



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 819 OF 2019

(Before Hon. Lady Justice Maureen Onyango)

DOROTHY MUTHONI IKIARA.....CLAIMANT

VERSUS

KENYA NATIONAL UNION OF TEACHERS.....RESPONDENT

JUDGMENT

1. The Respondent is a duly registered trade Union under the provisions of the Labour Relations Act, 2007, whose mandate is to represent interests of unionisable public school teachers employed by the Government in primary schools.
2. The Claimant is a former member and official of the Respondent union from July, 2004 to September, 2019.
3. The Claimant instituted the instant Claim vide her Memorandum of Claim dated 3rd December, 2019 and filed in Court on 4th December, 2019, in which she avers that she was on 19th February, 2019 issued with a six (6) months' notice of retirement on the grounds of having attained the mandatory retirement age with effect from 10th March, 2019 by the Respondent through its Secretary General.
4. That upon service of the said letter she was required to proceed on terminal leave during which period she maintained that she was entitled to full payment of her salaries and other allowances up to 10th September, 2019 when her terminal dues were to be paid in full.
5. The Claimant further avers that she was informed by the Respondent that she would additionally be entitled to other benefits such as a car grant and that she would continue to use her medical cover until she attains the age of 70 years.
6. The Claimant maintains that her terminal dues were then tabulated by the Respondent, following which she was informed of her entitlement vide its letter dated 2nd April, 2019 totalling to Kshs.12,132, 878.10/-.
7. The Claimant avers that despite tabulating her dues payable, the Respondent has failed and/or ignored and/or refused to settle the amount prompting her to file the instant claim in which she is seeking the following reliefs: -
 - (a) The sum of Kshs.12,132,878.10/-
 - (b) Interest on (a) above from the date of filing suit at Court rates until payment in full.
 - (c) Costs of this suit; and
 - (d) Any other relief as this Court may deem just to grant.
8. After service of Summons and the Memorandum of Claim, the Respondent only filed its Memorandum of Appearance dated 21st February, 2020 and filed in Court on 24th February, 2020. It however failed to file its defence in this matter. The suit therefore proceeded as an undefended claim and was scheduled for formal proof hearing on 7th December, 2021 when the Claimant testified on her own behalf.

Claimant's Case

9. The Claimant, urged this Court to adopt her witness statement dated 3rd December, 2019 as her evidence in chief. She further requested this Court to adopt her documents as contained in the list and bundle of documents as exhibits in this matter.

10. In her statement the Claimant reiterates the averments made in her memorandum of Claim.
11. She argued that she has made out her claim as against the Respondent and urged this Court to allow the same in terms of the reliefs sought therein.
12. On cross examination the Claimant confirmed that she was engaged by the Respondent as a union official. She specifically stated that she was the Respondent's first National Women Representative and was based at its head office.
13. She further testified that she held the said position until sometime in the year 2019.
14. The Claimant further confirmed having received the sum of Kshs.2,450,000/- from the Respondent union but maintained that the sum of Kshs.12,132,000/- she claims in her Memorandum of Claim remains unsettled by the Respondent. She denied any knowledge of any agreement between herself and the Respondent on payment by instalments of Kshs.1 million per month.
15. On re-examination the Claimant stated that she had not received any amount in settlement of her dues since she left the Respondent's employment.
16. The Claimant urged this Court to find merit in her claim and to allow it as prayed.

Claimant's Submissions

17. The Claimant did not file any submissions choosing to rely entirely on her testimony and the evidence on record.

Respondent's Submissions

18. The Respondent submitted that the Claimant is only entitled to Kshs.8,682,878.10/-, which amount remains outstanding following the Claimant's admission of having received the sum of Kshs.2,450,000/- as of 6th December, 2020 and a further Kshs.1,000,000/- in late January/February 2022 with respect to the Claimant's retirement benefits.
19. The Respondent further submitted that insistence of full payment of the sum of Kshs.12,132,878.10/- is tantamount to unjust enrichment on the part of the Claimant and should therefore be dismissed by this Court.
20. On the issue of costs, the Respondent submitted that the Claimant is not entitled to the same as she was aware of the Respondent's intention to settle the outstanding sums despite its financial constraints a fact that was within her knowledge. The Respondent therefore maintained that each party to this suit be ordered to bear its own costs.

Determination

21. It is not in dispute that the Claimant was under the Respondent's employment and that on 19th February, 2019 she was issued with a letter informing her of her retirement on the grounds that she had attained the mandatory retirement age. The Respondent then subsequently proceeded to tabulate the Claimant's terminal dues upon her retirement totaling to Kshs.12,132,878.10 which it communicated to the Claimant vide its letter dated 2nd April, 2019. The tabulation was confirmed to be due to the Claimant on 3rd April, 2019.
22. It is further not in dispute that the Claimant has to date received the sum of Kshs.3,450,000/- towards settlement of the outstanding dues owed to her by the Respondent herein, the Claimant having admitted to receiving the sums on cross examination. The only issue for determination is whether the Claimant is entitled to the reliefs balance of her claim.
23. In her Claim the Claimant seeks payment of the entire sum of Kshs.12,132,878.10/- as terminal dues, which amount the Respondent admits save that as at the time of filing suit it had paid her a total of Kshs.3,450,000/-.
24. The Respondent went on to indicate that its failure to settle the entire amount was due to financial constraints it had been facing. The Respondent further stated that it made a proposal to settle the outstanding sums in equal monthly instalments. However, no evidence was availed to support this assertion.
25. The Respondent maintained that claiming the entire amount is tantamount to unjust enrichment on the part of the Claimant, which should not be entertained by this Court.
26. I do agree with the Respondent. The Claimant having admitted to receiving part of the sum claimed, it is only logical that this Court orders the payment of the outstanding balance of Kshs.8,682,878.10/-.
27. This Court therefore enters judgment in favour of the Claimant against the Respondent in the sum of Kshs.8,682,878.10/- being the outstanding retirement dues owed to her by the Respondent.
28. The Claimant is awarded costs of this suit. Interest shall accrue from the date of filing this claim at Court rates until settlement in full.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27TH DAY OF APRIL 2022

MAUREEN ONYANGO

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.

MAUREEN ONYANGO

JUDGE