



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 140 OF 2011

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS (KUDHEIHA).....CLAIMANT**

-VERSUS-

DANDORA SECONDARY SCHOOL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 8th November, 2019)

JUDGMENT

The claimants filed a memorandum of claim on 07.09.2011 on behalf of its members Alfred Enyonga Lidubwi; Anthony Bulinda; Jane Akeyo Ojonde; and Margaret Adhiambo (the grievants). The claim is for terminal dues based on the CBA and 12 months' salaries in compensation for unfair termination of the grievants. The memorandum of claim sets out the computation of the amount claimed for each grievant.

The respondent filed the memorandum of defence on 24.03.2017 through Mwaura Ngugi Gichinga & Company Advocates. The respondent's case was that the grievants were terminated normally and the respondent was willing to pay each of them the terminal dues under the law and CBA less legal liabilities. The respondent wished to settle the dispute amicably. The respondent prayed that the parties are given time to negotiate the case towards an amicable settlement.

The case came up before Court on 30.08.2011 and the respondent's counsel was absent and Mr. Mwari was present for the claimant and the Court ordered:

- 1) Hearing on 21.09.2011 at 2,30pm.
- 2) Claimants to serve the counsel for respondent.
- 3) Claimants to serve the learned counsel with tabulation on or before 13.09.2011.

On 21.09.2011 the respondent's counsel informed the Court that the claimant had served the memorandum of claim and the tabulations and counsel needed to take instructions. The Court ordered parties to negotiate a settlement. Parties did not reach a settlement and the respondent changed its advocates to the Hon. Attorney General. The Court gave the parties chance to reach a compromise but they failed to do so. The case went to full hearing. The claimant did not call a witness but opted that the suit be determined upon the pleadings and the documents on record. The respondent's counsel cross-examined two of the grievants Alfred Enyonga Lidubwi and Jane Akeyo Ojonde. The two grievants confirmed that there had been no termination letters given to them.

The respondent's 1st witness (RW1) was the Principal Pamela Obiero and the 2nd one (RW2) was Moses Omoongeh, a member of the Board of Governors. Their evidence was that the grievants were terminated and each was entitled to one month pay in lieu of notice. They also testified that the grievants were members of the NSSF.

The Court has considered the pleadings, the evidence and submissions filed for the parties. The Court finds as follows:

- 1) There is no dispute that the respondent employed the grievants. They were in a contract of service.
- 2) The claimant relies on the respondent's admission and acknowledgement that the claimants were terminated normally and all that remains is to compute their final dues as per the CBA less liability to the respondent. The claimant's allegations for unfair termination and compensation in that regard will fail.

3) As submitted for the respondent under clause 6 of the CBA the respondent was entitled to terminate the contract by paying in lieu of the termination notice and the clause applies. Each grievant is entitled to pay in lieu of notice as computed in the memorandum of claim.

4) As the respondent pleaded that the termination was normal each claimant is entitled to service gratuity under clause 31 and as computed in the memorandum of claim.

5) The claimant has not provided evidence to justify the other claims and prayers and they will fail as not established at all.

6) In the submissions the respondent refers to a response to the memorandum of dated 22.07.2012 and filed on 24.07.2012 but which must have been filed without leave and without expunging the defence already on record. The earlier defence must therefore prevail.

The claimant having substantially succeeded in the suit, the respondent will pay partial costs of the suit now fixed at **Kshs.30, 000.00** only.

In conclusion judgment is hereby entered for the claimant against the respondent for:

1) Payment to each grievant in lieu of notice under clause 6 of the CBA; and to each service gratuity under clause 31 of the CBA and as computed for each in the memorandum of claim and which sums of money shall be included in the decree for payment to each grievant respectively.

2) Payment to the claimant **Kshs.30, 000.00** being costs of the suit.

3) The money in (1) and (2) above to be paid by 31.01.2020 failing interest to be payable thereon at court rates from the date of filing the suit till full payment.

Signed, dated and delivered in court at Nairobi this Friday, 8th November, 2019.

BYRAM ONGAYA

JUDGE