



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NYERI

CAUSE NO.55 OF 2014

EDWARD MAINA MWANGI.....CLAIMANT

-VERSUS-

KAGUMO TEACHERS COLLEGE.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 11th December, 2014)

JUDGMENT

The claimant filed the statement of claim on 13.06.2014 through Gori, Ombongi & Company Advocates. The claimant prayed for judgment against the respondent for terminal benefits of Kshs 247, 399.45 being 2 months in lieu of notice, gratuity, compensation for loss of job, 69 pay for leave days, and July Salary; costs of the suit; costs of the suit; and interest.

The respondent filed the memorandum of response on 26.08.2014 through A.M. Njagi, State Counsel for Attorney General. The respondent prayed that the claimant's suit be dismissed with costs.

The claimant was employed by the respondent as a cook for 8 years with effect from 2003 and confirmed in employment in January 2004. On 28.06.2011 the claimant was on duty and the head watchman conducted a search at the respondent's kitchen. The respondent's Principal informed the claimant on 29.06.2011 that some 5.5 kg of rice was discovered around the kitchen during the search of 28.06.2011. Since the claimant was assigned to cook rice on 28.06.2011, the Principal told the claimant that the claimant was implicated because the rice as discovered suggested a design for theft especially that on that day some students missed food when the rice meal was served. On 28.06.2011, the claimant further testified that the cateress found one Stephen Maina in the process of hiding some food items at the kitchen. The claimant denied involvement in the design to steal the rice.

The claimant was interdicted by the letter dated 29.06.2014 on account of loss of 5.5kg of rice on 28.06.2011. The claimant appeared before the human resource committee on 8.07.2011 for review of the case. He denied that he was negligent leading to the loss of the rice in issue. The claimant received the show-cause letter dated 8.7.2011 inviting him to appear before the respondent on 15.07.2011 at 10.00am together with an employee of his choice. The claimant attended as scheduled and he denied involvement in the designs to steal the rice in issue. The claimant was subsequently dismissed on account of the said allegations.

The respondent agreed to pay 61 due leave days not taken or paid for; and 15 days salary for days worked in July. The respondent's witness (RW), the respondent's principal testified that the rice meal for the day in issue was not sufficient for students due to claimant's negligence. RW testified that he did not know

whatever happened to the rice and he could not say that the claimant had stolen the rice. He further admitted that the minutes of meeting that deliberated the case referred to 4.5kg of rice, and the letter of dismissal referred to 5kg as well as a discrepancy on the dates in issue. RW further testified that it was the duty of the cateress to ensure sufficient meals for students and not the claimant.

The court has considered the pleadings, the evidence and the submissions and makes the following findings on the issues in dispute:

1. The claimant denied the allegations as levelled. RW has admitted to discrepancies in the kilos of rice in issue as well as dates of the alleged loss. RW has testified that it was not the claimant's responsibility to ensure sufficiency of the rice as served to students on the material day. Taking the evidence into account the court finds that at time of dismissal the respondent did not have a valid reason to dismiss the claimant and the court finds that the dismissal was unfair under section 43 of the Employment Act, 2007. The claimant did not contribute to his dismissal in any manner, he was keen to continue in employment and the court finds that he is entitled to the **Kshs.116, 652.00** being compensation for unfair termination as prayed for.
2. The respondent admitted to pay 61 due leave days. No evidence was advanced to rebut the claimant's prayer for payment of 69 days and the claimant is awarded **Kshs. 33, 537.45** as prayed for.
3. The respondent admitted to pay July salary and the claimant is awarded Kshs. **9, 721.00** as prayed for.
4. The claims for gratuity and 2 months' pay in lieu of termination notice were based on a collective agreement which was not filed. The court finds that the claimant failed to establish the prayers but he is entitled to the one month statutory pay in lieu of notice being **Kshs.9, 721.00**.

In conclusion judgment is entered for the claimant against the respondent for:

- 1. The respondent to pay the claimant Kshs.169, 631.45 by 1.02.2015 failing interest at court rates to be payable from the date of this judgement till full payment.**
- 2. The respondent to pay claimant's costs of the suit.**

Signed, dated and delivered in court at Nyeri this Thursday, 11th December, 2014.

BYRAM ONGAYA

JUDGE