



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 381 OF 2016

(Before Hon. Justice Mathews N. Nduma)

GEORGE MBOROGO OBANGI.....CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT OMOYO SECONDARY SCHOOL.....RESPONDENT

J U D G M E N T

1. The Claimant filed suit on 26th December, 2016 seeking payment of terminal benefits set out under paragraph 11 (1-9) and pages 8 to 13 of the statement of claim in the sum of Kshs.1,015,724.45. The Respondent was served with summons to enter appearance and statement of claim on 10th January, 2017.

2. The Respondent filed Memorandum of Appearance through N. E. Mogusu & Co. Advocates on 19th January, 2017 but did not file any statement of defence. The matter was set for hearing on 13th March, 2018. Mr. Nyamwea, Advocate appeared for the Respondent. The Claimant testified under oath in support of the particulars of claim.

He told the court that he worked for the Respondent as a watchman from 15th June, 2000. He was paid Kshs.1,700 per month. That he worked until 29th October, 2013. The Claimant said he worked 12 hours daily in the night from 6pm in the evening until 6 am in the morning. He said he was not paid overtime. He was not paid salary for March 2014. He was underpaid from 2001 up to 2013. The he was not given off during holidays. He worked throughout. That himself and his colleague complained but overtime and holidays worked was not paid. That he did not go on leave at all and was not paid in lieu of leave. The Claimant was retired without notice. He claims payment in lieu of notice. He also claims payment of service gratuity for 14 years and 3 months in terms of the Regulation of Wages order (security) services 1998 since he was not paid at all.

3. Claimant states that his employment was unlawfully terminated on false allegations that he had allowed students to sneak out of the school compound. The Claimant denied this allegation and told the court that he was not given opportunity to defend himself and fair procedure was not followed in terminating his services. The Claimant was cross examined by Mr. Nyamwea for the Respondent. He said he was born in 1953. That at the time of termination he was 71 years old. That he worked in a public school but was paid by the Board of Management. He admitted that retirement age was 60 years. He insisted that he worked 12 hours daily without payment of overtime. He insisted he never went on leave or holidays. He said that when he reported the matter to the labour office, the Principal of the school failed to attend conciliation meeting. He denied that he allowed students to escape from school. He said that he had complained of underpayments all along but it was not paid. He said he worked 7 days a week without any off days and was paid 1,700 per month. He commuted to work from home and was never paid travelling allowance. He denied having been paid 3 months in lieu of notice. He said NSSF was paid for him and that he was entitled to gratuity calculated at 18 days salary for each year worked. He also testified that he got no certificate of service.

4. Mr. Nyamwea for the Respondent closed the Respondent's case without calling any witness to rebut the evidence adduced by the Claimant.

5. Mr. Nyamwea said that the Respondent admitted the claim for terminal benefits but the amount payable needed to be computed.

Determination

6. The reliefs sought by the Claimant have not been opposed at all by the Respondent. The Respondent failed to file a statement of defence nor call any witness to rebut the Claimant's case. The court finds that the Claimant has proved all the claims for payment of terminal benefits set out under paragraph 11 of the statement of claim.

7. The Claimant however had reached retirement age and the claim for compensation for wrongful termination is not sustainable and is dismissed.

8. The court enters judgment in favour of the Claimant as against the Respondent as follows:-

1(a) Payment of underpayments capped at not more than six years to the date of filing suit in terms of legal notice No. 70 of 2009; No. 98 of 2010; No. 71 of 2012; and No. 197 of 2013 in the sum of Kshs.105,133.

b. Payment of overtime worked capped at six years to the date of filing suit from item (vii) to (xi) in the sum of Kshs.278,348.35.

c. Accrued Annual Leave for six years (26 days)

(Kshs.5,218 x 6 years) – Kshs.31,308.

d. Uniform Re-imbusement for six (6) years

(4,500 x 6 years) Kshs.27,000.

e. Three months in lieu of notice Kshs.18,002.10

f. Service Gratuity for 14 years and 3 months Kshs.74,356.50.

Total award **Kshs.534,147.95.**

II. Interest at court rates from date of filing suit till payment in full.

III. Respondent to provide certificate of service to the Claimant within 30 days.

IV. Costs of the suit.

The claims for travelling allowance and laundry soap have not been proved and are dismissed.

Judgment Dated, Signed and Delivered in Kisumu this 17th day of January, 2019

Mathews N. Nduma

Judge

Appearances

Claimant in person

Mr. Nyamwea for Respondent

Chrispo – Court Clerk