



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 282 OF 2016

JASPER NGARE OGATO

CLAIMANT

v

BRIGHT LIGHTS GIRLS HIGH SCHOOL

RESPONDENT

JUDGMENT

1. Jasper Ngare Ogato (Claimant) instituted legal proceedings against Bright Lights Girls High School (Respondent) on 26 July 2016 and he stated the Issues in Dispute as

1. Unfair termination
2. Salary in lieu of notice
3. Public holiday's allowance
4. Leave allowance
5. Severance pay.

2. A Response was filed on 5 December 2016, and on 17 March 2017, the Court scheduled hearing for 8 November 2017.

3. During the scheduling of the hearing, Mr. Maina held brief for Mr. Waiganjo for the Respondent, but due to unexplained reasons, there was no representation at the hearing.

4. The Court being satisfied that the hearing date was fixed in the presence of the Respondent's advocate allowed the hearing to proceed, and the Claimant gave sworn testimony and also produced 2 exhibits.

5. According to the appointment letter, the Claimant was employed by the Respondent as a Teacher/Laboratory Technician in Charge.

Termination

6. On the separation, the Claimant testified and produced a letter dated 3 November 2015 informing him that his services would not be required from 5 November 2015.

7. The letter did not give any reasons for the termination of employment. In Court the Claimant stated that the reason he was given was that the Respondent had difficulties in maintaining him due to the low enrolment of students taking the subjects he was teaching.

8. The Respondent appeared to admit the same in paragraph 7 of the Response.

9. It is apparent that the separation was due to operational reasons (redundancy) on the part of the Respondent.

10. There is nothing on record to show that the Respondent complied with the statutory requirements/conditions as provided for under section 40 of the Employment Act, 2007 before ending the Claimant's contract.

11. And even if the Respondent complied with the conditions, it failed to attend the hearing to prove that it had a valid and fair reason based on its operational requirements to relieve the Claimant of his duties in terms of section 45(2)(a),(b)(ii) of the Employment Act, 2007.

Overtime

12. The Claimant also testified that he worked during public holidays without appropriate overtime pay for which he sought Kshs 14,785/-.

13. However, no evidential foundation or particulars of the public holidays were disclosed and the Court finds this head of claim not proved.

Leave allowance

14. The Claimant further testified that he was not paid leave arrears for 2011 to 2015.

15. The general law of employment does not provide for *leave allowance* but rather the entitlement of an employee to leave with full pay.

16. The Claimant herein did not suggest that he was not paid wages when on leave, or prove a foundation for *leave allowance*, and therefore this head of claim is also not proved.

Appropriate remedies

Pay in lieu of notice

17. The Claimant is entitled to 1 month pay in lieu of notice in terms of clause 9 of the letter of appointment (Kshs 16,000/).

Overtime

18. This relief is declined.

Severance pay

19. The Claimant was declared redundant and in terms of section 40(1)(g) of the Employment Act, 2007, he is entitled to severance pay, which he computed as Kshs 27,857/-.

Leave allowance

20. This head was not proved and is declined.

Compensation

21. The Claimant served the Respondent for about 4 years and in consideration of the length of service, the Court is of the view that the equivalent of 4 months gross wages would be appropriate and fair.

Conclusion and Orders

22. The Court finds and holds that the termination of the Claimant's contract on account of redundancy was unfair and awards him

(i) 1 month pay in lieu of notice Kshs 16,000/-

(ii) Severance pay Kshs 27,785/-

(iii) Compensation Kshs 64,000/-

TOTAL Kshs 107,785/-

23. Claimant to have costs on half scale.

24. File to be transmitted back to Nakuru after this judgment.

Delivered, dated and signed in Nairobi on this 19th day of January 2018.

Radido Stephen

Judge

Appearances

For Claimant Ms. Wairimu instructed by Munene Chege & Co. Advocates

For Respondent Waiganjo & Co. Advocates

Court Assistant Nixon