



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CASE NO. 380 OF 2017**

**WILSON NDIANGUI WACHIRA.....CLAIMANT**

**VERSUS**

**B.O.M NYARIBO PRIMARY SCHOOL.....RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent seeking to recover for unlawful dismissal and asserted that his services were terminated on 8<sup>th</sup> February 2017. He averred that he was employed as a watchman on 11<sup>th</sup> November 2015 earning Kshs. 6,000/- which was increased to Kshs. 7,000/- at the time of the dismissal. He averred that his services were terminated prematurely and he sought payment of damages for the unlawful dismissal being compensation, salary arrears for the month of January 2017 and the 8 days worked in the month of February 2017, unpaid leave for one year and one month's salary in lieu of notice. He also sought costs of the suit.

2. The Respondent's defence was to the effect that the Claimant worked as a night watchman on contract basis from 11<sup>th</sup> November 2015 and that the Claimant voluntarily resigned vide his undated letter in February 2017. The Respondent averred that the letter cited availability of a job elsewhere as the reason for his resignation. The Respondent averred that the Claimant reported the existence of a dispute to the Labour Office and in the report indicated that he had left employment due to insecurity surrounding his job. The Respondent asserts that the Claimant's claim was an attempt to extort money from the Respondent as there were no dues he was entitled to.

3. The Claimant testified and as did the Respondent's witness Cecilia Nyambura Mwangi. The Claimant testified that he was called by Cecilia the secretary to the Board and told not to report to work the following day. He was cross-examined and stated that he was called by the headteacher who is the Secretary to the BOM and told not to report to work the next day. He denied knowledge of the letter of resignation. He stated that he did not know what the Labour Officer recorded when they reported the dispute to him which he stated was a dismissal on account of seeking a payrise. He denied receiving the payment on the payment voucher exhibited by the Respondent.

4. The Respondent's witness stated that she was familiar with the matter though she had left the employment of the Respondent. She stated that the Claimant and a colleague by the name Hilary Githuku tendered their resignation indicating they had found alternative work. She testified that the Claimant surrendered the whistle and they parted. She stated that she received a letter from the Labour Office where the Claimant had gone to report the existence of a dispute. She stated that the Claimant received payment and signed in acknowledgement. In cross-examination she testified that the Claimant resigned in order to go and work elsewhere. She stated that the Claimant had been paid for days worked in January and for the 8 days worked in February 2017. In re-exam she stated the name of the company was in the resignation letter.

5. The parties filed submissions and in the Claimant's submissions, he submitted that it that the Respondent had failed to prove the payment for January 2017 and that it was conceded the sum paid was for the 2 watchmen for the 8 days worked in February 2017. The Claimant urged the grant of the prayers in his claim.

6. The Respondent submitted that the Claimant resigned from his employment as a watchman. The Respondent submitted that when the Claimant reported a labour dispute he did not mention unlawful dismissal but rather the insecurity surrounding his work. The Respondent submitted that the Claimant resigned and upon resignation was paid for the services offered for 8 days worked in February 2017 and that the Claimant acknowledged receipt by signing and endorsing his identity card number. The Respondent urged the dismissal of the suit with costs.

7. The Claimant misled the court regarding his alleged dismissal. In the report to the Labour Office he indicated that he had left his employment with the Respondent due to insecurity surrounding his employment. He came to court knowing full well he was not dismissed by the Respondent having resigned as indicted in his undated letter of February 2017. The Claimant embarked on a frolic when he commenced the suit as the suit was not proved. The record shows that the Claimant was paid his terminal dues as evidenced by the payment voucher upon which he acknowledged payment of the sums he was seeking in his claim as terminal benefits. The suit is accordingly only fit for dismissal. Suit dismissed with costs to the Respondent.

It is so ordered.

**Dated and delivered at Nyeri this 29<sup>th</sup> day of October 2019**

**Nzioki wa Makau**

**JUDGE**