



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 909 OF 2012

JOSEPH KIMANI NJOROGE.....CLAIMANT

VERSUS

HON. THE ATTORNEY GENERAL.....1ST RESPONDENT

THE SECRETARY OF THE BOARD OF GOVERNORS

MANG'U HIGH SCHOOL.....2ND RESPONDENT

JUDGMENT

1. The Claimant sued the Respondents for his dismissal from employment. He sued the Respondent seeking payment of his unpaid salaries, acting allowance, notice and terminal dues.
2. The Respondents filed a response and averred that the suspension of the Claimant was lawful and procedural and was not dependent on the outcome of the Court proceedings. The Respondent averred that the Claimant was upgraded to the position of bursar in 1996 and not 1993. The Respondent sought the suit by the Claimant be dismissed.
3. The Claimant testified and stated that presently he is in employment and was seeking payment of his accrued salary, notice as well as terminal dues for the years of service. He testified that during his suspension he was not paid half salary. He thus sought the payment of salaries that accrued during his suspension at rate of 12,481/- a month, accrued leave for 1993-1995, May 1998- September 1998, acting bursar's salary, severance pay all totalling 1,390,523/-, compensation and costs of suit.
4. In cross-examination the Claimant testified that he was aware of the reason for the suspension and that he was charged with forgery and theft. He stated he was acquitted after the trial. He testified he was entitled to the pay as he was suspended and not terminated.
5. The parties filed written submissions. The Claimant submitted that the termination of his employment was against the cardinal rules of natural justice and against the Public Service Regulations in force. The Claimant thus submitted he was entitled to the sums in the claim. He relied on the civil appeals between **National Cereals & Produce Board and Albert Ongaro Civil Appeal No. 9 of 1999** (unreported) and **Barclays Bank of Kenya Ltd and Joseph Mwaura Njau Civil Appeal no 314 of 2001**.
6. The Respondent submitted that the Respondents were justified in dismissing the Claimant from employment on 30th November 1999 on account of the criminal offence the Claimant committed against

the employer. The Respondent submitted that the claim was time barred as the same was not filed within 3 years. The Respondent relied on the cases of **Joseph Mwangi v Board of Governors Mwiruti Secondary School [2013] eKLR**, **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR** and **Iga v Makerere University [1972] EA 65**.

7. The authorities cited as well as the pleadings on record have been considered in coming to this decision.

8. It was not controverted that the Claimant worked for Mang'u High School as bursar at the material times to this suit and was subsequently suspended from his duty and charged in a criminal case before the Thika Senior Resident Magistrates Court and the criminal case ended in his acquittal. The Claimant filed the suit in August 2002 and his dismissal was on 30th November 1999 and the suit therefore was filed on time within the 3 years limitation period. The Respondent's objections on this score are thus unfounded. The Claimant was dismissed on 30th November 1999 as his position was filled by another and the school refused to readmit the Claimant to his former employment after his court case. He thus would only be entitled to claim reliefs up to the period ending 30th November 1999.

9. In the claim the Claimant sought payment of the acting salary for the position of bursar after his promotion. This would fall due being the pay for the period he acted as bursar Kshs. 111,110/-. The Claimant is entitled payment of salary for May 1998 which is Kshs. 12,481/-. During suspension of a public servant salary can either be withheld in full or only applicable allowances. In the case of the Claimant he was suspended without pay and he was not entitled to any pay on account of the period under suspension from May 1998 till termination on 30th November 1999. He was in service for 8 years and is entitled to severance pay for the 8 years amounting to Kshs. 49,924/-. The Claimant was partly successful in his claim and I will award him costs.

10. In the final analysis I enter judgment for the Claimant against the Respondents for Kshs. 173,515/- plus costs.

Orders accordingly.

Dated and signed at Nairobi this 7th day of July 2014

Nzioki wa Makau

JUDGE