



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 116/2013

(Before Hon. Justice Hellen Wasilwa on 14th March, 2014)

PETER OTIENO NDHERE

WELLINGTON OLUOCH CLAIMANTS

-VERSUS-

THE SECRETARY, BOG JOYLAND

SPECIAL SEC. SCHOOL RESPONDENTS

JUDGMENT

The claimants herein filed their memo of claim on 6.5.2013 through the firm of Otieno, Yogo, Ojuro & Co. Advocates. The respondents on the other hand filed their statement of defence on 9.7.2013 through the firm of P. D. Onyango & Co. Advocates. The parties by consent agreed that the case proceeds based on their pleadings and submissions filed herein. No witnesses were called.

Based on their pleadings and submissions, the claimants' case is that they were both employees of the respondents having been employed in 2001 to March 2010 as security guards. On 22.3.2010, the claimants were in the course of their employment when they were arrested and accused of being involved in theft that occurred between 18th and 19th March 2010. They were arrested on 1.4.2010 by police officers from Kondele Police Station and were subsequently charged on two counts before **Winam PMCC Case No. 622 of 2010**. They were subsequently suspended and terminated from employment by the respondents. The claimants were subsequently acquitted of the criminal charges under Section 210 of the CPC.

The claimants contend that they were unlawfully terminated and were not accorded any fair hearing by the respondents. They also contend that the respondents failed to pay them their terminal benefits. The claimants avers that at the time of termination, they each earned a salary of Ksh 12,000/= per month and the respondents failed to pay them their dues based on this salary which they are now claiming.

The respondents on the other hand contend that after the theft in their school, a report was made to the police who charged the claimants with breaking and stealing instead of failure to prevent a felony. The respondents aver that the claimants were suspended from duty after failure to stop theft which took place and they had been given a chance to defend themselves. Further, the respondents aver that the claimants were paid according to regulations and guidelines from the Ministry of Education, Special Education Department and therefore there was no underpayment.

Upon consideration of the pleadings and submissions of the parties, the issues for determination are as

follows:-

1. **Whether the claimants were fairly and lawfully terminated by the respondents.**
2. **Whether the claimants are entitled to the prayers they have sought.**

On the 1st issue, the claimants were suspended from duty after the theft incident. The letters of suspension dated 21.6.2010 indicate that they would stand suspended until the court case is heard and determined. The criminal case was determined on 26.7.2012 when the claimants were acquitted under Section 210 of CPC.

After the acquittal the claimants through their advocate Otieno, Yogo, Ojuro & Co. Advocates wrote to the respondents on 2.8.2012 informing them of the criminal trial outcome and requesting that the claimants be allowed back to work. No response to this letter was received hence the filing of this case on 9.7.2013. It is therefore apparent that the respondents went against their word in the suspension letters stating that the suspension stands until the criminal case is determined and therefore constructively terminated the claimants with their silence. No hearing was accorded to the claimants as required by Section 41 of Employment Act 2007. I therefore make a finding that the termination of the claimants by the respondents was unlawful and unjustified.

What remedies then are the claimants entitled to? I find that each claimant is entitled to:-

1. **1 month salary in lieu of notice = Ksh 12,000/=,**
2. **12 months salary as compensation for unlawful termination = Ksh 12,000 X 12 = Ksh 132,000/=,**

KSH 144,000

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3. **The claimants shall be paid costs of this case.**

HELLEN WASILWA

JUDGE

14/3/2014

Appearances:-

Otieno for claimants

P. D. Onyango for respondents

CC. Wamache