



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 253/2013

(Before Hon. Justice Hellen Wasilwa on 31st March, 2014)

PETER MORWABE & 4 OTHERS CLAIMANTS

-VERSUS-

E - SMART COLLEGE LTD RESPONDENTS

JUDGMENT

The claimants; Peter Morwabe, Boaz Nyariki, Patrick Masita, Joash Nyasende and Daniel Ombati filed this claim on 6.9.2013 through the firm of Ochoki & Co. Advocates. The respondents herein were duly served but they failed to file any appearance nor file any response. The case therefore proceeded for formal proof on 27.1.2014.

The claimants case is that they had been employed by the respondents in different positions. The 1st claimant Peter Morwabe was employed as a resident lecturer at the respondents' Kisii town campus. He took up the appointment in October 2011. He was also asked to recruit a centre manager and he recruited Peter Masita Mali – 3rd claimant and also Boaz Nyariki – 2nd claimant as Marketing Director. He further recruited Joash Nyasende – 4th claimant as Marketing Assistant. The 5th claimant Daniel Ombati was recruited as the cleaner. The claimants were all issued with letters of appointment. The claimants were being paid 60,000/=, 45,000/=, 38,000/=, 30,000/= and 10,000/= respectively. However 4th and 5th claimants were not issued with letters of appointment. The claimants submitted the letters of appointment as exhibits before this court. (Pg 9 to 15 of the Memo of Claim).

The letters of appointment were issued in January 2012 but it is the claimants contention that they were never paid any salaries after the letters of appointment. They waited for 4 months and when the salary was not forthcoming, they wrote a letter on 11.4.2012 to the respondents asking for their salary arrears. The letter is at pg 16 and 17 of the claimants' memo. There was no response. On 15.5.2012 they wrote another letter to the Managing Director and he replied vide his letter dated 2.6.2012. It was written by the Managing Director and directed to the Principle asking him to give the claimants their dues.

The claimants tried to follow up with the Principle but he never paid them. He however hired other people and threw them out of the centre. They reported the matter to the police and also tried other informal meetings in Nairobi. Nothing came out of the meeting. They now filed this case before court where they seek orders that they be paid their dues from the time they were recruited and also be reinstated to their jobs. They contend that they have not received any formal letters of dismissal and neither has their employer made any statutory deductions of NSSF, NHIF etc.

Having heard the claimants herein and upon consideration of their submissions, the issues for determination are:-

- 1. Whether claimants had any valid employment contracts with the respondents**
- 2. What the terms of their contracts**
- 3. Did the respondents breach the terms of the contract**
- 4. If so what remedies are the claimants entitled to.**

\On the 1st issue the 1, 2, and 3 claimants have exhibited their letters of appointment. The appointment letter of the 1st claimant is signed on 26.10.2012 and is signed by one Prof. Thairu, who is Chairman Board of Directors of the respondents. The 1st claimant was engaged as Resident Lecturer in-charge of the Centre. The contract was subject to three months termination notice or 3 months salary in lieu of such notice. It was to be a 3 year contract. The salary or emoluments attached to the job is however not stated.

The 2nd claimant's letter of appointment as Centre Marketing Officer is signed on 25.1.2012 and is also a three year contract with similar terms as those of the 1st claimant. The remuneration is stated as 45,000/=.

The appointment letter of 3rd claimant is dated 26.1.2012 and it states that his salary was 38,000/= and it was also a 3 year contract. The 4th and 5th claimants stated that they had no written contracts. Going by the appointment letters exhibited, it is apparent that the first 3 claimants had valid written contracts with the respondents.

From the letter written by the Managing Director dated 2.6.2012 directed to the College Principle it is also apparent that the other claimants also had a valid contract with respondents and that is why the Managing Director was directing the Principle to pay them their salary arrears since January 2012.

The terms of these contracts are as exhibited in the appointment letters and as per the evidence of the claimants that the salaries were 60,000/=, 45,000/=, 38,000/=, 30,000/= and 10,000/= respectively. There is no indication that the claimants were dismissed or their contracts were terminated. It is not clear what happened between claimants and respondents. All that the claimants state is that they were locked out and others hired. This might have occurred in May 2012 as this is the day – 14.5.2012 that the respondents hired other people prompting the claimants to report to police vide OB NO.33/14/5/2012. This then translates to the day the respondents terminated the contracts of the claimants without any due process.

The contract had itself provided that either party could terminate the contract after giving 3 months notice but this was never given. No hearing was also accorded to the claimants as envisaged under Section 41 of Employment Act.

It is therefore apparent that the respondents unlawfully and unfairly terminated the claimants services. The claimants are therefore entitled to the following remedies:-

1. Salary arrears for 5 months with effect from January to May 2012;

1st claimant - 60,000 X 5 = Ksh 300,000/=

2nd claimant - 45,000 X 5 = Ksh225,000/=

3rd claimant - 38,000 X 5 = Ksh 190,000/=

4th claimant - 30,000 X 5 = Ksh 150,000/=

5th claimant - 10,000 X 5 = Ksh 100,000/=

2. 3 months salary in lieu of notice:

1st claimant - 60,000 X 3 = Ksh 180,000/=

2nd claimant - 45,000 X 3 = Ksh135,000/=

3rd claimant - 38,000 X 3 = Ksh 114,000/=

4th claimant - 30,000 X 3 = Ksh 90,000/=

5th claimant - 10,000 X 3 = Ksh 30,000/=

3. 6 months salary as damages for unlawful termination:

1st claimant - 60,000 X 6 = Ksh 360,000/=

2nd claimant - 45,000 X 6 = Ksh 270,000/=

3rd claimant - 38,000 X 6 = Ksh 208,000/=

4th claimant - 30,000 X 6 = Ksh 180,000/=

5th claimant - 10,000 X 6 = Ksh 60,000/=

TOTALS:

1st claimant = Ksh 840,000/=

2nd claimant = Ksh 630,000/=

3rd claimant = Ksh 512,000/=

4th claimant = Ksh 420,000/=

5th claimant = Ksh 140,000/=

All subject to statutory deductions.

4. Each claimant will also be issued with a certificate of service.

The respondents will meet costs of this suit.

HELLEN WASILWA

JUDGE

31/3/2014

Appearances:-

Both parties absent

CC. Wamache