



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 101 OF 2014

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS.....
CLAIMANT**

-VERSUS-

**ISIOLO TEACHERS SACCO.....
RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday 8th April, 2015)

JUDGMENT

The claimant filed the memorandum of claim on 5.09.2014 alleging the unfair termination of its member Abdi Halake, the grievant. The claimant prayed for judgment against the respondent for:

- a. Award in favour of the grievant and order the respondent to pay terminal benefits as provided in the parties' collective bargaining agreement.
- b. The respondent to pay the underpayments arising from promotion backdated to the date of promotion.
- c. An order of full compensation to the grievant.
- d. Costs to be provided for.

The respondent filed the statement of defence to memorandum of claim on 24.10.2014 through Mikira Mbaya & Company Advocates. The respondent prayed for the dismissal of the suit with costs.

By consent of the parties, the suit was fixed for hearing on 16.12.2014 at 9.00AM. The respondent and the respondent's Advocate did not attend court on the hearing date.

The grievant testified to support his case. The grievant was employed by the respondent as a guard on 22.03.2003. His gross pay was Kshs.10, 250.00 per month. By the letter dated 1.10.2006 he was promoted to the position of Chief Security Officer with effect from 1.11.2006. The grievant testified that after the promotion he was not paid as per the new assignments of Chief Security Officer. By the letter dated 1.09.2009 the grievant complained about underpayments and lack of pay increment following his promotion. By the letter of 05.03.2014, the grievant wrote to the Commissioner of Co-operatives to intervene in view of the underpayments and the unpaid promotional salary and allowances.

By the letter dated 17.05.2010, the respondent suspended the claimant from duty on account of the grievant being out of duty on 16.05.2010 without permission. It was the grievant's case that he had been on duty on the night of 15.05.2010 and despite the ill health he suffered that night, he had relieved the day guard who was at large on the morning of 16.05.2010. The grievant testified that he had worked on that date till around midday when he left for medical treatment. The grievant filed the medical notes to show

that he indeed had been sick at all material time. The grievant had responded to the suspension letter by his letter dated 21.05.2010.

The grievant testified that he was not allowed to attend the disciplinary hearing scheduled for 3.06.2010. The claimant's branch secretary who had accompanied the claimant was also not allowed in the meeting. The meeting resolved that the claimant makes an apology in view of the alleged absenteeism and a further allegation of writing letters to superiors which the respondent said amounted to insubordination. Subsequently, the respondent dismissed the claimant on account of failure to apologize and for failing to be remorseful. The termination letter was dated 12.07.2010.

The court has considered the pleadings, the evidence, and the submissions on record and makes findings as follows:

1. The grievant was promoted to the position of Chief Security Officer with effect from 1.10.2006, he was not paid the relevant salary and allowances as promoted and the court finds that he is entitled accordingly and as provided for in the collective agreement.
2. The grievant was not accorded a disciplinary hearing as envisaged in section 41 of the Employment Act, 2007. Accordingly the court finds that the termination was unfair. The grievant testified that he was not scheduled to be on duty on 16.05.2010 and the grievant has established that on that material date he was in poor health. In the circumstances, the court finds that he is entitled to 12 months' salaries in compensation for unfair termination taking into account the aborted disciplinary hearing, the willingness of the claimant to continue in service and the failure by the respondent to establish the reason for the termination.

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

1. The respondent to pay the grievant the unpaid salaries and allowances applicable to the position of Chief Security Officer from 1.10.2006 to 12.07.2010.
2. The respondent to pay the grievant 12 months' gross pay (salary and allowances for Chief Security Officer) at the rate as at 12.07.2010.
3. The respondent to pay the grievant one month salary in lieu of the termination notice.
4. The respondent to pay the grievant one basic salary together with a refund for provident fund contributed by the grievant and respondent as per clause 36 of the collective agreement.
5. The claimant to calculate the amount of money due to the grievant as per the orders above, to file and serve the computation within 7 days and to mention the case to record the same in court.
6. The respondent to pay the judgment sum to the grievant by 1.06.2015 in default interest to run at court rates from the date of the suit, 05.09.2014, till full payment.
7. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nyeri this Wednesday, 8th April, 2015.

BYRAM ONGAYA

JUDGE