



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 396 OF 2013

MOSES KEYA.....CLAIMANT

VERSUS

THIKA HIGH SCHOOL thro'

THE BOARD OF GOVERNORS..... RESPONDENT

JUDGMENT

1. On 1st October 2015, the parties to this claim recorded consents on most of the heads of claim that the claimant had against the respondent. The only issue that was left for the Court to determine was the unfairness or otherwise of the termination of the claimant's services. Parties were therefore directed by the Court to file and exchange witness statement and submissions on this issue. Only the claimant complied.

2. In his statement dated 6th October, 2015, the claimant stated that on 3rd October, 2011 he reported to work at around 1.30 a.m. and prepared breakfast for both the students and teachers. On this day, there was a morning assembly addressed by the Principal. After the assembly, a Mrs. Kangethe, a teacher at the school came to the kitchen and told them they had been called thieves at the assembly by the head teacher. The students who were passing by also shouted and called them thieves of food stuff meant for them.

3. They sent the head cook Mr. Ndungu to ask the head teacher why he called them thieves without any evidence but the head teacher refused to see him. They continued with their tasks until the foreman a Mr. Isaac Njoroge came and told them they had been sacked and should leave the compound immediately. Casual employees were deployed to take over their duties. When they returned to their quarters, they found them locked with padlocks. They then left the school compound as ordered and met a journalist who called the head teacher on their behalf. When they went back to the school, they found an advertisement at the gate for their jobs.

4. The head cook reported the matter to Thika Police Station. The Police called and pleaded with the Principal to open the gate but he refused. The claimant therefore spent the night out with his wife and children.

5. The claimant further stated he was not given any reasons why his services were terminated. He further denied committing any gross misconduct against the respondent to warrant his dismissal.

6. The School's Principal in his statement attached to the statement of response stated that on the material day at the Assembly Hall the students complained of getting less food and he told them that he had discovered some theft of food stuff in the kitchen and promised that the problem would be sorted out. Thirty minutes later after the assembly the Deputy Principal and the Bursar came to his office to report that the cooks had boycotted cooking and stormed out of the kitchen and went out of the school compound through the fence. The cooks then went to the media and complained that they had been called thieves. Since then the claimant and three other cooks never reported back to duty.

7. Section 45 of the Employment Act prohibits unfair termination of employment. Under subsection 2 of the said section, a termination of employment is unfair if the employee fails to prove that the reason for termination is valid and that the reason for termination is a fair reason and that the termination was carried out in accordance with a fair procedure.

8. Theft is a valid reason for termination of services of an employee. However in carrying out the termination the employee must be taken through a disciplinary hearing where the charges and evidence in support thereof are presented to the employee and he or she is thereafter given an opportunity to be heard before the decision to terminate is made.

9. The respondents witness claimed the claimants absconded duty after they were accused of theft, however no evidence has been tabled before the Court to show they were called back to work and refused to return.

10. In the circumstances the Court finds that the termination of the claimant's services was unfair in terms of section 45(2) of the Employment Act.

11. The Court therefore awards the claimant ten months salary as compensation for unfair termination of services. The claimant shall further have costs of the suit.

12. It is so ordered.

Dated at Nairobi this 2nd day of September 2016

Abuodha Jorum Nelson

Judge

Delivered this 2nd day of September 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge