



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 23 OF 2018

DANIEL WANJALA NAMUNUA.....CLAIMANT

VERSUS

BOARD OF MANAGEMENT MIHUU

SECONDARY SCHOOL.....RESPONDENT

JUDGMENT

1. The claimant filed suit on 1st March 2018 seeking retirement benefits to wit:

- (i) Service gratuity for 11 completed years of service.
- (ii) Unpaid rest days Kshs. 53,333.
- (iii) Unpaid overtime between July 2004 to June 2015 Kshs. 110,880.
- (iv) Public holidays Kshs. 32,260.
- (v) House allowance arrears Kshs. 39,600.
- (vi) Leave allowance arrears Kshs. 17,769.
- (vii) Arrear salary between July 2004 to June 2015 calculated at Kshs. 10,814 per month for 11 years Kshs. 1,427,448.

2. The claimant testified that he was employed by the respondent on 6th July 2004 as a watchman and he worked continuously until June 2015. That in June 2015, the claimant was retired by the principal on account of old age. That he was not paid terminal benefits and salary arrears upon retirement hence the suit.

3. That he worked from 6 am to 6 pm for 7 days including Sundays and was not paid overtime. That the claimant earned Kshs. 2,000 per month and was therefore underpaid. That he did not go on leave at all and did not rest during public holidays. That he was not paid any house allowance. The claimant prayed to be awarded as set out under paragraph 6 of the statement of claim. That he was 60 years old upon retirement. Claimant stated under cross examination by Mr. Tarus for the respondent that he was not registered with NSSF and no contribution was made on his behalf. Claimant further stated that his two children joined the respondent's school after he had worked for 8 years. Claimant stated that he paid fees for his two children.

4. The claimant admitted that he ceased being a watchman in 2009. That from the year 2010 to 2015, he worked as a cook in the kitchen. That as a cook he worked from 4 am in the morning until 6 p.m in the evening. That even when school closed he was not given leave. He worked at the school from 7 am to 3.30 p.m. That there were two watchmen one on day shift and the other on night shift.

5. RW1 Denis Wanjala testified that he was the principal of the respondent from January 2014. RW1 confirmed that the claimant worked for the respondent from the year 2004 up to the year 2016. That the claimant was paid Kshs. 2,000 per month but his three children were given free education by the school. That the children were Jeremiah Wanjala who completed school in the year 2016; Lilian Wafula in 2015 and Isaac Wanjala in the year 2016. That the school had four (4) watchmen so the claimant did not work day and night. That the claimant ceased to be a watchman in the year 2010 when he was transferred to the kitchen as a cook.

6. That the claimant was paid Kshs. 7,000 as terminal benefits upon leaving school. That the claimant had a verbal agreement with the school regarding the pay of Kshs. 2,000 to be supplemented by free education for his children. RW1 prayed the suit be dismissed with costs.

Determination

7. The issue for determination is whether the claimant is entitled to the reliefs sought.

8. The claimant testified that he was employed on 6th July 2004 as a watchman by the respondent. That he was paid Kshs. 2,000 per month. That he worked from 6 am in the morning until 6 pm in the evening for 7 days a week. That he did not go on leave and was not paid overtime. That he worked on public holidays also without extra pay. That he remained as a watchman until the year 2009 and was transferred to be a cook in the kitchen from the year 2010 until June 2015 when he was retired from service at the age of sixty years. The claimant admitted that his children studied at the respondent school but denied the allegations by RW1 that he had an agreement with the school that his children would study for free to supplement his remuneration. The claimant stated that the children came to the school after he had served for 8 years. RW1 stated that the claimant was paid Kshs. 7,000 upon retirement but claimant stated he was not paid at all.

9. The court has observed from the pleadings filed by the claimant and his testimony that the suit was filed on 1st March 2018 and the claimant was retired in June 2015. It follows that all the claims made by the claimant with regard to the period 6th July 2004 up to the 28th February 2015 arose outside the three years limitation period within which the claimant could legitimately file the suit.

10. This only excludes the claim for service gratuity which becomes due and payable from the date of termination which in this case is the 30th June 2015. The claimant was entitled to payment of Kshs. 12,814 per month as at the time of retirement in terms of the Regulation of Wages (General) Order, Amendment 2013 which came into effect on 1st May 2013. The claimant is entitled to service gratuity calculated at 15 days salary for each completed year of service for the eleven (11) years completed service in the sum of Kshs. $(12,814 \times \frac{1}{2} \times 11)$ 70,477.

11. The rest of the claims are only valid for the period 1st March 2015 to 30th July 2015 a period of three (3) months only. All the claims set out under paragraph 6(ii) to (viii) being rest days, overtime; public holidays and leave days not taken are therefore only valid for the three months period. The rest of the claims are time barred and the court lacks jurisdiction to entertain them.

12. Accordingly, judgment is entered in favour of the claimant as against the respondent as follows:

(a) Service gratuity Kshs. 70,477.

(b) Unpaid rest days, overtime, public holidays and in lieu of leave days not taken are granted only with respect to the period 1st March 2015 to 30th July 2015 which period falls within the limitation period. The claimant to compute and file these claims within 30 days. The respondent to file a response if any.

(c) Interest at court rates from date of retirement being 30th June 2015 until payment in full.

(d) Costs of the suit.

Judgment Dated, Signed and delivered this 29th day of January , 2020

Mathews N. Nduma

Judge

BUNGOMA

Appearances

Mr. Were for Claimant

Mr. Tarus for Respondent.

Chrispo – Court clerk.