



**Trustees of Premier Academy Charitable Trust t/a Premier Academy v Ocholah
(Cause E179 of 2022) [2023] KEELRC 2892 (KLR) (15 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2892 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E179 OF 2022
JK GAKERI, J
NOVEMBER 15, 2023**

BETWEEN

**THE TRUSTEES OF PREMIER ACADEMY CHARITABLE TRUST T/A
PREMIER ACADEMY CLAIMANT**

AND

SAMUEL OOKO OCHOLAH RESPONDENT

JUDGMENT

1. The claimant sued the respondent who was its former employee alleging that he had resigned without notice and was thus liable to pay three months' salary in lieu of notice.
2. The claimant prays for;
 - a. Kshs.220,000/=.
 - b. Costs of the suit.
 - c. Interest on (a) and (b) above at court rates.
 - d. Any other or further relief the court may deem fit and just to grant.
3. The claimant employed the respondent on August 1, 2020 as a Secondary School teacher at Kshs.110,000/= per month.
4. The contract was terminable by three (3) months' notice by either party or pay of salary in lieu of notice.
5. It is the claimant's case that the respondent terminated the contract *vide* letter dated July 5, 2021, effective August 4, 2021 during the school term and at the beginning of the school term.



6. That the respondent's resignation violated the terms of the contract in terms of timing and duration and left employment without payment of two months salary in lieu of notice, the sum of Kshs.220,000/=.
7. The claimant prays for
 - i. Payment of Kshs.220,000/=
 - ii. Costs of the suit.
 - iii. Interest on (i) and (ii) above at court rates from date of filing till payment in full.
 - iv. Any other or further relief as this court may deem fit and just to grant.

Respondent's case

8. The respondent did not file any response to the claim or deny it.

Claimant's evidence

9. The claimant's witness statement dated March 11, 2022 reiterates the contents of the Statement of Claim and the witness rehashed the same during the hearing on May 11, 2023.
10. The witness testified that the respondent agreed that his July 2021 salary be used to offset part of the pay in lieu of notice and would pay the rest in three instalments or in lump sum if possible but did not honour the agreement.
11. The respondent did not participate in the proceedings.

Claimant's submissions

12. Counsel identified four issues for determination including costs and interest.
13. As to whether there was a valid contract between the parties, counsel relied on the Contract of Service dated August 1, 2020 to submit both parties were bound by the terms of the contract of employment.
14. Reliance was made on the decisions in *Frederick Kariuki Kamau v Bank of India* (2015) eKLR and *Martin Vindija Nyambuku v Mbukoni Logistics Limited* (2016) eKLR on resignation.
15. As to whether the respondent breached the terms of the contract, it was submitted that since the employment contract provided for 3 months' notice or pay in lieu of notice and the respondent paid one (1) month's salary, he breached the terms of the contract. Counsel further submitted that the respondent had admitted his fault after the claimant reached out to him.
16. As regards the sum of Kshs.220,000/=, counsel submitted that the respondent was liable to pay the same.
17. The sentiments of Odunga J. (as he then was) in *Gideon Mutiso Mutua v Mega Wealth International Ltd* (2012) eKLR were cited to buttress the submission on the damages recoverable.
18. On costs, counsel urged that the law was clear that costs were discretionary and typically followed the event.
19. The Respondent did not file submissions.



Determination

20. The issues for determination are;
 - i. Whether the respondent was an employee of the claimant.
 - ii. Whether the claimant is entitled to the sum of Kshs.220,000.00.
21. As regards the employment relationship between the claimant and the respondent, the claimant's uncontroverted evidence reveals that the two entered into a contract on August 1, 2020 under which the claimant engaged the respondent as a Mathematics Teacher at the claimant's Premier Academy, Nairobi at an all-inclusive salary of Kshs.110,000/= per month.
22. The duration of the contract was 2 years as confirmed by the Human Resource Officer of the claimant, Tabitha Kimani.
23. Clause 14.0 of the agreement provided for termination of the contract of employment by either party giving the other 3 months' notice on the 1st day of the term or 3 months basic pay in lieu of notice.
24. Evidence shows that the respondent resigned by a written notice dated July 5, 2021 giving the Claimant one month's notice and promised to pay the balance of Kshs.220,000/= by letter dated July 9, 2023.
25. In its entirety, the evidence on record overwhelmingly demonstrates that the respondent was an employee of the claimant.
26. As to whether the respondent complied with the terms of the contract of employment, it is evident that he did not and admitted in writing by forgoing his July salary and undertaking to pay the balance by instalments, a promise he did not keep.
27. From the letter dated July 9, 2021, it is clear that the respondent's resignation was actuated by the fact of having secured employment elsewhere.
28. Clause 14.0 of the Contract of Employment dated August 1, 2020 was emphatic that it was terminable "by either party giving 3 months' notice to the other party . . . or by payment, by the party intending to terminate the contract, of an amount of money equivalent to 3 months basic pay in lieu of notice . . ."
29. As regards the reliefs sought by the claimant's, evidence on record reveals that the respondent gave the requisite notice but left employment immediately and was thus bound to pay a total of Kshs.330,000.00 as basic pay in lieu of notice. He indirectly paid Kshs.110,000/= and the balance of Kshs.220,000.00 remains outstanding.
30. In its response to the resignation letter, the claimant persuaded the respondent to comply with the terms of the agreement he had signed and subsequently cleared him on the basis of the promise to pay the sum of Kshs.220,000.00.
31. Granted that the respondent admitted in writing as owing the amount in question and in fact undertook to pay and did not respond to the claimant's email dated September 22, 2021 at 1.14 pm demanding payment, two (2) months later and equally failed to honour counsel's demand letter dated October 6, 2021 and blatantly refused to respond to the claim or participate in the proceedings, the court is satisfied that the Claimant is entitled to recover the amount due to it under the contract of service, Kshs.220,000.00.
32. In the upshot, judgement is entered for the claimant against the respondent in the following terms;
 - a. Sum of Kshs.220,000/=.



- b. Costs of this suit.
- c. Interest at court rates from the date hereof till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 15TH DAY OF NOVEMBER 2023

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

