



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 21 OF 2018

(Before Hon. Justice Mathews N. Nduma)

BENSON WAMBULWA.....CLAIMANT

VERSUS

BOARD OF MANAGEMENT

LUNYU SECONDARY SCHOOL.....RESPONDENT

JUDGMENT

1. The suit was filed on 26th February 2018 the claimant seeking the following reliefs:

- (i) Payment of service gratuity in the sum of Kshs. 15,000.
- (ii) Payment for rest days not taken in the sum of Kshs. 80,000.
- (iii) Payment of overtime in the sum of Kshs. 151,200
- (iv) Payment in respect of public days in the sum of Kshs. 4,000.
- (v) Payment in respect of house allowance in the sum of Kshs. 54,000
- (vi) Payment in lieu of leave days not taken for years worked in the sum of Kshs. 24,230.
- (vii) Arrear salaries for the period February 2007 to July 2017 in the sum of Kshs. 480,000

2. The statement of claim and summons to enter appearance were served on the respondent who proceeded to file memorandum of appearance on 21st March 2018 and a statement of defence on 11th April 2018. The office of the Attorney General also entered appearance on 18th April 2018 and filed statement of defence and list of documents on the even date.

3. The respondent represented by Mr. Tarus Advocate participated in the trial but did not call any witness in defence of the case.

4. The claimant (CW1) testified under oath as CW1 and adopted a witness statement dated 23rd February 2018 as his evidence in chief.

5. CW1 testified that he was employed by the respondent as a watchman from September 2006 and worked continuously until he reached the retirement age of 60 years in 2017.

6. The claimant was paid Kshs. 2,000 per month and the Board promised to review the amount later. The claimant asked for review of salary but it was not done. The claimant testified that he worked overtime including during public holidays for the whole period but he was not paid in respect thereof. That he had no letter of appointment. That he was underpaid and was not paid any terminal benefits upon his retirement.

7. The claimant prays to be paid all the reliefs set out in the statement of claim. The claimant issued a demand letter to the respondents through his advocates but same was not heeded hence this suit.

8. The evidence adduced by the claimant was not controverted. The claimant has proved his case on a balance of probabilities and the court

awards him the following reliefs:

(a) Service gratuity payable for 15 years based on the salary he was entitled to in 2017 when he retired.

9. Claim in prayers 6(i) , (ii), (iii), (iv), (v), (vi) and (vii) are restricted to the last three years of service. The rest of the claim is time barred. The claimant to compute the award in respect of items (ii) to (vii) limited to the last three years of service and file and serve on the respondent within 30 days of the judgment.

10. In the final analysis judgment is entered in favour of the claimant against the respondent in respect of all the items set out under paragraph 6(i) to (vii) limited to the last three years of service except item (i) – Gratuity which is payable for the 15 years of service at the rate of 18 days salary for every completed year of service as per the Regulation of Wages(Protective Services) Order 1998 as amended.

11. Interest is payable at court rates from date of filing suit till payment in full.

12. Cost to follow the event.

Judgment Dated, Signed and delivered at Nairobi this 13th day of May, 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

Mr. Were for Claimant

Mr.Tarus for Respondent

Chrispo – Court Clerk