



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2147 OF 2017

ISAYA MUKURIA KAGUMU.....CLAIMANT

v

BOARD OF MANAGEMENT

DAGORETTI HIGH SCHOOL.....RESPONDENT

JUDGMENT

1. According to an affidavit of service filed in Court on 6 November 2017, the Principal, Dagoretti High School (Respondent) acknowledged receipt of service of *Notice of Summons* and *Statement of Claim* by stamping on 1 October 2017.
2. Despite acknowledging service, the Respondent did not enter Appearance and/or file a Response, and on 19 September 2019, the Court directed that the Cause proceed undefended.
3. The Cause was heard on 16 December 2019 and Isaya Mukuria Kagumu (Claimant) testified. He filed submissions on 24 January 2020.
4. The Court has considered the pleadings, evidence and submissions.
5. The Claimant was offered employment as a Laboratory Technician by the Respondent through a letter dated 23 October 2000.
6. On or around 9 October 2014, the Claimant gave notice of resignation, and on 24 October 2014, he completed the handover process and was cleared.
7. The Claimant expected to be paid gratuity, and when payment was not forthcoming, he sought legal assistance and his advocates sent a demand letter to the Respondent on 9 October 2017.
8. The payment was not made and on 27 October 2017, the Claimant instituted these legal proceedings against the Respondent seeking gratuity of Kshs 487,928/- and Kshs 212,248/- which he said was interest on the gratuity.
9. Documents filed in Court by the Claimant show that the Claimant was registered with and was making contributions to the National Social Security Fund.
10. If by gratuity the Claimant meant *service pay* as envisaged under section 35(5) of the Employment Act, 2007 and as urged in the submissions, he would not be eligible for the same by dint of section 35(6) of the Act.
11. And if there was a contractual agreement to pay gratuity, the Claimant did not prove as much.
12. The Claimant also made reference in the submissions to an absolute right to pension and gratuity. However, he did not disclose which particular provision of law entitled him to a pension or indeed whether the Pensions Act applied.
13. The Court finds no merit in the *Memorandum of Claim* filed in Court on 27 October 2017 and orders it dismissed with no order on costs.

Delivered, dated and signed in Nairobi on this 6th day of March 2020.

Radido Stephen

Judge

Appearances

For Claimant Mr. Mutisya instructed by Kinyanjui Kirimi & Co. Advocates

Respondent did not participate

Court Assistant Judy Maina