



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 67 OF 2013**

**(Formerly Cause No.218 of 2011 at Nairobi)**

**BEATRICE WANJUGU MAKIRA.....**

**CLAIMANT**

**VERSUS**

**THE BOARD OF MANAGEMENT, KANJURI HIGH  
SCHOOL.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 12<sup>th</sup> June, 2015)**

**JUDGMENT**

The claimant initially filed the memorandum of claim dated 16.02.2011 in person and subsequently filed the amended memorandum of claim on 08.08.2013 through Enonda Makoloo Akori and Company Advocates. On 17.09.2013 the claimant changed her advocates to Gori and Ombongi Advocates. The claimant prayed for judgment against the respondent for:

- a. Kshs. 201,673.35 being part of unpaid terminal dues as agreed by the respondent, accrued annual leave, pay in lieu of notice, off days worked and not paid, and 17 days worked in March 2008.
- b. 12 months' salaries for compensation for unfair termination Kshs. 111,564.00.
- c. General damages of Kshs. 266, 257.75.
- d. Costs of the suit.
- e. Interest.
- f. Any other relief as the court may deem just.

The respondent filed the memorandum of defence on 08.06.2011 through the Attorney General. The respondent prayed that the claimant's suit be dismissed with costs.

The claimant was employed by the respondent as a cateress with effect from 10.06.1988.

The claimant testified that on 13.09.2007 the respondent's principal gave the respondent a verbal permission to take her son to school and to report back by 1.00PM. The claimant reported back at 4.30PM and informed the respondent's bursar about her predicament that it had taken longer at her son's school than was expected. That was on a Friday and come next Monday the respondent's principal summoned the claimant and asked the claimant **"to go and sleep at home"** for 30 days of compulsory leave until 16.10.2007. After leave the claimant reported back on duty and she was given a letter of compulsory leave until further notice. The claimant appeared before the respondent for a hearing on 23.02.2008 and the claimant testified that she told the board she had no problem in relating to her workmates and was willing to be corrected. The claimant further testified that the respondent concluded that her defence was

not satisfactory and the issue which was core being her reporting back at work at 4.30PM instead of 1.00PM on 13.09.2007 was not discussed at all. The claimant admitted that in her service record there were cases when she was required to make explanations about her unsatisfactory performance and there was a record of warning letters. Upon termination, the claimant testified that the respondent paid her Kshs.125, 000.00 as a token of appreciation for long service. The claimant was subsequently dismissed from employment effective 15.03.2008 as per the termination letter dated 17.03.2008.

The **1<sup>st</sup> issue** for determination is whether the termination was unfair. There is no doubt that the claimant was accorded notice and hearing as envisaged in section 41 of Employment Act, 2007. The claimant has admitted that she was late in reporting back at work at 4.30PM instead of 1.00PM on 13.09.2007 and as per her letter of 7.02.2008. She admitted as much in her evidence in court. She further admitted in her said letter that she reported on duty late on some weekends when she was expected at work so as to attend to her private matters. The court has considered the claimant's employment record that showed several warnings and together with the admissions finds that the respondent had a valid reason to terminate the claimant's employment as envisaged in section 43 of the Act. Thus, the court finds that the dismissal was not unfair.

The **2<sup>nd</sup> issue** for determination is whether the claimant is entitled to the remedies as prayed for. The court makes findings as follows:

- a. The claimant has filed the relevant leave forms showing outstanding leave days as at the time of termination and as claimed in the memorandum of claim. The court finds that the claimant is entitled to **Kshs. 33, 774** as submitted for pay in lieu of leave due but not taken during the service with the respondent.
- b. The claimant is entitled to 17 days worked in March 2008 being **Kshs.6, 484.00** as submitted.
- c. The court finds that the claimant has not established the justification for the other reliefs made in the memorandum of claim and the same shall fail.
- d. The Kshs. 125, 000.00 paid to the claimant has been shown by the claimant to have been with respect to gratuity that the respondent decided to pay in view of the claimant's long service. The court finds that it was not with respect to any of the claims made for the claimant and found due and the same will not be applied as a set off to the amount the court has found to be due to the claimant.

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

- a. The respondent to pay the claimant **Kshs. 40, 258.00** by 1.08.2015 in default the respondent to pay interest thereon at court rates from the date of termination, 15.03.2008, till full payment.
- b. The respondent to pay 50% of the claimant's costs of the suit.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 12<sup>th</sup> June, 2015.**

**BYRAM ONGAYA**

**JUDGE**