



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 165 OF 2014

ESTHER WAIRIMU IGATI.....CLAIMANT

VERSUS

**ST. ANDREW'S COLLEGE OF THEOLOGY OF DEVELOPMENT-
KABARE.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 2nd October, 2015)

JUDGMENT

The claimant filed the statement of claim on 11.12.2014 through Magee Wa Magee & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Payment of Kshs.1,547,745.00 being half salary from 5.03.2014 to 24.07.2014, duty allowance for 5 months, electricity and water for 5 months, house allowance for 5 months, unremitted NSSF for 5 months, 12 months' salaries for unfair termination, 1 month pay in lieu of termination notice, leave allowance, and service gratuity for 7 years.
- b. General damages.
- c. Costs of the suit.
- d. Interest on a, b, and c above at court rates.
- e. Service letter.
- f. Any other or further relief the honourable court may deem fit and just to grant.

The respondent filed the response to the claim on 24.03.2015 through Ngigi Gichoya & Company Advocates. The respondent prayed that the suit be dismissed with costs.

From the material on record, the facts and circumstances of this case are as follows:

- a. The respondent employed the claimant as a librarian with effect from 1.02.2008 as per the letter dated 16.01.2008. By the letter of 2.05.2013 the respondent reappointed the claimant to the position of librarian
- b. By the letter dated 4.03.2014 the respondent suspended the claimant on account of accusations leveled against the claimant in relation to her duty in the library. The suspension was effective 5.03.2014 on 50% basic pay. By the letter dated 10.03.2014 the claimant requested for the copy of accusations made against her but she was not given the same.
- c. By the letter dated 30.05.2014 the respondent informed the claimant that the investigations into the allegations were not yet completed and the suspension was extended for 3 months effective 30.05.2014 and on 50% basic pay. By letter of 01.07.2014 the claimant requested for the supply of the accusations against her in preparation to appear before the respondent's Executive Governing Council but the same was not supplied.

- d. The claimant was invited to attend the Council meeting on 23.07.2014 at 11.00am. At the meeting allegations were read to the claimant but she failed to orally reply because she had no prior knowledge of the accusations.
- e. The claimant's employment was terminated by the letter dated 24.07.2014 but the reason was not stated
- f. While suit was pending, the claimant realized that she had been paid her withheld half salaries of Kshs.56,316.00 as was deposited in her bank account by the respondent (except half pay for July 2014).

The **1st issue** for determination is whether the termination was unfair. It is not disputed that the claimant was not given prior notice of the allegations and RW confirmed as much. The termination letter did not set out the reason for termination. The reason remained blurred. The court finds that the respondent has failed to establish the reason for termination as at time decision to terminate was made. The court finds that the termination was unfair under section 43 of the Employment Act, 2007. The court has considered the manner the claimant was put on suspension for over four months and that she did not contribute to her termination. She is awarded 12 months' gross salaries for the unfair termination at Kshs.26, 958.00 per the pay slip for June 2014 making **Kshs.323, 496.00**.

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

- a. The claimant is entitled to one month pay in lieu of termination notice making **Kshs.14, 680.00** as prayed for.
- b. As the claimant was put on unjustified suspension and throughout the period the claimant was still in employment, the court finds that the claimant is entitled to duty allowance for 5 months making **Kshs.10,000.00** as prayed for; electricity and water for 5 months making **Kshs.7,340.00** as prayed for; house allowance for 5 months as prayed for Kshs. 36,700.00; and half basic pay for July making **Kshs.7,340.00** (the rest of half pay having been paid and therefore not due)
- c. The claimant has failed to establish the basis for claim for gratuity and the same will fail as the claimant was a member of the NSSF. As submitted for the respondent, section 35(6) of the Employment Act, 2007 bars the claimant from claiming gratuity as she was a member of NSSF.
- d. The claimant is entitled to an order that the respondent remit to NSSF a sum of Kshs.7,045.00.
- e. The claimant stated she would have taken leave in April and that was not rebutted. The court finds that she is entitled to **Kshs. 26,000.00** in lieu of annual leave especially that 12 months of service had already lapsed between her last annual leave and the termination.
- f. The claimant is entitled to a certificate of service as a statutory right.

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

- a. The declaration that the termination of the claimant's employment by the respondent was unfair.
- b. The respondent to pay the claimant **Kshs.388,856.00** by 1.12.2015 failing interest at court rates to be paid thereon till full payment.
- c. The respondent to deliver to the claimant the certificate of service by 1.12.2015.
- d. The respondent to forthwith remit to the NSSF **Kshs.7,045.00** with respect to the claimant's service and not later than 1.11.2015.
- e. The respondent to pay the claimant's costs of this suit.

Signed, dated and delivered in court at Nyeri this **Friday, 2nd October, 2015**.

BYRAM ONGAYA

JUDGE