



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 64 OF 2013

(Formerly Nairobi Cause No. 1262 of 2011)

MARY BOKE WANYOIKE.....CLAIMANT

-VERSUS-

**BOARD OF GOVERNORS GILGIL DAY SECONDARY
SCHOOL.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 26th July, 2013)

JUDGMENT

The claimant **Mary Boke Wanyoike** filed the memorandum of claim on 28.07.2011 through Ikua Mwangi & Company Advocates. She prayed for judgment against the respondent for:

- a. **a declaration that the act of the defendant was illegal, null and void;**
- b. **general damages for unlawful and unfair dismissal; and**
- c. **costs of the suit.**

The respondent, the Board of Governors Gilgil Day Secondary School filed the memorandum of response on 20.09.2011 through the Honourable Attorney General. The respondent prayed that the claim be dismissed in its entirety with costs.

The case was heard on 3.07.2013 when the claimant testified to support her case. The respondent's witness was its Principal Peter Mbugua Kibury.

There is no dispute that claimant was the respondent's employee in the capacity of the office messenger with effect from 12.11.2010 and as per the appointment letter exhibit C1. The claimant testified that on 29.01.2010, she reported on duty as usual. She cleaned the offices and engaged to supply water and building material at the construction site in the school and as was assigned by the Principal. The Principal summoned her to his office through a prefect and the Principal directed her to leave work until further notice. She complied and she left for her home. At the time of termination, her salary was **Kshs.8,100.00** per month.

The claimant was on 29.01.2011 summoned by telephone call from the Principal's secretary to attend a meeting at the school. She waited for long and the Deputy Principal asked her to gratify by apologizing to the Principal so that she could be reinstated. She had not been given any reason for the verbal termination. She was then asked to reapply for her job to earn Kshs.5,000.00 per month as a casual worker instead of the **Kshs.8,100.00** that was her last salary as a permanent employee.

The claimant later visited the respondent's chairman and made her written complaint attached on the memorandum of claim and the chairman advised her that she had been sacked. The respondent never paid any terminal dues even after demands by the claimant's Advocates.

The Principal testified that on 29.11.2010, the claimant had performed her duties poorly. He asked her to improve and apologize. The claimant otherwise had a clean record of service and it was his testimony that he never asked her to go away but to write a letter of apology. In January 2011, he called the claimant to school and asked her to make an apology as the Principal told the court he was concerned with her long absence.

The court has considered the evidence and finds that the Principal leveled against the claimant allegations of poor performance for which the claimant was entitled to a notice and a hearing under section 41 of the Employment Act, 2007. The court has considered that if indeed the Principal discussed the claimant's performance on 29.11.2010 with genuine appraisal to improve but the claimant decided to be absent till the meeting of January 2011, then the legitimate cause of action was for the respondent to activate disciplinary action in view of the claimant's unjustified disobedience to heed performance appraisal and in view of the long absence from duty. In the opinion of the court, the respondent's long silence and inactivity renders the Principal's account of the events improbable and incredible. Accordingly, the court finds that the respondent verbally terminated the claimant's employment on 29.11.2010 without any reason, notice and hearing. The termination was unfair. The court finds that the claimant is entitled to the maximum 12 months gross pay for the unfair termination being **Kshs.97,200/=**.

The court further finds that the claimant is entitled to one month pay of **Kshs.8,100.00** in lieu of the termination notice under section 35 as read with section 36 of the Employment Act, 2007.

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

- a. that the respondent's termination of the claimant's employment was unfair;
- b. the respondent to pay the claimant **Kshs.105,300.00** by 1.09.2013 failing interest to be payable from the date of the judgment till full payment;
- c. the respondent to deliver to the claimant a certificate of service by 1.09.2013; and
- d. the respondent to pay costs of the case.

Signed, dated and delivered in court at **Nakuru** this **Friday, 26th July, 2013**.

BYRAM ONGAYA

JUDGE