



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 44 OF 2016

(Before Hon. Justice Mathews N. Nduma)

MANASE OBWANA OBOSE AND 7 OTHERS.....CLAIMANT

VERSUS

APOKOR YOUTH POLYTECHNIC.....RESPONDENT

JUDGMENT

1. The eight (8) claimants filed suit on 10th February 2016 praying for payment of the following terminal benefits:-
 - a. One month salary in lieu of notice.
 - b. Salary arrears due to each claimant and
 - c. Certificates of service.
2. The claimants filed a statement signed by each one of them authorizing Mr. Manase O. Obose the 2nd claimant to represent them in court.
3. CW1 Manase Obose testified under oath in support of the claims. CW1 produced appendix 'I' which is a computation of terminal dues owed to each claimant by the respondent. The document is signed by all the 8 claimants. CW1 also produced a demand notice sent to the respondent by the Kenya National Private Security Worker Union on behalf of the claimants dated 28th July 2014.
4. CW1 testified that the Claimants were 5 teachers, 1 secretary and 1 watchman at Apokor Polytechnic employed on diverse dates. The claimants were paid salaries stated in the statement of claim and they worked until the dates set out in the statement of claim.
5. CW1 testified that the employment of the claimants was terminated without payment of arrear salaries and notice pay on different dates. The termination by the respondent was for inability to pay the claimants their salaries. The claimants had not been paid for the number of months shown in Annex 'I' of the claim.
6. The claimants were not given notice of termination and were not paid in lieu of notice. The claimants were also not given certificates of service. The claimants were not union members. CW1 stated that he was a welding teacher and was dismissed on 10th September 2014. That Juvenal O. Okelele was the watchman whereas Carolyn Okelele was the secretary.
7. CW1 prayed the suit be granted as prayed.
8. The suit was not defended by the respondent despite having filed Memorandum of Appearance on 15th August 2018. The respondent did not file statement of response nor did it attend the hearing of the suit.
9. The Court is satisfied that the claimants have proved the particulars of claim on a balance of probabilities as set out in the statement of claim and annexures thereof and in particular annex 'I'.
10. The court enters Judgment in favour of the claimants against the respondent as follows: -
 - a. Carolyn Ipalei – Kshs. 36,000.

- b. Manasi Obware Obose Kshs. 84,000
- c. Opili Michael Kshs. 112,000
- d. John Ken Barasa Kshs. 126,000
- e. Pamela Imai Kshs. 72,000
- f. Juvenal O. Okele Kshs. 45,000
- g. Pamela O. Omukanga Kshs. 126,000 and
- h. David S. Wanzala Kshs. 84,000
- i. Interest at court rates from date of filing suit till payment in full.
- j. Certificates of service to be issued to the Claimants within 30 days of this Judgment.
- k. Costs of the suit.

Ruling Dated, Signed and Delivered at Nairobi this 16th day of July 2020.

Mathew N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling 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:-

Claimants in person

J. P. Wakhokiher & Co. Advocates for the respondent.

Chrispo: Court clerk