

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

INDUSTRIAL CASE NO. 343 OF 2014

(Before Hon. Justice Mathews N. Nduma)

NASHON KUNGU AKUKU.....PLAINTIFF

VERSUS

MIGORI TEACHERS' CO-OPERATIVE SAVINGS & CREDIT SOCIETY LTD..DEFENDANT

JUDGMENT

1. The suit was filed on 4th December 2014 seeking an order to rescind the suspension of the plaintiff and payment of arrear salaries and allowances due. In the alternative payment to the plaintiff by the defendant salary and allowances for the remaining 264 months of the contract of employment.
2. The respondent filed a memorandum of reply on 17th December 2014 in which respondent states that the claimant was placed on suspension on 7th August 2008 and on 2nd August 2009, the claimant was retrenched from employment and an invitation given to retrenched employees to reapply for advertised positions.
3. The claimant testified under oath as CW1 and relied on a witness statement filed on 4th December 2014 as his evidence in chief. Claimant told the court that he was employed by the respondent in 1995 as a Data clerk. He was promoted to loans officer. Claimant was suspended in 2008 and was later retrenched on 5th February 2010. The claimant prayed for the rescission of the suspension and he be paid arrear salary. CW1 said he was employed on permanent and pensionable terms and contributed 5% of his salary to Lap-fund. That part of the contribution was not remitted by the respondent. The claimant was not paid his entitlement. The claimant prayed to be awarded as prayed. The claimant earned Kshs. 15,795 per month.
4. The claimant produced letter of retrenchment dated 5th February 2010, in which is shown that the claimant was paid one month salary for each completed year of service for 14 years upon retrenchment in the sum of Kshs. 230,343 less Kshs. 459,145 outstanding loan due to the respondent. The claimant still owed the respondent Kshs. 228,802.
5. The claimant was placed on suspension without pay from 7th August 2008 to date of retrenchment on 2nd February 2010. The respondent did not adduce any evidence to justify such a prolonged suspension without pay. The claimant was not charged with any offence and no reason is given why he should forfeit his salary for the said period. The court finds that the claimant is entitled to arrear salary calculated at Kshs. 15,795 per month for the entire period he was under suspension in the sum of Kshs. (15,795x15 months) 236,925.
6. The claimant is awarded accordingly. The claimant did not challenge the retrenchment in the plaint filed and did not claim damages for wrongful retrenchment. Accordingly, the court awards the claimant Kshs. 236,925 being arrear salary not paid during the period of suspension.
7. The amount to attract interest at court rates from date of filing suit till payment in full.
8. Costs to follow the outcome.

Judgment Dated, Signed and delivered this 18th day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. S. Onyango for claimant

B.W. Oigara for respondent.

Chrispo – Court Clerk