



+REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1031 OF 2011

JAMES MWANIKI KINGORI CLAIMANT

VERUS

ST. ELIZABETH ACADEMY RESPONDENT

Mr. Mwangi for the Claimant

JUDGMENT

This suit was filed on 29th June 2011 alleging wrongful and unfair termination of the Claimant's services and failure by the Respondent to pay terminal benefits to the Claimant.

The Claimant states that he was employed as a teacher at a monthly salary of Kshs. 20,000/=. At the time of termination on 15th December 2010 he earned a monthly salary of 60,000/= and was the Principal of the Respondent School.

He has produced the letter of appointment and a copy of the Bank statement to confirm his terms and conditions of service.

The Claimant testified in support of the averments in the memorandum of claim and told the Court that he served the school very well consequent upon the students performed well with a mean score of B and B- in 2009 and 2010 with about sixty (60) 'O' level candidates.

That his employment was terminated for no good reason at all as he was only told that the school needed to introduce changes and that he was not part of the Respondent's future plans.

The Claimant was not given any notice nor was he paid in lieu thereof. He was only paid salary for days worked and did not receive any severance pay.

That the Respondent deducted National Social Security Fund (NSSF) dues and National Hospital Insurance Fund (NHIF) dues from his monthly salary but the same was not remitted. Accordingly he states that he is entitled to payment of severance pay and or remittance of the statutory dues deducted from his salary together with the employer's contribution.

He claims payment of:

- a. One month salary in lieu of Notice in the sum of Ksh. 60,000/=;

- b. Severance pay for 5¹/₂ years at the rate of 15 days salary for each completed year of service in the sum of Ksh. 165,000/=;
- c. Refund of unremitted contributions to NHIF (320 X 8) in the sum of Ksh. 2,560/=;
- d. Refund of unremitted contributions for NSSF (200 X 66 months for 2005 – 2010) in the sum of Ksh. 13,200/= and damages for wrongful and unlawful termination.

The Respondent was duly served with the memorandum of claim and entered appearance through M/S Njenga Muchai & Associates on 8th August 2011.

No statement of Response was filed.

A date for hearing was allocated on 13th May 2013 *ex parte* for the matter to be heard on 4th October, 2012.

On 9th September 2013, the Hearing Notice was served on the Respondent at Karen Shopping Centre. According to the Affidavit of Service filed, the Process Server spoke to the Deputy Principal Mrs Rose Mutinda and the Academy Director Mrs Anne Wanjiku Wado who were personally known to Mr. Lukas Maingi Kimani, the Process Server. Mrs Wado received the hearing notice.

On the date of hearing, there was no appearance for the Respondent and the matter proceeded *ex parte*.

After a careful evaluation of the Pleadings and the testimony of the Claimant the Court is satisfied that the Claimant is entitled to all the terminal benefits claimed. However, the Court will not order refund of the unremitted NSSF dues but will instead direct the Respondent to pay severance pay as claimed above.

The Respondent has not provided any valid reason to terminate the employment of the Claimant nor was a fair procedure followed in the termination.

The Claimant has therefore shown on a balance of probability that his employment was unlawfully and unfairly terminated contrary to *Section 45 of the employment Act*.

The Claimant had served for 5¹/₂ years. He had a good work record. He did not contribute to his dismissal. Was not paid any terminal benefits upon termination and he suffered loss and damages as a result of the sudden loss of his source of livelihood.

Considering all the circumstances of the case, the Court awards him five (5) months salary as compensation in the sum of Kenya Shillings 300,000/=.

In the final analysis the Court awards the Claimant against the Respondent as follows:

1. Ksh. 60,000/= being payment in lieu of notice;
2. Ksh. 165,000/= being severance pay for 5¹/₂ years;
3. Ksh. 2,560/= being unremitted NHIF contribution for 8 months and;
4. Ksh. 300,000/= as compensation for unlawful and unfair termination.

Total awards Ksh. 527,560/=.

The Respondent is also to pay to the Claimant the costs of the suit.

Dated and delivered at Nairobi this 26th day of February, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE