he again appeared before the respondent for the disciplinary hearing but all his witnesses were absent because they had travelled to Mombasa. On 22.05.2015 the claimant's services were summarily terminated subject to payment of Kshs. 63, 050.00 being service pay for 6 years, balance of half salary and less income tax. The letter directed the claimant to collect his terminal dues from the school's accounts office.

Respondent's witness RW testified that at disciplinary hearing on 14.11.2014 there were no witnesses to show that the claimant was culpable as was leveled against him. Further, the alleged theft was not reported to the police.

The court has considered the material on record. The allegations made against the claimant entailed the serious offence of theft. The respondent made no criminal report against the claimant in view of the allegations. All the material on record does not show the evidence the respondent considered to prefer the allegations and then dismiss the claimant upon such serious allegations. The court finds that the allegations were empty without supporting evidence to justify the dismissal at the time the decision was made by the respondent. In the circumstances, the court returns that the claimant has established that the termination was unfair and unlawful for want of a valid reason as envisaged in section 43 of the Employment Act, 2007.

The court returns that claimant is entitled to the remedies as prayed for. The court has considered the claimant's service of 6 years; that the claimant wished to continue in employment and did not contribute to his termination in any manner. Under section 49 (1) (c) of the Employment Act, 2007 the court awards the claimant Kshs. 113, 440.00 at Kshs. 11, 344.00 being 10 months' salaries and as submitted for the claimant.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- a. The declaration that the termination of employment of the claimant by the respondent was unfair, unprocedural, wrongful, and illegal.
- b. The respondent to pay the claimant **Kshs. 113, 440.00** by 01.09.2015 failing interest to be payable thereon at court rates from the date of this judgment till full payment.
- c. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 15th July, 2016**.

BYRAM ONGAYA

JUDGE