

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

CASE NO. 36 OF 2018

JOYCE KATHAMBI.....CLAIMANT

VERSUS

B.O.M MBWINJERU PRIMARY SCHOOL.....RESPONDENT

JUDGMENT

1. The Claimant sought relief for her dismissal from employment. She alleged that the Respondent dismissed her from teaching the ECD class without any colour of right. She averred that despite attempts at conciliation the Respondent was unwilling to reverse course and re-assign her to teach. She sought her retirement benefits for 38 years which were Kshs. 4,000/- multiplied by the number of years worked totaling to the grand sum of Kshs. 520,000/-.

2. The Respondent that the Claimant was requested to return the properties in her possession in 2014 to enable the Respondent prepare her retirement later that year. After she refused to be feted by the school for her service and upon her reporting the dispute to the Ministry of Labour, the Respondent agreed to pay her Kshs. 100,000/- but she declined to accept the payment. The Respondent thus urged the dismissal of her suit.

3. The Claimant and the former head teacher Amos Mwebia, Cyrus Kiriimi the Chairman of the Board of Management of the School, Grace Mwari an ECD teacher and Mary Mugambi the current head teacher all testified. The Claimant stated that she was compulsorily retired in 2014 as the Respondent wanted a 'digital' teacher and upon seeking her service for the 38 years in January 2015, the Respondent declined to pay. She was cross-examined and stated that she did not have a contract of employment and that she was paid a daily rate. She testified that she received the letter of retirement on 11th November 2014 but had not attached it to her claim. She stated that her terminal benefits were not paid and she did not know why she was in court. The court deferred further hearing to allow the Claimant to prepare.

4. The Respondent's witnesses testified that the Claimant was not chased from her employment and that the Respondent did not refuse to pay her terminal dues and that she declined to accept payment. The witnesses in cross-examination testified that the Claimant did not do anything wrong. The former head teacher denied telling her that she was analogue. He also denied employing his sister. The second defence witness testified as the chair of the Board of Management, the Claimant visited the head teacher at the school and the Claimant sought to retire and he asked her to write a letter but she did not do so. The third defence witness testified that she was an ECD teacher and was employed by parents and paid by parents just like the Claimant used to. She stated that after the county government came into force she was employed by the county. The current head teacher stated that the ECD teachers were always paid salary by the ECD parents. She testified that the Claimant did not write seeking payment. She confirmed in cross-examination that she knew the Claimant had worked for many years though she could not confirm it was 38 years and that there was nothing wrong the Claimant did.

5. The Claimant was to file submissions but she did not. The Respondent filed submissions on 14th December 2018. The Respondent submitted that parties are bound by their own pleadings and that the agreement that had been reached was with a party that was struck out from the proceedings and therefore was no longer available. The Respondent further submitted that there was no document produced by the Claimant in support of her claim to prove how much she earned. The Respondent submitted that the claim was unproved and ought to be dismissed with costs.

6. The Respondent is right in as far as the issue of there being no proof of the sums earned. The court finds that the Claimant was offered some modicum of relief but she spurned it in the hope of a better and bigger payout. She failed to prove she was entitled to the sum of Kshs. 520,000/- as her terminal benefits. A sum of Kshs. 100,000/- had been offered as per the Respondents' pleadings. This is the sum she will be entitled to receive from the Respondent as her retirement benefits. There will be no order as to costs.

7. In the final analysis I enter judgment for the Claimant as against the Respondent for

a. Kshs. 100,000/- as terminal benefits

b. Certificate of service

It is so ordered.

Dated and delivered at Nyeri this 24th day of January 2019

Nzioki wa Makau

JUDGE