



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 225 OF 2017

BETWEEN

BUGUU NGOME MERI.....CLAIMANT

VERSUS

REGISTERED TRUSTEES OF THE CATHOLIC

ARCHDIOCESE MOMBASA.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Stephen Jumbale & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 23rd March 2017. He states he was employed by the Respondent as a Groundsman/Cleaner for 18 years, beginning May 1997 to 19th October 2015. He was assigned duty at Respondent's Sacred Heart Primary School. He was attacked by thieves, and seriously injured, leading him to be recommended for early retirement by his Doctor. He was retired on 19th October 2015, as shown in the letter of the Headmaster Sacred Heart Primary School, dated 26th February 2016. His last salary was Kshs. 7,150 per month. He avers he was not paid salary for 7 months; gratuity over a period of 18 years worked; and public holidays over the same period. In total he prays for Judgment against the Respondent for an amount of Kshs. 210,924. He prays for release of his Certificate of Service; costs; and interest.

2. There is an Affidavit of Service indicating the Respondent was served with the Notice of Summons and copy of the Statement of Claim. The Respondent did not file any response, and did not attend Court at any time. The Claimant was heard on formal proof, on 13th November 2017.

3. He restated his employment history with the Respondent, and retold the Court about his terms and conditions of service, and the circumstances of his departure from employment, as outlined in his Pleadings.

4. He adopted documents attached to the Statement of Claim as his exhibits. These include: demand letter issued before action; letter of appointment issued by the Catholic Archdiocese Mombasa; medical report from Dr. Jaffar Musa dated 28th December 2015; a petty cash voucher signed by among others Headmaster of Sacred Heart Primary School; and an intercessory letter from the same Officer to the N.S.S.F dated 26th February 2016.

The Court Finds:-

5. There is sufficient evidence to show the Claimant was employed by the Respondent as a Groundsman/Cleaner, for 18 years, beginning 1997, ending 2015. He was lastly paid a salary of Kshs. 7,150 monthly. He left employment by mutual agreement, after he was attacked and injured by thieves, impairing his ability to continue serving.

6. The only aspect of the Claim the Court is not convinced about, is the prayer for Public Holiday pay. The Claimant did not satisfy the Court that he worked on all Public Holidays, for 18 years. He did not give details of the specific Public Holidays, merely giving a number of 10 Public Holidays for each year. He did not persuade the Court that he was at work even on Public Holidays falling within the School vacation. This prayer is not convincingly pleaded and supported in evidence.

7. The Court shall allow his Claim, less the prayer for holiday pay.

IN SUM, IT IS ORDERED:-

A. The Respondent shall pay to the Claimant arrears of salary of 7 months at Kshs. 50,050 and gratuity at 15 days' salary for every complete year of service at Kshs. 68,946- total Kshs. 118,996.

B. Certificate of Service to issue.

C. Costs to the Claimant.

D. Interest allowed at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 16th day of February 2018.

James Rika

Judge