



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

**CAUSE NO. 289/2013**

**(Before Hon. Justice Hellen Wasilwa on 30<sup>th</sup> April, 2014)**

**METHUSELA K. KACHESO ..... CLAIMANT**

**-VERSUS-**

**INTERNATIONAL SCHOOL OF MEDICINE &**

**APPLIED TECHNOLOGY ..... RESPONDENTS**

**JUDGMENT**

The claimant herein Methusela K. Kacheso filed his claim on 22.10.2013 through the firm of Nyanga & Co. Advocates. The respondents was served with the statement of claim and verifying affidavit on 25.10.2013 as per the affidavit of service filed in court on 21.11.2013. The respondents never filed any defence nor any appearance. They were thereafter served with a hearing notice for the hearing of this matter; and still never attended the hearing. This case therefore proceeded for formal proof on the 11.3.2014.

It is the claimant's case that he was employed by the respondents on 8.5.2007 as a college principle. His appointment letter set out his duties and responsibilities (**App 1**) and also his terms and conditions of service. The initial salary was Ksh 24,000/= and he was to serve for a renewable contract of three years. As the initial principle of the institution, he was also required to embark on the registration of the college. He was asked to submit his CV and certificates for purposes of the registration of the institution as the Manager. He told court that verbally he was informed that he would be paid Ksh 60,000/= monthly once the institution was registered and he became a manager. The institution was assessed by the Public Health (**Exh 2**) and this paved way for the institution to apply to the District Development Committee Kisumu and Provincial Technical Training Office in Kisumu for purpose of registration (**Exh 3**) and also his approval was given in July 2007. He also needed to get collaboration with institutions of higher learning and he managed to secure collaboration with Moi University Eldoret in October 2007 (**Exh 6**). There was an inspection after this by the Ministry of Education and Science (**Exh 7**) whose recommendations show that he was approved as the Institution Manager. Based on these achievements, the respondents made an advertisement in November 2007 (**Exh 8**).

In the meantime until October 2007 his salary was not being paid regularly. He requested the board of directors to release him from task of principle so he concentrates on task of Manager (**Exh 9**).

He thereafter moved to court to seek orders for the respondents to pay him his salary arrears in October 2008 (**Exh 10**). He received his arrears of payments in October 2008 and thereafter the respondents asked him to keep away from the college yet continued to use his name as Manager on their documents as per **Exh 13** and **Exh 14** dated 30.1.2012 and to run upto 2.6.2016.

He now seeks to be paid damages by the respondents who are using his position of Manager from 2008 to 2nd June 2016. He also seeks for damages.

Having heard evidence of the claimant and upon considering his submissions thereof, the issues for determination are as follows:-

1. **Whether the claimant was unlawfully terminated by respondent.**
2. **Whether the claimant is still *bonafide* Institution Manager of the respondent.**

From the letter of appointment issued to claimant he was to be the college principle and manager. He initiated the registration of this college in 2007 June 26th. However there is a letter to the effect that he resigned from the institution on 26.11.2009. His letter in part states that:-

**“I now write to state my resignation took effect from 23.10.2007.**

**I also wish to state that I'll not take any responsibility for any official documents communicated to any party by the college in my names as principle, since then. Take due process to regularize such references if any at all. Finally, I request that you process my arrears payments and invite me to collect the same in January 2008.**

**Thank you**

**signed**

**Methusela K. Kacheso”.**

If this letter of resignation is considered as *bonafide*, then the claimant ceased being an employee of the respondents in October 2007. It was therefore imperative that the respondents take action as requested by the claimant not to use his name on their official communication.

Whether the respondents continued to use claimant's name on their documents is evident from the documents submitted to them dated 30.1.2012 showing that he is still the Manager of the Institution. As the respondents continue to benefit from use of claimant's name, it is in order that they pay for the same. Under Article 40(5) of the Constitution;

**“The State shall support, promote and protect the intellectual property rights of the people of Kenya”**

The claimant offered his credentials and assisted the respondents to be registered as an institution of higher learning. The claimant was also approved as the Institution's Manager. After his resignation however, it would have been the duty of respondents to further desist from using claimant's name or if using it, to pay for it. It is therefore the finding of this court, that the use of claimant's name in institution's official documentation is tantamount to infringing in claimant's intellectual property for which the respondents should pay. I therefore find for claimant and enter judgment for him as follows:-

1. **That the respondent do pay the claimant as equivalent of 24 months salary for use of his name on their documentation which has benefited the institution.**

$$= 24,000 \times 24 = \text{Ksh } 576,000/=$$

2. **The respondents to desist henceforth from using the claimant's names on their documentation and in any case to take action on this aspect within 6 months.**
3. **Respondents to pay costs of this case.**

**HELLEN WASILWA**

**JUDGE**

**30/4/2014**

**Appearances:-**

Omboto for claimant present

Respondent absent

CC. Wamache