



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAKURU
CAUSE NO. 446 OF 2014

DAVID K. BUNGEI

CLAIMANT

v

MAASAI MARA UNIVERSITY

RESPONDENT

JUDGMENT

1. For determination are the questions *whether the termination of the Claimant's employment was unfair and if so, appropriate remedies.*
2. The Claimant filed the Memorandum of Claim on 23 September 2014, while the Statement of Reply was filed on 16 October 2014.
3. The Claimant filed a Reply to Statement of Reply on 10 November 2014. The Respondent amended its Statement of Reply on 17 November 2014.
4. The Cause was heard on 17 February 2016, after which the Claimant filed his submissions on 18 March 2015. The Respondent's submissions were filed on 21 April 2016. The Court has given due consideration to the submissions.
5. Before examining the questions arising for determination, a short background is in order because of the heat generated in the course of the hearing.

Background

6. David Kiptum Bungei (Claimant) was employed by Narok University College (later Maasai Mara University) - (Respondent) in 2009 as an *Office Assistant*.
7. On 5 May 2010, the Claimant was appointed to the Landscaping and Beautification Committee and a few weeks later (31 May 2010), he was appointed as a *Grounds Attendant* on permanent and pensionable terms.

8. Thereafter, on 17 April 2012, the Respondent's Deputy Registrar (Administration) informed the Claimant that he was being deployed to Kilgoris Learning Centre to *assist in recruitment of students* and also to send reports to the Registrar.
9. On 10 October 2012, the Respondent's Deputy Principal (Academic Affairs) issued an Internal Memo to several staff including the Claimant requesting them to forward to his office what is called a *Declaration of Teaching Load* for part time (internal and external) lecturers.
10. After attending an interview, the Respondent on 16 July 2013 informed the Claimant that he had been re-deployed from Kilgoris Learning Centre to the main campus-Narok.
11. On 8 November 2013, the Respondent issued to the Claimant a show cause notice asking him to respond within 7 days to some 4 allegations (*misconduct by failing to give students proper guidance and relevant information regarding courses offered; false pretence by unlawfully teaching and awarding certificates to students; arrogant behaviour to students and lecturers and misuse of petty cash*).
12. The Claimant responded to the allegations, though the response was not dated.
13. On 14 February 2014, the Claimant was invited to appear before the Staff Disciplinary Committee on 25 February 2014. The letter was copied to the Secretary General of a union (KUDHEIHA).
14. The Staff Disciplinary Committee met as scheduled, but the proceedings were adjourned to enable further investigations to be carried out.
15. The Claimant appears to have written an apology letter on 10 March 2014, referring to some of the allegations outlined in the show cause notice.
16. Eventually, further hearing was held on 22 May 2014 and those in attendance included a shop steward and Secretary of the Union.
17. The Committee recommended that the Claimant's employment be terminated.

Whether termination of employment was unfair

Procedural fairness

18. In testimony, the Claimant contended that the termination of his employment was unlawful and the hearing unfair.
19. However, he admitted that he received the show cause notice, was invited to an oral hearing and attended.
20. Indeed, it cannot be disputed that the Claimant was made aware of some 4 allegations to respond to and that he responded in writing after which he was invited to an oral hearing which he attended and made representations.
21. The minutes of the hearing show that the Union of which the Claimant was a member was represented by 2 officers.
22. Considering the totality of the documented process and testimony in Court, the Court is satisfied that the Respondent complied with the peremptory requirements of procedural fairness as envisaged by section 41 of the Employment Act, 2007.

Substantive fairness

23. Pursuant to sections 43 and 45 of the Employment Act, 2007, it is incumbent upon an employer to prove the reasons for terminating the services of an employee, and that the reasons are valid and fair.
24. The Court has briefly alluded to the reasons that led to the termination of the Claimant's employment and these were the reasons the Respondent had to prove and not only prove but prove as valid and fair.
25. There are 2 written responses made by the Claimant.
26. One is the undated response to the show cause notice. He denied all the allegations save the one on finances (misuse of petty cash) for which he explained that he was not getting adequate petty cash to meet the requirements of running the centre.
27. The Respondent did not rebut the contention by the Claimant that he was not given sufficient petty cash. This ground was therefore not proved.
28. In his apology of 10 March 2014, the Claimant admitted to having made mistakes and sought forgiveness. He alluded to overstepping his mandate and to rudeness.
29. The Respondent's Acting Academic Registrar testified on its behalf.
30. Regarding the first allegation (*misconduct by failing to give students proper guidance and information*) against the Claimant, he did not give any direct evidence.
31. On the second allegation, the witness produced a letter of complaint alleging the Claimant was receiving fees from students for computer studies and issuing fake certificates. A copy of one such fake certificate was also produced.
32. Considering the admissions in writing by the Claimant, and the testimony of the Respondent's witness, the Court is satisfied that the Respondent had and has proved as valid and fair, the second allegation as valid and fair reason to terminate the employment of the Claimant.
33. However, the Court has been bothered that the Respondent's Deputy Principal gave the Claimant what appeared to be duties beyond his qualifications (the Court says so despite observing in Court that the Claimant appeared to be a very sharp person despite his educational qualifications).
34. The Court also notes that the Disciplinary Committee decried the fact that the Claimant was given responsibilities beyond his capability.

Conclusion and Orders

35. The upshot of the foregoing is that the Court finds and holds that the termination of the Claimant's employment was valid and fair, and orders that the Memorandum of Claim be dismissed save for the dues indicated in the letter of termination of employment.
36. Each party to bear own costs.

Delivered, dated and signed in Nakuru on this 15th day of July 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Oumo instructed by Oumo & Co. Advocates For Respondent Mr. Kiptoo instructed by Kiptoo & Co. Advocates

Court Assistant Nixon