



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 25 OF 2018

(Before Hon. Justice Mathews N. Nduma)

CHRISCENT M. ONDERECLAIMANT

VERSUS

THE PRINCIPAL

ST. MARTIN KISOKO SPECIAL SCHOOL.....1ST RESPONDENT

BOARD OF MANAGEMENT

ST. MARTIN KISOKO SPECIAL SCHOOL.....2ND RESPONDENT

JUDGMENT

1. This suit is undefended the respondent having failed to attend the hearing despite having responded to the statement of claim filed on 24th January 2018 by a statement of response dated 20th September 2018 and having been served with a hearing notice dated 23rd July 2019 for hearing on 6th October 2019. The claimant in the statement of claim prays for liquidated special damages comprising of three (3) months salary in lieu of notice in the sum of Kshs. 34,875 and unpaid salary for 25 months from the date of termination on 6th October 2015 to the date of filing suit.
2. The claimant testified under oath that he worked as an accounts clerk for the respondent, a special school earning a salary of Kshs. 11,625 per month. The claimant testified that he was dismissed from employment and was not given any reason or notice and was not paid in September 2015.
3. The claimant produced a letter of employment dated 27th April 2010 which shows that his basic salary was Kshs. 8,750 plus Kshs. 2,200 house allowance and Kshs. 475 medical allowance. The claimant was paid for NSSF in terms of the letter. The letter does not provide for termination notice and so, the claimant is entitled to the minimum termination notice of one month or payment of one month salary in lieu of notice.
4. As regards the question whether the claimant is entitled to payment of salary from date of termination in October 2015 to date of filing suit, there is no basis in law for such payment since the claimant did not work during that period.
5. However, the claimant prays for compensation for the unlawful and unfair termination of employment which the claimant testified was wrongful and unfair.
6. The court finds that the claimant has proved on a balance of probabilities that his employment was terminated without notice and without any valid reason by the respondent. The respondent did not adduce any evidence to justify the termination.
7. Accordingly, the court finds that the termination was in violation of Sections 36, 41, 43 and 45 of the Employment Act, 2007.
8. The claimant is entitled to compensation in terms of Section 49(1) (c) and (4) of the Act. In this regard the claimant had served for a period of five years. He did not contribute to the termination. He was not compensated for job loss and lost career prospects. The claimant suffered loss and damage. The claimant was not paid salary for the month of September 2015 which is an aggravating factor.
9. The court awards the claimant the equivalent of four (4) months salary in compensation in the sum of Kshs. 11,625x4) Kshs. 46,500.

10. The court also awards the claimant Kshs. 11,625 in lieu of one month notice.

11. Judgment is entered in favour of the claimant against the respondent in the sum of Kshs. 93,000. The award is payable with interest from date of judgment till payment in full. Respondent to pay costs of the suit.

Judgment Dated, Signed and delivered at Nairobi this 30th day of April, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. 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 18 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.

Mathews N. Nduma

Judge

Appearances

Claimant in person

AG'S office Kakamega

Chrispo – Court Clerk