



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 47 of 2013

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL
INSTITUTIONS, HOSPITALS AND ALLIED WORKERS
(KUDHEIHA WORKERS).....CLAIMANT
-VERSUS-**

HILL SECONDARY SCHOOL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 24th May, 2013)

JUDGMENT

The claimant Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied workers filed the memoranda of claim on 19.05.2011 on behalf of its members Elizabeth Kadeya Anane (1st grievant) and Sellah Anyango Tuwei (2nd grievant).

The 1st grievant has prayed for orders that:

- a) The dismissal should be reduced to normal termination and the employee be paid all her terminal benefits as per the collective bargaining agreement (CBA) between the union and the Ministry of Education.
- b) The grievant be given pay in lieu of notice as per the CBA.
- c) The grievant be paid her accumulated leave days from 2001 to 2007.
- d) The grievant should be compensated for loss of employment at least 12 months.
- e) Employer to pay costs of the case.

The 2nd grievant has prayed for orders that:

- a) The grievant be reinstated back to work unconditionally.
- b) Alternatively the grievant be paid all her terminal benefits as per the CBA between the union and the Ministry of Education.

The respondent filed the memorandum of response on 11.09.2011 and prayed that the claim be dismissed with costs because:

a) The 1st grievant was dismissed procedurally following her admission of a charge of theft before the school Board of Governors.

b) The 2nd grievant was dismissed as a result of unprofessional conduct on her part by encouraging indiscipline among students leading to student unrest on one occasion and contrary to the CBA between the parties.

This case was fixed for hearing on 22.05.2013 and the claimant effected service of the relevant hearing notice upon the respondent. Despite the service, the respondent did not attend court. Thus, the claimant's case was heard in absence of the respondent.

The 1st grievant testified as follows:

1. She was employed by the respondent from 1.08.1987 as per exhibit 1 on her memorandum of claim.
2. She initially served as the school accountant and was later promoted to the position of school bursar job group H.
3. She was terminated from employment on 22.03.2007 as per exhibit III on the memorandum of claim. The letter stated that she had been summarily dismissed following a case of theft of timber which occurred on 7.03.2007 and for which she appeared before the full Board of Governors on 22nd March, 2007 and pleaded guilty. She was to be available for any audit queries and to clear from the school house. The letter was signed by Mrs. Imelda A. Barasa, the respondent's Principal and Board's Secretary.
4. At termination, her basic salary was Ksh.12,665, house allowance of Ksh.2,380, medical allowance of Ksh.990 and being a gross monthly pay of Ksh.16,005.
5. As for the alleged theft no police reports were made.

The 2nd grievant testified as follows:

1. She was employed as a subordinate staff by the respondent from 1.05.1985 as per the letter of appointment being exhibit 1 on her memorandum of claim. She was promoted to the position of matron as per exhibit III on the memorandum of claim.
2. She was suspended by the letter dated 3.03.2008 being exhibit IV(a) on the claim on account of entertaining indiscipline among students by keeping unwanted items such as foodstuffs and mobiles for students in her house; allowing students to watch movies from her house; and purchasing biscuits for the girls. She was to remain on suspension until 12.03.2008 when she would appear before the respondent Board of Governors. She appeared for the hearing alone in absence of the union representatives.
3. By the letter dated 20.03.2008 being exhibit IV (b) on the memorandum of claim, she was summarily dismissed with effect from 13.03.2008 following investigations into unrests in the school which showed she had been encouraging indiscipline among the students by buying for them biscuits, allowing them to go to her house, keeping for them mobiles and involving her son in the same. She was to clear with the school immediately and move out of the house for the new matron to occupy.

The claimant reported a trade dispute and the Minister for Labour appointed a conciliator culminating into the certificate of disagreement dated 7.12.2009 attached on the memoranda of claims.

The court has perused the extracts of the Board minutes attached on the memorandum of response. They depict a sad state of indiscipline in the school involving 24 girls being students at the material time. The 2nd grievant is recorded as confessing to all the accusations leveled against her. She did not deny any of the alleged misconducts and the court is persuaded that the school underwent a turmoil directly connected to the 2nd grievant's gross misconduct. The grievant did not give any evidence to rebut the account of the

circumstances leading to the dismissal as stated in the extract of the minutes. Further, she did not dispute the reasons as pleaded by the respondent.

The letter of dismissal for the 1st grievant is clear that she appeared before the Board and admitted the allegations leveled against her. In her evidence, there was no substantial account as to rebut the contents of the letter for summary dismissal. Thus, in the opinion of the court she is not disputing the reason for the dismissal.

In view of the pleadings, materials filed and the evidence on record the court finds that the respondent had genuine reason to terminate the grievants' employment on account of gross misconduct.

The 1st grievant has pleaded unfair termination because she was not given a notice. However, she did not dispute appearing before the respondent Board for a hearing. The 2nd grievant has pleaded unfair termination because when she appeared before the Board she was not accompanied by the union officials.

The court has carefully considered the case and finds that the procedural impropriety in this case did not occasion any substantial or significant injustice to the grievants. The court has scaled and measured that impropriety against the strenuous and urgent actions the respondent had to invoke to protect its integrity as a school able to safeguard its core mission of high discipline and finds that the grievants' misconducts were grave so that minor procedural defects in the administrative disciplinary process that did not occasion significant injustice, in the opinion of the court, are matters the court may reluctantly excuse the respondent in the special circumstances of this case. Thus, the court considers that the respondent's decisions to end the employment relationship on account of gross misconduct may not be overturned and further that each of the grievants shall each be entitled to nominal two months gross salaries in view of the indentified procedural defects in the disciplinary process.

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

- a) The respondent to pay each of the grievants two months gross salaries at the rate of their last pay at termination.
- b) The respondent to pay costs of this case fixed at **Ksh.30,000**.
- c) The respondent to pay the sums in (a) and (b) by 15.07.2013 failing interest at court rates to be paid from the date of the judgment till full payment.

Signed, dated and delivered in court at **Nakuru** this **Friday, 24th May, 2013**.

BYRAM ONGAYA
JUDGE