



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.400 OF 2016

PAUL MUIRURI NGUGI CLAIMANT

VERSUS

ANIL WALIA T/A SHINNERS GIRLS HIGH SCHOOLRESPONDENT

JUDGEMENT

The claimant was employed by the respondent as a Teacher from January, 2009 to May, 2016 at a monthly wage of Ksh.18, 500.00.

The claim is that during the course of employment, there was no house allowance paid and upon termination of employment no terminal dues were paid. The claimant is seeking the following dues;

- a. Leave allowance Ksh.148,000.00;
- b. House allowance Ksh.192,000.00;
- c. 15 days' pay for every year worked Ksh.74,000.00;
- d. Loss of employment Ksh.222,000.00;
- f. Deducted NHIF and NSSF not remitted Ksh.3,000.00; and
- g. Compensation for unfair termination of employment.

The claimant testified that on 12th January, 2009 he was employed by the respondent as a Teacher and in the year 2014 appointed as the Deputy Head of Studies. He then became the examinations coordinator. The claimant was also invited to market the respondent school and would be sent to various destinations. While away the respondent was to appoint another teacher to carry out the claimant's duties but this was not done forcing him to undertake evening classes for students and without compensation.

The claimant also testified that on 21st May, 2016 there was a meeting called by the respondent to which he was not invited despite being a head of studies. The claimant was also accused of failing to circulate his department reports as he had not received the memo calling for the same.

On 23rd May, 2016 the claimant was the master on duty and he reported to work but at 11am during break he was called by the respondent's director to explain why he had not submitted reports as directed by his supervisor. The claimant gave his defences but he was directed to resign or be issued with a termination notice. The claimant was accused of enrolling other teachers with the union and this had caused tension in the school which was not true.

On 2nd June, 2016 the claimant went to the respondent and the director told him to write a letter asking for his terminal dues he could be paid. The claimant testified that at this point he was broke, he had not paid his rent and due to termination of employment, he really needed the dues to be able to organise his life. The claimant was paid Ksh.43, 072.00 which was in underpayment.

In response, the respondent admit the claimant was an employee but left his employment upon request and was paid all his owing terminal dues. On 2nd June, 2016 the claimant approached the respondent seeking to end his employment and in such letter he requested an advance payment for 3 months which was dully paid to him.

The defence is also that the dues sought by the claimant do not owe, all statutory deductions made were remitted and the claims made an afterthought and should be dismissed with costs.

Anil Walia testified for the respondent as the director. The claimant was employed as a Teacher but in June, 2016 he resigned and was paid for 3 months. The payment of Ksh.43, 000.00 was paid to the claimant less what he owed the teachers Sacco. The resignation was voluntary.

Mr Walia also testified that on the claims made, leave allowance is not due as in each year the school has holidays and the claimant was paid. The salary paid was consolidated and inclusive of the house allowance. All the extra duties and travel the claimant made for the respondent were facilitated and paid for in full.

The claimant failed to submit his lesson plans with Mr Kinyanjui his supervisor and as this was a requirement, the matter was reported to the director who summoned the claimant and heard his defence. The claimant then opted to resign before the matter was fully addressed.

The claimant testified that the his letter dated 2nd June, 2016 where he resigned from his employment with the respondent and asked to be paid was done under duress and or coercion. That he got a written note and made to write it under his own hand.

However, after the payment of Ksh.43, 000.00 following the letter, the claimant has not protested this alleged duress or coercion. This is not pleaded and or articulated for the respondent to be able to respond. The matter only arose in court during the hearing.

I take note the claimant was unrepresented but in his testimony he was detailed and well understood the veracity of the matters herein. As a teacher, the claimant was articulate and had done his pleadings well and admitted to having received assistance from a Process Server, Mr John Aturo. He was also previously unionised and stood out as one well aware of his rights.

On this background, I take it where the claimant was forced to write his letter of resignation, nothing stopped him from writing a protest and or articulating the details in his pleadings. In the various demand letters to be paid his dues, there is no mention of such matter.

The claimant thus left his employment with the respondent voluntarily.

On the remedies sought, the respondent as the employer and pursuant to the provisions of section 10 (6) and (7) of the Employment Act, 2007 did not file any work records. This would have helped and facilitated the court in assessing the claims made based on the prevailing terms and conditions of employment and especially the payment statement required to be issued to an employee pursuant to the provisions of section 20 of the Employment Act, 2007 read together with sections 19 and 21.

Without these work records, there is no evidence that the claimant was paid a consolidated wage. There is also no pleadings or material evidence that the claimant was accommodated by the respondent or paid a house allowance in lieu thereof.

On this basis, the claim for a house allowance is not challenged in any material way and is hereby awarded at Ksh.192, 000.00.

Leave allowance is claimed at Ksh.148, 000.00 on the evidence that the claimant would be teaching at school or would be out marketing the respondent's business. The claimant admitted he was facilitated to take all the travel and nothing is claimed out of such travels. It is common cause that there is a school calendar which allow students and teachers to take generous breaks. To claim for a leave allowance outside of such break would require clear and unchallenged agreement outside the norm.

Claim for 15 days for each year worked is not due as such a claim only arise out of termination of employment under section 35 or 40 of the Employment Act, 2007 provisions in the case of non-payment of statutory dues or in a redundancy. The claimant is seeking the payment of the non-remittance of statutory dues of Ksh.3,000.00 and this computed do not round up to year for him to benefit under section 35 in service pay or under section 40 under redundancy pay.

The claims for NSSF and NHIF unremitted dues are not payable to the employee. Such accrue to the requisite statutory bodies. On the claim for loss of employment, the claimant left employment on his own volition as analysed and held above. Such a claim is thus lost.

Accordingly, judgement is hereby entered for the claimant against the respondent for the payment of the due house allowance at Ksh.192, 000.00 plus costs assessed at Ksh.20, 000.00.

Delivered at Nakuru this 31st day of January, 2019.

M. MBARU JUDGE