



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2129 OF 2015

CW1 urged the Court to allow his Claim as prayed.

The Respondent did not call any witness to rebut the Claimant's evidence.

Claimant's Submissions

In the written submissions the Claimant reiterated the contents of the Memorandum of Claim and the grievant's oral evidence in Court.

It was the Claimant's submission that the employment relationship between the grievant and the Respondent was governed by the CBA and was supplemented by the Deputy Prime Minister's Secular Number MSPS 2/6/4A Vol X (2) dated 25th June, 2012 which realigned the salary structure for all civil servants.

It is submitted that it was unfair for the Respondent not to pay the retirement benefits as provided in the CBA and the Deputy Prime Minister's secular. To fortify this argument the Claimant union relied on the Authority of *Industrial Cause No. 1688 of 2014 Kenya Union of Domestic, Hotel, Education Institution & Hospital Workers Vs BOM Ndumberi Secondary School*.

In conclusion the Claimant union urged the Court to allow the Claim as drawn as the grievant is entitled to the reliefs as sought in the statement of claim.

Determination

Having considered the pleadings, evidence, submissions and authorities cited, I am of the view that there is only one issue for determination which is whether the grievant is entitled to the reliefs sought in the Memorandum of Claim.

From the grievant's letter of Appointment dated 21st September, 1994 it is clear that he was employed by the Board of Governors of Gatamaiyu High School. It is also clear from the attached payslips the Claimant was employed by board of the school and was not a civil servant.

The claim must fail therefore as the grievant is not covered by the Prime Minister's circular that the Claimant union seeks to rely on. Furthermore on his retirement, the grievant received Kshs.148,200 as retirement benefits from the Respondent. He is therefore estopped from claiming further payments as he duly accepted the payment on 9th February 2015.

The Claim is accordingly dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 31ST DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE