



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT BUNGOMA

ELR CAUSE NO. 49 OF 2018

PATRICK KIPSANG CHEBURET.....CLAIMANT

VERSUS

BOARD OF MANAGEMENT BIWOTT

MIXED DAY SECONDARY SCHOOL.....RESPONDENT

RULING

This is a ruling on the award for computation of salary arrears due to the claimant in judgement entered in this claim on the 29th January, 2020 by Judge Mathews N. Nduma.

The Court awarded the Claimant as follows:-

- (a) The two weeks suspension by the full board expired on the 13th February, 2018 and the Claimant be paid an arrears salaries from the said date to date.
- (b) The Claimant's employment was never terminated and he remains in full employment of the Respondent.
- (c) The Claimant to compute and file arrear salaries due to him from 13th February, 2018 to date within 30 days and the Respondent to file any response on the computation within 30 days of service.
- (d) The award is payable with interest at court rates from date of filing suit till payment in full.
- (e) Costs of the suit.

Judge Mathews.N. Nduma has since been transferred and the matter has been placed before me as the current Presiding Judge to award the payable salary arrears. The parties have filed their computation of the arrears as directed by the Judge. The Claimant filed his computation dated 3rd February 2020 stating the period of payment to be from 13th February 2018 to 31st January, 2020 making total 24 months salary arrears **kshs. 8,600/- x 24 = Kshs.206,400/-**

The Claimant further filed supplementary computation dated 22nd March, 2021 in which he added computation for 31st January, 2020 to 30th April, 2021 making total 16 months in addition to previous computation. The additional computation being for **kshs. 128,000/-**. The court finds the supplementary computation to be outside the purview of the judgment and discards the same.

The Respondent filed its computation of salary arrears dated 9th March, 2020 as directed. The Respondent tabulated the arrears of salary from 13th February, 2018 to 29th February, 2020 making total of 23 and half months thus **Kshs. 8,600x23.5 = 202,100/-**. The Respondent then deducted 13 months for total sum **Kshs.90,300/-** alleging that the Claimant was employed elsewhere. The court finds the deduction to be outside the purview of the judgment and discards the same.

I have considered the computation by both parties. The Honourable Judge award was that the Claimant be paid salary arrears from 13th February, 2020 to date which I take to be the 29th January 2020 when the Judge delivered the judgement in this claim.

The Claimant's salary as found by court and as applied by both parties is **Kshs.8,600** per month. The court finds the period for computation to be from 13th February, 2018 to 29th January, 2020 (inclusive of both days) making a total of 23 and ½ months' salary which is **Kshs.**

8600x23.5=202,100/. The court finds the payable salary arrears due to the Claimant and to be paid by the Respondent to be **Kshs. 202,100/-** plus interest as awarded.

Accordingly, I award in terms of computation of salary arrears to the Claimant as against the Respondent in the sum of **Kshs. 202,100/-** and this forms part of Judgment delivered on the 29th January 2020 by my brother Judge Mathews. N. Nduma.

DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 24TH SEPTEMBER 2021

HON. J. W. KELI

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.

HON. J. W. KELI

JUDGE