Ochola v Board of Management Lenana School (Cause 144 of 2017) [2022] KEELRC 1784 (KLR) (26 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1784 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 144 OF 2017

JK GAKERI, J

JULY 26, 2022

BETWEEN

ALICE OCHOLA ..... CLAIMANT

AND

BOARD OF MANAGEMENT LENANA SCHOOL ..... RESPONDENT

RULING

1. In its judgement in ELRC Cause No. 144 of 2017, dated 26th May, 2022, the court directed the Respondent to:

    i. Compute and pay its portion of gratuity and facilitate the claimant to access the Ministry of Education portion by availment of the requisite documents.

    ii. Compute and pay the claimant's salary arrears from September 2010 to December, 2015.

    iii. Pay costs of the suit with interest at court rates.

2. By letter dated 27th May, 2022, the claimant's counsel on record wrote to the Board of Management of respondent informing it that he had taken the Liberty to compute the gratuity and salary arrears and anticipated that the respondent would send its computation within seven (7) days of notification of the claimant's computation for purposes of arriving at the correct figure of the outstanding arrears.

3. A copy of the judgement and the computation were enclosed and were received by the respondent on 3rd June, 2022.

4. The matter was scheduled for mention on 27th June, 2022. The Mention Notice was served upon the respondent on 16th June, 2022 and accepted on the same day and an Affidavit of Service filed thereafter.

5. The notice elicited no response on the part of the respondent.

6. Instructively, the respondent's counsel on record, Robinson Harris Advocates LLP applied to cease acting by Chamber Summons dated 17th January, 2022 for lack of instructions from respondent, an application which the court granted and closed the respondent's case bearing in mind that the respondent's case had been outstanding since 21st October, 2021 when the Claimant's case was closed.

7. The court bent backwards for almost four months to afford the respondent an opportunity to salvage its case during which time the claimant waited for the outcome.

8. For unexplained reasons, the respondent did not facilitate its counsel to prepare and participate in the hearing. The law firm subsequently withdrew.

9. Despite the courts insistence that all documents including submissions, mention hearing and judgement date be served upon the respondent, the respondent neither responded nor explained to the court the challenge(s) it was facing including why it could not seek the assistance of the Office of the Attorney General.

10. Having engaged on a firm of Advocates to represent it in this matter, the respondent undoubtedly appreciated the essence of court processes and their consequences. Its failure to facilitate its counsel or respond to court process is confounding.

11. The claimant has assessed the arrears as follows:

    a. Service gratuity

       Between 1993 to 2015 = 22xKshs.32,552/= Kshs.716,144/=

    b. Salary Arrears between 1st September, 2010 to 1st July = Kshs.110,040/=

    c. Salary Arrears between 1st November, 2012 to 1st December, 2014 =Kshs.145,704/=

    d. Salary Arrears between 1st January, 2015 to 1st December 2015 = Kshs.14,796/=

       Total Arrears Kshs.986,684/=.

12. Disconcertingly, the respondent has not provided its computation or objected to the Claimant's figures.

13. In the absence of evidence of the respondent's disagreement with the claimant's computation of outstanding arrears of salary and gratuity, the claimant's computation is hereby adopted as judgement of this court.

14. The sum of Kshs.986,684/= is awarded to the claimant.

15. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26TH DAY OF JULY 2022

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