



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSENO.11OF 2015

JAMES MAGONDU GITHINJI.....1ST CLAIMANT

JOHN KARANJA NDONGA.....2ND CLAIMANT

VERSUS

PETER KOMBE.....1ST RESPONDENT

BOG ST. MARY'S BOYS SECONDARY SCHOOL....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 26th June, 2015)

JUDGMENT

The claimants filed the memorandum of claim on 28.01.2015 through Waweru Macharia & Company Advocates. The claimants prayed for judgment against the respondents for:

- a. A declaration that the dismissal of the claimant by the respondents was illegal, unprocedural, unfair and unlawful.
- b. Reinstatement of the claimants to their employment with full back pay and without loss of benefits.
- c. In the alternative and without prejudice, an order compelling the respondents to pay the claimants damages and compensation amounting to Kshs. 1, 045, 490.00 and Kshs. 1, 309, 775.00 respectively.
- d. An order restraining the respondents from evicting the claimants from the respondents' staff houses until the matter is heard and determined by the court.
- e. Interest at bank rates on enforced savings of Kshs. 182, 000.00 and Kshs. 125, 000.00 respectively.
- f. Costs of this suit.
- g. Any other relief the court deems fit.

The respondent filed the response to the memorandum of claim on 03.03.2015 through Wahome Gikonyo

& Company Advocates. The respondent prayed that the suit be dismissed with costs.

The claimants were employed by the respondent as teachers. The 1st claimant taught biology and the 2nd claimant taught history. They served on fixed term contracts of 12 months running from 1st January to 31st December the last of such contracts being from 1.01.2014 to 31.12.2014. The standard staff contract provided thus, **“This contract is one-year renewable or terminated by either of the signed parties below. If the contract is terminated without one month notice by either party before its expiration time, a one month’s salary must be given or forfeited in lieu of such notice. The accrued contributions of both staff and the school for that member’s pension plan plus interest is given to the staff member upon termination. No other gratuity is given.”**

The claimants met the respondent’s principal sometimes on 21st and 22nd July 2014 respectively. The parties discussed the claimants’ performance and it was desired to terminate the claimants’ services. However, in view of the school cycle and the national examinations to be held towards the end of the year in third term, the claimants were allowed to serve until the end of 2014. The evidence suggests that the claimants and the respondent’s principal agreed that the respondents serve until the end of 2014. The respondent’s evidence was that the respondent levelled allegations of poor performance against the claimants leading to the failure to renew the contract of service. It is not disputed that the respondent paid each claimant one month salary in lieu of the termination notice or as *ex-gratia* payment at separation.

The court has considered the pleadings, the evidence and the submissions.

The 1st issue for determination is whether the termination of the claimants’ employment was unfair. The claimants received, about 2.1.2015, the letters informing them that their 2014 contracts would not be renewed. Thus, it was submitted for the claimants that they had been dismissed without due notice. The court has carefully considered the facts and evidence in this case. The claimants served on a fixed one year contract that was renewable. The claimants served the 2014 contract fully and that contract was never terminated prematurely or at all. The contract was not renewed. There were no agreed terms to govern the renewal. The claimants have not, in any event, claimed for renewal of the contract. The court finds that the claimant’s contract of service lapsed by effluxion of the agreed fixed term and there was no unfair termination of employment. Thus the court finds that the prayer for reinstatement was misconceived because the agreed term of service lapsed, the claimants did not claim or urge for renewal of the contract of service, the contract was never renewed after it lapsed by effluxion of time and the claimants are not entitled to compensation for unfair termination as prayed for.

The 2nd issue for determination is whether the claimants are entitled to the other remedies as prayed for. The court finds that the evidence and the submissions have failed to justify the remedies and they will fail. However, the court will single out the prayer for interest on enforced savings. The respondent admitted that the claimants were entitled and relevant bank interest due was paid as the hearing of the suit was underway and the evidence filed in court. The court finds that the claimants were entitled accordingly and the relevant dues have already been paid to them. In view of that successful claim, the claimants will be entitled to part of the costs of the suit.

The court has considered that the claimants continued to occupy the housing accommodation as provided by the respondent in accordance with the interim orders made in this suit and it should be fair that they vacate by 1.08.2015.

In conclusion the suit is determined with orders as follows:

- a. The declaration that the claimants’ employment lapsed in accordance with the contract of employment between the parties by reason of effluxion of the agreed fixed term of 12 months.
- b. The respondent to pay 10 % of the claimants’ costs of the suit.
- c. The claimants to vacate by 1.08.2015 the housing accommodation provided to the claimants by

the respondent.

Signed, dated and delivered in court at **Nyeri** this **Friday, 26th June, 2015.**

BYRAM ONGAYA

JUDGE