



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MALINDI
CAUSE NUMBER 39 OF 2018

BETWEEN

IRENE KAINGU BENJAMEN.....CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT [B.O.M] CHIPANDE MEMORIAL

PRIMARY SCHOOL, KILIFI.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Claimant Irene Kaingu Benjamin in Person

Respondent appearing through its Member, Samuel Safari Kinga

JUDGMENT

1. The Claimant was employed by the Respondent as a Teacher, in the year 2010. She was paid a monthly salary of Kshs. 4,000 at the beginning, and Kshs. 7,000 in the end. She resigned in 2016.
2. Her claim is that she was owed by the Respondent Kshs. 38,570 in arrears of salary, by the time she resigned. The B.O.M, the Respondent herein, wrote to the Claimant on 15th July 2016, admitting the School owes the Claimant a sum of Kshs. 38,570. The letter is part of the documents exhibited by the Claimant.
3. The Respondent did not pay the debt, despite the acknowledgement. The Claimant first asked for the assistance of the Labour Office, Kilifi County. A letter of demand issued on 17th March 2016. The Labour Office called for a joint meeting on 31st March 2016, which did not yield settlement. There was no payment. The Claimant sought the intervention of the Zonal Ministry of Education Office. The Office wrote a letter to the Respondent on 30th October 2017, advising the Respondent to pay up. There was no compliance. The Claimant wrote a demand letter in person on 5th February 2018 and was met with a brick wall. She filed the Claim in Court on 4th April 2018, seeking an order for payment of Kshs. 38,570; costs; interest; and any other suitable relief.
4. The Respondent filed its Statement of Response on 3rd May 2018. It is stated in response that there are signs, that the Claimant was once a Teacher at the Respondent School. It is also claimed by the Respondent that the debt was never acknowledged by the Respondent. The Respondent urges the Court to dismiss the Claim with costs.
5. The matter was mentioned in Court on 20th July 2018 in the presence of the Claimant and Samuel Safari Kinga. It was agreed that the matter is heard on 30th November 2018.
6. The Respondent did not attend Court on the hearing date. The Claimant attended, restating in brief, her position as outlined in her

Statement of Claim. She adopted the documents referred to at paragraph 3 above, as her exhibits.

The Court Finds:-

7. The Claimant was employed by the Respondent as a Teacher, in 2010. She resigned in 2016. Her last salary was Kshs. 7,000.

8. There is adequate documentary and oral evidence to establish that as of the time of resignation, she was owed Kshs. 38, 570 by the Respondent, in arrears of salary. Interventions were made by the Labour Office and the Zonal Education Office, imploring the Respondent to meet its obligation to the Claimant. The Respondent stonewalled every such entreaty. When brought before the Court, the Respondent filed a most frivolous Statement of Response, and failed to attend Court to explain its default.

9. Section 17 of the Employment Act 2007 demands that subject to the Act, an Employer shall pay the entire amount of the wages earned, by or payable to an Employee, in pursuance of a contract of service, directly. The entire Part 1V of the Employment Act is dedicated to protection of wages. The Respondent paid Claimant's salary in fits and starts. In the end she resigned, without receiving Kshs. 38,570 in arrears of salary.

IT IS ORDERED:-

- a) The Respondent shall pay to the Claimant Kshs. 38,570 in arrears of salary.***
- b) Costs to the Claimant.***
- c) Interest allowed at 14% per annum from the date of resignation, in January 2016, until payment is made in full.***

Dated and delivered at Malindi this 28th day of February 2019.

James Rika

Judge