



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 17 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**BERNARD OMONDI OCHIENG.....CLAIMANT**

**VERSUS**

**BOARD OF MANAGEMENT,**

**MALUNGA MIXED SECONDARY SCHOOL.....RESPONDENT**

**J U D G M E N T**

1. The suit commenced by a Memorandum of Claim filed on 24<sup>th</sup> January, 2017. The Claimant seeks compensation for alleged unlawful termination of employment and payment of terminal benefits to with –

(a) Kshs.8,000 in lieu of one month notice.

(b) Unpaid salary for September 2015, November and December 2016.

Remission of NSSF deduction for September 2015 to December 2016 and costs of the suit.

2. The claim was served and the Respondent entered appearance through Maxwell O. Ogonda and Associates on 22<sup>nd</sup> March, 2017. The Respondent filed a reply to the Memorandum of claim on 17<sup>th</sup> July, 2017 in which particulars of employment were admitted but the Respondent denied having not paid salary for November and December, 2016. The particulars of termination unlawfully were also denied generally. The matter was set for hearing in court on 14<sup>th</sup> May, 2018 for 16<sup>th</sup> October, 2018 in the presence of the Claimant but the Respondent was absent. The court issued a hearing notice and same was served on the Advocates for the Respondent. The Respondent's did not attend the hearing of the suit and the matter proceeded exparte.

3. The Claimant testified in support of the particulars of claim. He told the court that he was employed as a teacher by the Respondent on 1<sup>st</sup> September, 2015 and worked continuously until 18<sup>th</sup> December, 2016. That he was a trained accountant with a passion in teaching. He worked for 15 months earning Kshs.8,000. He was promised that salary would be doubled but it did not happen. He taught business studies and Geography. He was registered with NSSF, money was deducted from his salary but was not remitted to NSSF. He was not paid salary for September, 2015 and for November and December 2016. He was not told why he was not paid.

4. The Claimant did not pursue the claim for unlawful and unfair termination in his testimony before court.

5. The court finds that the Claimant has proved the claim for payment of three months' salary on a balance of probabilities. The Claimant is entitled to refund of NSSF dues calculated at Kshs.400 per month for 15 months.

6. In the final analysis, judgment is entered in favour of the Claimant as against the Respondent as follows:-

(a) Kshs.24,000 being three months' salary.

(b) Kshs.6,000 NSSF refund for 15 months.

Total award Kshs.30,000.

(c) Interest at court rates from date of filing suit till payment in full.

(d) Costs of the suit.

**Judgment Dated, Signed and delivered this 24<sup>th</sup> day of January, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Claimant in person

Mr. Maxwell O. Ongonda for Respondent

Chrispo – Court Clerk