



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1207 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 28th April, 2015)

ELIMU SACCO SOCIETY LIMITED.....CLAIMANT

VERSUS

CATHERINE MUTHONI NJIRU.....RESPONDENT

JUDGMENT

1. The Claimants herein filed their Memorandum of Claim on 17/7/2012 through the firm of Messrs Rachier & Amolo Advocates. The Respondent is a female adult of the sound mind residing in Kenya and who was an employee of the Claimant between 12th May 2008 to 16th January 2011 when she tendered her resignation.

Claimant's case

2. The Claimant's case is that the Respondent was employed by the Claimant on 12/5/2008 as per her letter of employment annexure MK1. This employment relationship was governed by terms and conditions of service and amongst these terms was a term providing that the Claimant could provide sponsorship to enable its employees train in a relevant field and at various institutions as the staff would acquire relevant to their duties (MK2).

3. That with respect to these terms and conditions of service the Respondent signed a Staff Training Bond Form by which the Claimant agreed to reimburse the Respondent 60% of fees spent by her in completing her Bachelor of Business Administration at the Kenya Methodist University on condition that the Respondent commits herself to serve the Claimants for a period of 3 years upon completion of her degree. The said Bond is annexed as Exhibit MK 3.

The Claimant avers that pursuant to this bond, they reimbursed Kshs.320,640/= to the Respondent of the Kshs.534,000/= that she had spent on her training as per Annexure MK 4.

4. The Claimant further states that on 16/1/2011, the Respondent tendered her resignation without having completed the required 3 years period she had committed herself to in accordance with the Staff Training Bonding Form (Annexure MK 5).

The Claimant therefore avers that the Respondent breached terms of the Staff Training Bonding Form. Further the Claimant avers that the Respondent failed to give the requisite notice to the Claimant on her resignation.

5. The claim against the Respondent is therefore for a refund of University fees less 1 year of employment at Kshs.213,760/= and 1 month salary in lieu of notice being 24,283/=.

The Claimant avers that demand for payment of the amount has been made but Respondent has failed, ignored or neglected to make good. The Claimant prays for interest on these amount plus costs of this suit.

Respondent's case

6. The Respondent filed her Memorandum of Defence on 5/11/2015 through the firm of Khayega Chivai & Co. Advocates. They denied the Claimant's claim is untenable and unenforceable.

The Respondent's case is that she paid her fees and was refunded 60% fees in 2010 December. However, in November 2011 they were ordered to fill the bonding forms. That this was introduced after she had cleared her fees and even been refunded.

She avers that the General Manager merely instructed her to fill the bonding forms and she filled them in January 2012 the month she resigned. She avers that she had been on leave in December 2011 and on resuming in January 2012 her contract terms were changed to permanent and pensionable and she was put under pressure to sign the bonding forms.

She avers that she didn't sign them voluntarily. She also avers that such forms should be filled prior to the studies and therefore the forms she signed cannot be binding on her.

7. On issue of a camera it is alleged she took, she avers that she has no such camera. She conceded to payment of 1 months salary in lieu of notice.

In cross examination, the Respondent avers that she had been asked to fill the bonding forms on 21/11/2011 but she didn't ignore it. She also agrees that on 21/3/2011 her contract was reviewed for 3 years. She contends that signing the same on 21/11/2011 would not have changed matters.

She called a witness who also stated that it is not true that the Respondent had the Claimants camera.

Issues for determination

8. Upon considering evidence of both parties and upon considering the submissions of both parties, the issues for determination are whether:

(1). The bond the claimant signed is enforceable.

(2). The Claimant is entitled to prayers sought.

From the evidence on record, the Respondent proceeded for training according to MK3 – she completed the course in December 2010. She was refunded school fees paid on 31/01/2011. The bond MK 3 was filled on 5/1/2012 but it was not signed as expected in the presence of the secretary of the Claimant nor even executed.

The question then is whether a bond such as this one can bind after the event. Under Clause 74 of the Terms and Conditions of service annexed as MF2:

“---Any employee who after training opts to resign before the bonded period is over shall be required to pay in full the amount the Society shall have spent on such a course. **The bonding terms will be signed during the processing of the sponsorship**-----“ (emphasis is mine).

9. This document states when the bonding is to be executed and this is during the processing of the sponsorship. The sponsorship or refund herein was processed in 2011 January and no bonding was

signed. It is therefore this court's finding that the Claimant slept on their rights and ignored or neglected the signing of the sponsorship as they processed the sponsorship and cannot therefore claim a refund at this stage. The claim for the 213,760 fails on that account.

As for the camera claimed, there is no proof that the Respondent was in possession of the same and so that prayer fails on that account.

What this court allows is therefore payment of 1 months salary in lieu of notice as admitted at Kshs.24,283/=.

The Respondent will also pay costs of this suit.

Dated and delivered in open court this 28th day of April, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance Claimant

No appearance for Respondent