



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NYERI

CAUSE NO.55 OF 2014

CONSOLIDATED WITH CAUSE NO. 56 OF 2014

LYDIA NYAGUTHI NJUGUNA..... 1ST CLAIMANT

AND

ISAAC NDIANG'UI GACHURU.....2ND CLAIMANT

-VERSUS-

**THE BOARD OF GOVERNORS GIAKANJA BOYS HIGH
SCHOOL.....RESPONDENT**

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

JUDGMENT

The claimants were employed by the respondent. The 1st claimant was employed as a kitchen hand on 1.02.1986. She served until February 2014 when she was suspended from employment by the letter dated 03.02.2014 on account of rampant theft of food stuff from the school kitchen as well as the capture of such stolen foods on Sunday 2nd February, 2014 at 8.30pm. The suspension was effective 3.02.2014 until further notice so as to facilitate thorough investigations. Her last pay of Kshs. 10, 653.00 was for December 2013.

The 1st claimant denied involvement in theft as alleged against her. It was her testimony that no stolen food was found in her possession. She testified that she appeared before the respondent for a hearing but it was her evidence that theft was not established as alleged. She received the letter of termination dated 12.02.2014 for summary dismissal on account of the alleged theft but considering her long service, age and family the respondent decided to give her Kshs. 100,000.00 being a compassionate send off.

The 2nd claimant was employed by the respondent as a cook by the letter dated 30.12.2005 and later designated as a grounds man by the letter dated 14.01.2014. It was alleged that there had been theft at the school on 02.02.2014 but it was the 2nd claimant's evidence that he was off duty on that date. The 2nd claimant was suspended on account of alleged rampant theft of food stuff from the school kitchen in similar terms as the 1st claimant's letter and he was suspended from duty with effect from 3.02.2014. The 2nd respondent was dismissed summarily with effect from 11.02.2014 and by the letter dated 12.02.2014. The 2nd claimant denied involvement in the alleged theft. The claimant admitted appearing before the respondent for a hearing but stated that the theft was not established against him as alleged.

The respondent's witness was Paul Gachoka (RW), the respondent's principal. RW testified that the respondent's executive committee interrogated the claimants about the alleged theft and the respondent decided to dismiss the claimants without pursuing the criminal cases that had been reported to the police.

The claimants were dissatisfied with the dismissals and they filed their respective suits seeking judgment against the respondent for salary and house allowance for January 2014; one month salary in lieu of notice; damages for wrongful termination; redundancy pay; certificate of service; costs of the suit plus interest; and any other relief the honourable court may deem just.

The court has taken into account the pleadings, evidence and the submissions on record and makes findings as follows:

1. The 1st issue for determination is whether the termination of the claimant's employment was fair. The minutes of the executive committee of the respondent's board meeting held on 10.02.2014 show that the respondent's principal had great trust in the claimants and further shows that the claimants denied involvement in the alleged theft. However, the evidence before the meeting by one Charles Ndumia and John Munga clearly implicated the two claimants in the theft in issue. Taking that account into consideration, the court finds that the respondent had a valid reason to dismiss the claimants as envisaged in section 43 of the Employment Act, 2007. It is not disputed that the claimants were given a notice and a hearing as provided for in section 41 of the Act. The court finds that the claimants' termination was not unfair.
2. As submitted for the respondent the case was not about redundancy and the prayer for redundancy pay as prayed for will fail.
3. The respondent has submitted that the claimants are entitled to January 2014 salary and house allowance as prayed for and the court finds that the claimants are entitled accordingly.
4. The court finds that the claimants are entitled to the certificate of service as prayed for because it was their statutory entitlement.
5. The respondent has admitted that the 1st claimant is entitled to Kshs. 100, 000.00 being compassionate terminal pay and the court finds that the claimant is entitled accordingly.

In conclusion judgment is made for orders:

1. The respondent to pay the 1st claimant a sum of Kshs.110, 653.00 being salary for January 2014 and the compassionate pay; and to pay the 2nd claimant Kshs.9, 081.00 being salary for January 2014 and to pay by 1.02.2015 failing interest at court rates to be payable from the date of this judgment till full payment.
2. The respondent to deliver to the claimants their respective certificates of service by 1.02.2015.
3. The respondent to pay half claimants' courts of the suit.

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

BYRAM ONGAYA

JUDGE



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