



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CASE NO. 637 OF 2013

KENYA UNION OF DOMESTIC, HOTELS EDUCATIONAL

INSTITUTIONS, HOSPITALS & ALLIED WORKERS.....CLAIMANT

VERSUS

GATHUGU SECONDARY SCHOOL.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent on behalf of a Grievant Ruth Njeri Mbugua. She sought annual leave for 16 years amounting to Kshs. 201,600, travelling allowance for 5 years – Kshs. 20,000/-, pro rata leave for 3 months – Kshs. 3,150/-, pro rata travelling allowance of Kshs. 1,000/- and unpaid balance of Kshs. 7,950/-. She averred that she resigned on 31<sup>st</sup> December 2010 after she was re-designated as a general clerk whose duties included typing, a function that was alien to an accounts clerk.

2. The Respondent was opposed and filed a defence in which it asserted that the Grievant was entitled to leave and that she took the said leave. It was averred that the Respondent paid all the dues in accordance with the law. In the alternative, the Respondent averred that the Grievant resigned of her own volition and thus the suit ought to be dismissed with costs.

3. The Grievant testified and was cross-examined by counsel for the Respondent. She testified that she was not paid her dues and that the effect of the deployment was in a field she was not trained in. She stated that she was paid her dues less some Kshs. 7,950/- that was unpaid. She also sought the other sums in her claim.

4. The Respondent called John Maina Murage the Principal of the Respondent since January 2015. He testified that when the Grievant was deployed she declined and wrote a resignation letter. He stated that as far as he was concerned, the benefits to the Grievant were fully paid. He denied that there was an agreement with the Claimant and there was no remittance on behalf of the Grievant. He stated that the Grievant was paid and she signed in acknowledgment on 21<sup>st</sup> September 2011. In cross-examination he stated that there was a CBA in force in 1994 and that the Ministry of Education left school boards to run schools. He testified that the deployment of the Grievant was very normal.

5. The parties filed final submissions in which the Claimant submitted that she was not paid her dues in full. The Claimant submitted that the recognition agreement applied to the Respondent and that she was entitled to payment under the CBA. The case of **Kudheiha Workers v Murang'a High School Cause No. 291 of 2010** (unreported) was cited in aid of the submissions that the Claimant was entitled to the remedies sought for the Grievant.

6. The Respondent submitted that the Grievant did not adduce any evidence that she was a member of the Claimant union. In addition the Respondent submitted that the Grievant resigned on her own volition and that she was not entitled to any relief.

7. Whereas the Claimant asserts that there was a CBA in force or that the CBA which applied in 1996 when the Grievant was employed, the court was unable to access the CBA in force as none was availed to Court. The Grievant resigned and was according to the Respondent paid in full. According to the Claimant, a sum of Kshs. 7,950/- was unpaid. The conciliator did not enumerate the sums the Grievant sought. In the absence of the proof of the nonpayment of the pro rata and annual leave, pro rata leave allowance and the leave travelling allowance, these sums would not fall due. The suit is devoid of any merit and is dismissed. I will make no order as to costs.

It is so ordered.

**Dated at Nyeri this 18<sup>th</sup> day of February 2019**

**Nzioki wa Makau**

**JUDGE**

**Delivered at Nairobi this 20<sup>th</sup> day of February 2019**

**Radido Stephen**

**JUDGE**