



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.521 OF 2014

ALEXANDER ODUOR OBOYA.....CLAIMANT

VERSUS

CATHOLIC DIOCESE OF NAKURU.....RESPONDENT

JUDGEMENT

The claim herein is based on the facts that the claimant was employed by the respondent on 1st December, 2014. He was underpaid contrary to the wage orders.

The claimant requested to go on early retirement upon recommendation by a doctor on 20th March, 2014 and he gave 30 days' notice but upon expiry of the same there was no response and he sent a reminder on 18th June, 2014 and got a response dated 1st August, 2014. There was no salary paid in August and July, 2014. Upon tabulation of terminal dues, there was underpayment.

The claim is also that in the year 2008 the claimant applied for a loan of ksh.24, 000 from the respondent and he was loaned Ksh.32, 525 and at the time of leaving employment he had not paid the loan which was deducted from his due. He was paid Ksh.32, 525 by cheque dated 10th September, 2014. He was not satisfied with the final dues paid and made demand which was not honoured and claims the following dues from the respondent;

- a) Underpayments Ksh.183,406.70
- b) Gratuity for 13 years Ksh.67,455.40
- c) Salary for August, 2014 Ksh.2,239.75
- d) Salary for August 2014 ksh.10,377.75

The claimant testified in support of his claims.

The defence is that the claimant was monthly wage of ksh.5,082.00 from 1st Ksh.4,682 as alleged; an employee of the respondent earning May, 2006 to 30th April, 2009 and not

Earned Ksh.5, 582 from 1st May, 2006 to 30th April, 2010;

Kshs.5, 582 from 1st May, 2010 to 30th April, 2011;

Ksh.5, 782 from 1st May, 2011 to 31st December, 2011;

6,782 from 1st January, 2012 to 30th April, 2013 and

Ksh.6, 782 from 1st May, 2013 to 31st May, 2013; and

Ksh.8, 138 from 1st June, 2013 to 31st July, 2014.

There was no breach of legal notices with regard to the wage paid.

There was no notice of retirement issued as alleged. The claimant resigned from his employment on 30th June, 2014 and which was accepted on 1st August, 2014 and his final dues processed and paid. The claimant accepted these payments and nothing owes.

The respondent filed the work records with the payment vouchers to confirm the payment of wages for the duration of service.

In evidence, Jimnah Kimani Mwangi testified that the claimant was a general worker at its Hekima Nursery and was not issued with a contract but was paid in accordance with the general orders. The claimant resigned from his employment in June, 2014 and he got the letter as the human resource manager in July, 2014 and proceeded to process his terminal dues and which have since been fully paid.

Mr Mwangi also testified that the total dues owing to the claimant were paid less a loan he had from the respondent and issued with a cheque of Ksh.32,552.00 and which included his July, 2014 wage; gratuity and an underpayment of Ksh.400. The gratuity paid was in good will as such was not due. The claims made are without merit and should be dismissed.

The parties filed written submissions.

The work records filed by the respondent have not been challenged.

The work records are crucial as from them, the claims made with regard to underpayments assessed vis-a-vis the applicable wage orders, the claimant as a general worker was not underpaid by the respondent.

On the claim for gratuity, the work records have the payment vouchers and included in the wage is a deduction of statutory dues to NSSF and NHIF. Though gratuity is due under a written contract or private treaty, even where the claimant were to seek service pay, upon the respondent compliance with section 35 of the Employment Act, 2007 with regard to remittance of statutory dues, such claim for payment of gratuity is found without merit.

On the claim for unpaid wages for August, 2014 one for Ksh.2,239.75 and for Ksh.10,377.75, the claimant tendered his letter of resignation from his employment with the respondent on 30th June, 2014 and which was to take effect in 30 days. Even where the claimant had resigned vide letter dated 20th March, 2014 to take effect in 30 days, upon the lapse of such notice/notices he was not required to attend work.

The claimant has attached annexure "AOO6 (b)" his letter of early retirement dated 30th June, 2016. It was accepted.

Part of the final dues paid to the claimant includes a payment for the wage due in July, 2014.

Having applied for early retirement and which was accepted, there was no obligation on the part of the respondent to keep the claimant in employment against his wishes. Such would be servitude.

The final dues paid to the claimant by the respondent are found generous and included a gratuity pay which was not due.

Accordingly, the claims made are found without merit and are hereby dismissed. Each party shall bear own costs.

Delivered at Nakuru this 23rd day of January, 2020.

M. MBAR?

JUDGE

In the presence of: