



REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 572 OF 2012

(Before D.K.N. Marete)

KUDHEIHA WORKERS.....CLAIMANT

Versus

MACHAKOS TECHNICAL INSTITUTE FOR THE BLIND.....RESPONDENT

DIRECTIONS

By a memorandum of claim dated 4th April, 2012 this matter was brought to court. The issue in dispute is

‘Wrongful dismissal of Mr. Robert M. Musau – Grievant’

The respondent, despite service has not filed an appearance or response in the matter. The respondent has not been involved in the litigation of this matter except on 4th June, 2013 when Mr. Mapesa of the Office of the Attorney-General appeared on its behalf and again on 24th June, 2013 when a Miss Nthiga held his brief. The respondent has indeed not entered appearance or even filed a notice of appointment of advocates.

The claimant’s case is that the grievant is a *bona fide* member of the claimant union. He was employed by the respondent as a cook on 1st May, 1999 at a monthly salary of Kshs.2,260.00. He was provided housing at the respondent’s school.

On 5th July, 2010, the grievant was suspended on allegations of drunkenness and insubordination. He refutes the same. It is alleged that on 3rd July, 2010, he left his workmates in the kitchen and went to drink. On 13th September, 2010, he was summoned to appear before the Executive Board of Governors disciplinary meeting scheduled for 16th October, 2010. He reported this to the union.

On 5th November, 2010, he was advised to leave the school due to his involvement of the union in the matter. He was dismissed on 22nd October, 2010 on the basis of warning letters issued on 28th March, 2009, 13th July, 2009 and drunkenness. It is the claimant’s submission that warning letters last only 9 months in accordance with the Collective Bargaining Agreement and thereafter become impotent in application. He therefore prays for;

1. *Three months pay in lieu of Notice = Kshs.8,863/= x 3 = **Kshs.26,589/=***

2. *Service Gratuity of one month's salary for every completed year of service that is 11 years = Kshs.8,863/= x 11 = Kshs.97,493/= (See App. 11)*
3. *Maximum compensation of 12 months for wrongful dismissal from employment = Kshs.8,863/= x 12 = Kshs.106,36/=*
4. *That the costs of the suit be awarded in favour of the claimant.*

TOTAL AMOUNT= KSHS.230,438/=

At the time of dismissal, the grievant earned Kshs.8,863.00. A trade dispute

was ultimately reported to the Minister on 16th March, 2011 and on 15th April, 2011, a Mr. Ndungu, of the Machakos Labour Office was appointed conciliator. The conciliator invited the parties to a conciliation meeting but the respondent refused to attend and hence this eventuality.

This action was not defended, or at all. This is despite service which is evidenced by numerous affidavits of service to the respondent and the Office of the Attorney-General. The respondent was also absent from court throughout the proceedings except on 4th June, 2013 when a Mr. Mapesa appears and prays for time to formally come on record and also serve a response.

On 4th March, 2014, the claimant, in the absence of the respondent prayed for judgment on the basis of the pleadings on record.

This is a very unfortunate matter. It is notable that the respondent has not made any serious attempts to litigate her cause. The claimant submits that the respondent has been served and was always aware of the suit and therefore judgement should ensue. I find this difficult. The data available and the court record is scanty and not adequate to offer a situation for determination of the issues in dispute. The circumstances leading to employment, alleged misconduct and termination of employment are not in themselves clear cut or adequately proven by evidence. This matter requires further scrutiny so as to achieve the ends of justice for all concerned. In view of the circumstances and with a view to ebbing out a case for justice in the circumstances, I direct and order as follows;

- i. **THAT** the Court Registrar be and is hereby ordered to issue and serve notices on all parties as follows;
 1. Kudheiha – the claimant
 2. The Principal, Machakos Training Institute for the Blind – Ms Priscillah Nduku Mutua, or the Chief Executive Officer or officer in charge
 3. Mr. Mapesa of the Office of the Attorney-General
 4. Robert Mule Musau – the grievant.
- ii. **THAT** all the above cited parties be and are hereby ordered to attend court for a mention of the matter on Wednesday 25th June, 2014 at 900 hours **without failure**.
- iii. **THAT** the claimant be and is hereby ordered to facilitate service and appearance of the grievant in court.
- iv. **THAT** the Court Registrar issues an affidavit of service in the circumstances.

Delivered, dated and signed the 24th day of April, 2014.

D.K. Njagi Marete

JUDGE

Appearances:

1. Mr. Samson Kioko for the union.
2. Mr. Mapesa instructed by the Attorney-General for the respondent.