



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 168 OF 2015

(Before Hon. Justice Mathews N. Nduma)

MOSES OMONDI BISERACLAIMANT

VERSUS

CHAIRMAN B.O.M.

ST. LINUS GIRLS HIGH SCHOOL ETAGO.....RESPONDENT

J U D G M E N T

1. The suit is premised on an amended memorandum of claim filed on 13th March, 2017 seeking the following reliefs:-

a. Retirement and terminal benefits for 13 years set out under paragraph 7A of the Amended memorandum of claim in the sum of Kshs.889,116.25.

b. Interest and Costs.

2. The cause of action as stated in the amended memorandum of claim attached documents and viva voce testimony before court is that the Claimant was employed by the Respondent as a night watchman on 18th July, 2002. The Claimant got a letter of appointment on 1st July 2004, erroneously indicating that to have been the year of his employment. That the Respondent deducted NSSF dues from his salary from 2002 but did not remit the same until 1st July 2004.

3. On 7th May 2013, the Respondent wrote a letter to the Claimant expanding his duties to include being school grounds man in addition to being a watchman.

4. The Claimant worked virtually with no rest thereafter since he worked as a grounds man during the day and a watchman at night. He was promised a salary raise but this was no implemented.

5. By a letter dated 19th September 2014, the Claimant gave notice of retirement to the Respondent for he could no longer cope with the overload. Retirement was effective 2nd January, 2015. When Claimant turned up to clear on 2nd January 2015, he was assigned duties of watchman and grounds man. He was however allowed to retire effective 7th January, 2015.

6. The Claimant was however not paid his terminal benefits despite following up keenly the matter. The Claimant involved KUDHEIHA Union who wrote letters on his behalf on 21st January 2015, 2nd March 2015 and 20th March 2015 which were not heeded by the Respondent.

7. On 19th March 2015, the Respondent issued the Claimant a cheque of Kshs.30,047 which the Claimant turned down as inadequate.

8. The Claimant prays to be paid a set out under paragraph 7A of the amended statement of claim which reflects the correct dues owed to him which include service gratuity for 13 years in terms of the Security Sector Regulation calculated at 18 days salary for each year served in the sum of Kshs.148,733, four (4) days unpaid salary in January 2015 Kshs.1,201.20, untaken leave for 30 days Kshs.6,223.60, 78 public holidays worked and unpaid Kshs.46,846.80, unremitted NSSF for 3 years Kshs.9,335.25, underpayments for 13 years Kshs.99,142. Total Claim Kshs.889,116.25.

Defence

9. The Respondent filed a statement of defence to the original memorandum of claim on 26th January, 2017 in which it attached various documents, including a witness statement of one Francis Asogo Obutu, the Chairman, Board of Governors of the Respondent.

10. The Respondent does not deny the particulars of employment of the Claimant as a night watchman, the allocation of extra duties as a grounds man and his retirement with effect from 2nd January 2015 in the filed papers.

11. The Respondent did not also make specific responses to the specific claims of terminal benefits made by the Claimant.

12. The hearing date of 29th January, 2018 was set in open court by Lady Justice Maureen Onyango on 10th July, 2017 in the absence of the Respondent. The hearing notice was served on the firm of Aboki Begi & Co. Advocates for the Respondents on 12th July, 2017 by Mr. Geoffrey Onderi Nyarige a court process server and a return of service with the hearing notice attached duly stamped and signed by Abok Begi & Co. Advocates on 12th July, 2017.

13. The matter proceeded ex parte in the absence of the Respondent or their advocate. The evidence by the Claimant under oath remains wholly uncontroverted.

14. The Claimant has discharged the onus placed on him in terms of sections, 106, 107, 108 and 109 of the Evidence Act , Cap 80 Laws of Kenya by proving his Claims on a balance of probabilities.

15. In the final analysis, the court enters judgment in favour of the Claimant as against the Respondent in the sum of Kshs.889,116.25. The award is payable with interest at court rates from the date of filing suit till payment in full.

16. The Respondent to pay costs of the suit.

Judgment Dated, Signed and delivered this 12th day of April, 2018

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Omwoyo for Claimant

Mr. Begi for Respondent

Chrispo – Court Clerk