



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 24 OF 2018

JULIUS OKUMU MACHIO..... CLAIMANT

VERSUS

SYEKUMULO PRIMARY SCHOOL..... RESPONDENT

JUDGMENT

1. The claimant was employed by the respondent as a watchman from August 2008 and worked continuously until 2016 when he was retired on grounds of age.

2. The claimant testified that during the entire period he worked from 6 am in the morning to 6 pm in the evening manning the gate of the school among other duties. That he was not paid overtime for the extra hours worked daily. That he worked 7 days a week and was not paid for one rest day not taken per week. That he was paid Kshs. 3,000 per month and was thus underpaid for the entire period. That the claimant did not go on leave for the entire eight (8) years period worked. That he was not paid house allowance and was not paid service pay upon retirement. The claimant prays to be awarded as prayed.

3. The respondent did not testify in defence of the suit despite that officials of the school were present in court on the day the matter was heard. The respondent had however filed a reply to the statement of claim after the claimant's case had been heard and closed on 16th September 2019 without leave of court. The averments in the reply to the statement of claim do not constitute evidence in rebuttal to the suit.

4. The suit is undefended. The suit was filed on 3rd February 2018 and the claimant was retired in August 2016. The claims that go beyond three years limitation period are time barred and the court lacks jurisdiction to award the specific claims.

5. Accordingly, the court finds that the claimant has proved on a balance of probabilities that he is entitled to payment of all the terminal benefits set out under paragraph 5 of the statement of claim since the claimant is bound by his pleadings except the claim for salary arrears limited to three years period from the date of filing suit.

6. Judgment is entered in favour of the claimant against the respondent as follows:

(a) Service gratuity in the sum of Kshs. 14,400 being equivalent of half salary for each completed year of service.

(b) Kshs. 14,400 being unpaid rest days for 48 weeks for three years.

(c) Kshs. 2,400 being unpaid public holidays worked for three years.

(d) Kshs. 14,400 being unpaid house allowance for three years.

(e) Kshs. 7,800 being unpaid 21 leave days for 3 years.

The claim for salary arrears has not been proved and is dismissed.

Total award is Kshs. 41,400.

(f) The award is payable with interest at court rates from date of filing suit till payment in full.

(g) Costs of the suit.

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

Mathews N. Nduma

Judge

BUNGOMA

Appearances

Claimant in person

Wamalwa Simiyu and Company for Respondent

Chrispo – Court clerk.