



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 571 OF 2015

BETWEEN

JOSEPHINE MUKULU KIMUYU CLAIMANT

VERSUS

JOHN AKIDA t/a OCEANIA JUNIOR PRIMARY

SCHOOL AND KINDERGARTEN RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Matete Mwelese & Company Advocates for the Claimant

Gichana Bw'Omwando & Company Advocates for the Respondent

JUDGMENT

1. The Claimant was employed by the Respondent as a Teacher on 6th May 2011. Her contract was terminated by the Respondent on 30th January 2015. She earned a salary of Kshs. 10,000 per month, as of the date of termination. She states she was not given reason, or reasons, by the Respondent, justifying termination. She was not issued notice of termination. She did not go on annual leave, and received no housing allowance. She feels termination was unfair. She filed her Statement of Claim on 11th August 2015, in which she prays for the following orders against the Respondent:-

- a) 1 month salary in lieu of notice at Kshs. 10,000.
- b) Annual leave for 5 years at Kshs. 50,000.
- c) 12 months' salary in compensation for unfair termination at Kshs. 120,000.
- d) Loss of future earnings at Kshs. 240,000.
- e) Housing allowance at Kshs. 90,000.

Total..... Kshs. 510,000

2. The Respondent filed his Statement of Response on the 18th September 2015. His position is that the Claimant suffers mental illness, which she did not disclose at the time she was recruited by the Respondent. This came to the attention of the Respondent after the Claimant was recruited. Her condition was a danger to the Pupils, and to herself. She did not have a Teacher's Training Certificate from a qualified Institution. She did not supply the Respondent with a certificate from a qualified medic, on her mental status. She exhibited violent traits, causing despondence at the School. She took her annual leave during school vacations. Her Claim has no merit. The Respondent prays the Court to dismiss the Claim, with costs to the Respondent.

3. The Claimant gave evidence and closed her case on the 1st July 2016. The hearing date was obtained in the presence of Parties' Advocates on the 29th October 2015. The Respondent did not participate in the hearing. Proceedings closed on the 1st July 2016, and the Claimant confirmed the filing of Closing Submissions on the 26th July, 2016.

4. The Claimant told the Court she taught Class 1 and 2. She was simply told by the Headmaster to surrender her School Books and vacate premises. She was neither heard, nor given a reason justifying the decision.

5. She explained that 4 of her Children were studying at the School. She complained that one of the male Teachers was molesting one of her Children. The Management thought she was muckraking the School, by complaining about her Child's molestation. This was the source of her problems with her Employer.

6. She was arrested and taken to Port Reitz Hospital at the instigation of the Respondent, alleging the Claimant was mentally ill. She was advised to report the complaint to the Ministry of Labour. She did so, and upon the Ministry writing to the Respondent seeking an explanation, the Respondent replied, alleging the Claimant was mentally ill, and unable to work. She was trained at Machakos Teachers College as per her Certificate from this Institution, contained in the Bundle of her Documents. Her performance was excellent. Her Pupils posted good examination results. It was not true as alleged by the Respondent, that she was poor in her work. The Claimant adopts her Witness Statement dated 3rd August 2015, as her evidence.

7. The Respondent as stated previously did not participate in the hearing. Its position, is as shown in the Statement of Response, summarized at paragraph 2 above. 2 Witnesses were lined up by the Respondent, and filed Statements in Court, but never gave evidence. Their Statements replicate the contents in the Statement of Response, highlighting the alleged mental problems suffered by the Claimant, as occasioning her inability to continue teaching.

The Court Finds:-

8. The Claimant was employed by the Respondent as a Teacher. She taught Class 1 and 2. She was employed on 6th May 2011. Her contract was terminated at the instance of the Respondent on 30th January 2015, ostensibly on the ground that she had suffered mental illness, and posed a hazard to the Pupils.

9. The Claimant states she complained to the School Management about a male Teacher who molested one of the Claimant's Children at the School. Her Children attended the same School at which the Claimant taught. The School was not happy, and felt the Claimant was bent on damaging the School's image. This was the genesis of her troubles. She transferred 2 of her Children to another School. She was then hounded out of her position. She was arrested and forced by the Respondent into a mental institution. Her employment was thus ended.

10. The Respondent did not avail to the Court any medical evidence showing that as a result of mental illness, the Claimant was unable to continue teaching. She had taught for about 5 years. The Respondent

states she did not disclose she suffered poor mental health on recruitment. How did she continue teaching for 5 years?

11. Even were it to be shown that the Claimant suffered some form of illness; the Respondent did not show that he reasonably accommodated the Claimant. He does not show that he arranged for her to have psychiatric care during the 5 years of employment. What he did was to have the Claimant arrested at the very end, and forcibly taken to a mental institution. There are no records from any institution showing the Claimant was mentally ill and could not continue teaching. The arrest instigated by the Respondent, and confinement at a mental institution, would not fit the requirement of reasonable accommodation. It was on the contrary an event meant to justify termination. It was not valid justification, and its manner of performance was not fair at all.

12. This is given added weight by the second ground stated by the Respondent, in attempting to validate his position. The Respondent states that the Claimant did not have valid Teacher's Training Certificate. There is evidence that she attended Machakos Teachers' College, and obtained a Certificate from there. The Respondent employed her in 2011, and retained her up till 2015. At what point in time, did the Respondent come to know he had employed a quack? Neither the allegation relating to mental illness, nor that relating to the Claimant's training background, amounted to valid reason justifying termination. The Claimant was not heard on any allegation. She was arrested, ushered into a mental institution, and dismissed from employment.

.13 She is granted the equivalent of 10 months' salary in compensation for unfair termination at Kshs. 100,000.

14. She allowed 1 month salary in lieu of notice at Kshs. 10,000.

15. She did not satisfy the Court, that she did not utilize her annual leave during school vacations. Teachers across the board, ordinarily utilize their annual leave entitlements during school vacations, which helps in Schools meeting their academic objectives. **The prayer for annual leave pay is declined.**

16. The prayer for housing allowance was not adequately supported in evidence. The letter of employment issued the Claimant on 6th May 2011, indicated the Claimant's salary of Kshs. 10,000 to be a gross salary. It was not a basic salary. The letter of intercession written for her to the Rafiki Microfinance Bank on the 14th November 2014, similarly described her salary of Kshs. 10,000 as gross. It would not be safe to conclude that the gross salary did not include the housing element. **The prayer for housing allowance is declined.**

17. The prayer for loss of future earnings at Kshs. 240,000 has no legal or factual basis and is rejected.

18. Costs to the Claimant.

19. Certificate of Service to issue.

IN SUM, IT IS ORDERED:-

a) Termination was unfair.

b) The Respondent shall pay to the Claimant Kshs. 100,000 in compensation; and Kshs. 10,000 in notice pay- total Kshs. 110,000.

c) Costs to the Claimant.

d) Certificate of Service to issue.

e) The Judgment shall be satisfied within 30 days of its delivery.

Dated and delivered at Mombasa this 28th day of October 2016.

James Rika

Judge