



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyakundi v BOM Lunga Lunga Seventh Day Adventist Educational Centre  
(Cause 207 of 2017) [2024] KEELRC 889 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 889 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 207 OF 2017  
L NDOLO, J  
APRIL 24, 2024**

**BETWEEN**

**CHARLES GEKONGE NYAKUNDI ..... CLAIMANT**

**AND**

**BOM LUNGA LUNGA SEVENTH DAY ADVENTIST EDUCATIONAL  
CENTRE ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By a Statement of Claim dated 3<sup>rd</sup> January 2017 and filed in court on 7<sup>th</sup> February 2017, the Claimant sued the Respondent for wrongful dismissal. The Respondent filed a Response dated 9<sup>th</sup> March 2017.
2. The matter went to full trial where the Claimant testified on his own behalf and thereafter called Morira Ragira. The Respondent called Stephen Williamson Nyambuka. Thereafter, both parties filed written submissions.

**The Claimant's Case**

3. The Claimant states that he was employed by the Respondent in the year 2003, as a Security Officer earning a monthly salary of Kshs. 8,300. He avers that he worked from 6.00 pm to 10.00 am six days a week.
4. The Claimant claims that in April 2016, he was ordered to resign, having been faced with allegations of pilferage of the Respondent's money. He states that the allegations were unfounded and malicious as he was not on duty at the time of the alleged theft.
5. The Claimant avers that he was not issued with a written contract of service. He further avers that he was not given an opportunity to defend himself against the allegations levelled against him.



6. The Claimant lays a claim of wrongful dismissal and therefore claims the following:
  - a. Statutory underpayments.....Kshs. 611,691.60
  - b. 1 month's salary in lieu of notice.....12,221.10
  - c. Overtime.....72,134.40
  - d. Service pay for 13 years.....91,650.00
  - e. Leave pay for 13 years.....128,321.55
  - f. 12 months' salary in compensation... .146,653.20
  - g. General damages for breach of contract and wrongful dismissal
  - h. Punitive damages for victimisation
  - i. Certificate of service
  - j. Costs of the suit

### **The Respondent's Case**

7. In its Response dated 9<sup>th</sup> March 2017, the Respondent states that the Claimant's allegations are a fabrication of facts and outright falsehoods. The Respondent states that the Institution the Claimant claims to have worked for was started in 2005.
8. The Respondent avers that it came to know the Claimant sometime in September 2011, through the Lunga Lunga Seventh Day Adventist Church members.
9. The Respondent further avers that it enrolled the Claimant's children at the Institution free of charge and also provided free housing and food to the Claimant.
10. The Respondent adds that on 10<sup>th</sup> November 2011, it offered the Claimant contractual employment as a general worker for a fixed period of two months, which was successively renewed until 11<sup>th</sup> April 2016, when the Claimant voluntarily chose to resign by giving a written notice.
11. The Respondent denies any knowledge of pilferage of money at the Institution.
12. The Respondent denies that the Claimant was dismissed from employment and states that it received and acknowledged a resignation letter dated 11<sup>th</sup> April 2016 from the Claimant.
13. The Respondent avers that the Claimant was paid all his terminal dues, which he duly acknowledged.

### **Findings and Determination**

14. There are two (2) issues for determination in this case:
  - a. Whether the Claimant has made out a case of unlawful termination of employment;
  - b. Whether the Claimant is entitled to the remedies sought.

### **Unlawful Termination?**

15. The Respondent produced a letter dated 11<sup>th</sup> April 2016, written by the Claimant as follows:

“Dear Sir,



Ref: Resignation From My Duties As A Security Guard

I hereby requesting (sic) you kindly that I am resigning my duties as a security guard in your organisation due to unavoidable circumstances.

I have work (sic) in your organisation for 17 years and I would like to give you one week notice from now that I will be no longer a security guard in your organisation.

I hope you will consider my case and expecting you to calculate all my benefits with a positive response.

Yours faithfully,

(signed)

Charles Nyakundi”

16. The Respondent acknowledged and accepted the Claimant’s resignation by its letter dated 15<sup>th</sup> April 2016.
17. The Claimant claims that he was forced to resign. He however did not adduce any evidence to support this proposition.
18. In its final submissions dated 16<sup>th</sup> February 2024, the Respondent cited the South African decision in *Quinn v Singleton Hydraulics (SA) Ltd (2005) BALR, 673* where it was held that where the act of resignation by an employee is in controversy, the Court is required to examine whether the employee has by word or conduct, reasonably demonstrated an unambiguous intention to leave employment.
19. Reading the Claimant’s resignation letter dated 11<sup>th</sup> April 2016, there is no mention of any coercion applied on him to resign. There is also no indication of any attempt to rescind the resignation. I have therefore reached the conclusion that the Claimant’s averment that he was forced to resign is an afterthought.
20. Consequently, I find and hold that the Claimant, having resigned from employment, cannot turn around and claim that his employment was unlawfully terminated. The claims for compensation, notice pay, general and punitive damages are therefore without basis and are dismissed.

#### **Other Claims**

21. From the evidence on record, the Claimant was paid service pay as part of his terminal benefits. This claim is therefore also without basis and is disallowed.
22. The claims for statutory underpayments and leave pay were not proved and are dismissed.
23. Ultimately, the only order I will make is that the Claimant be issued with a Certificate of Service.
24. Each party will bear their own costs.
25. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kagunda for the Claimant



Mr. Ntabo for the Respondent

