



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 291 OF 2014

(Before Hon. Justice Mathews N. Nduma)

JOHN OTIENO OBONYO.....CLAIMANT

VERSUS

KENYA UNION OF POST PRIMARY

EDUCATION TEACHERS (KUPPET).....RESPONDENT

J U D G M E N T

1. The Claimant who had been on suspension with half pay was reinstated to full pay pending the hearing of the suit by a ruling of Radido J delivered on 11th December, 2014.

2. In the Memorandum of Claim filed on 28th October, 2014 and the amended memorandum of claim filed on 3rd April, 2017 the Claimant states under paragraph 3 in both documents that –

“The claimant is at all material facts relevant to this claim employed by the Respondent as the county Executive, Secretary Migori County.”

3. It is not in dispute that this is an elective position in terms of the constitution of the Respondent Union.

4. The Claimant was employed between the period 1st December 2011 to February 2016 at a gross monthly salary of Kshs.175,000. The Claimant earned a net salary of Kshs.96,398.

5. From September 2014, the Claimant was placed on a half pay earning Kshs.34,300.

6. This position was however reversed by the court in its ruling of 11th December, 2014 which restored the full salary of the Claimant.

7. The Claimant seeks payment of net arrear salary from September 2014 to February 2016 in the sum of Kshs.430,129.90.

8. The Claimant seeks interest of the said sum at court rates from 28th October 2014, till payment in full.

9. The Claimant seeks payment of costs.

Amended Memorandum of Response

10. The Respondent admits that the Claimant was an elected Executive Secretary of the Respondent Union, Migori Branch in 2014.

11. The Respondent admits that the Claimant was temporarily suspended from the position on 23rd February 2014, and placed on half pay but the full salary was reinstated by the court on 11th December, 2014.

12. The Respondent admits further that the Claimant was voted out by members in February, 2016.

13. The Respondent denies that the Claimant earned Kshs.175,000 a month stating that all Executive Secretaries of the Respondent Branches, as from 1st August 2011, earned a salary calculated on the number of members of the respective branch.

14. The Respondent produced documents marked "KUJ" showing the salary earned by the Claimant from January to October, 2014. Respondent cites the month of June, 2014 when the Claimant's gross salary was Kshs.129,302 and net pay of Kshs.104,212.
15. The Respondent denies it owes the Claimant any arrear salary and set out under paragraph 10 of the amended memorandum of response a schedule of salaries paid to the Claimant from December 2014, to June 2015.
16. Further, the Respondent pleads that the Claimant was paid Kshs.469,000 from a policy with liberty life insurance upon his end of term.
17. The Respondent prays that the suit be dismissed with costs.
18. The Claimant filed reply to the amended memorandum of response on 5th July, 2017 in which he joined issues with the Respondent.

Determination

19. In the Ruling of the court, delivered on 11th December 2014, the court did not determine the full salary payable to the Claimant but only ordered the Respondent to pay to the Claimant 'full monthly salary pending hearing and determination of the cause on the merits.'
20. The Claimant has not tendered any evidence to show that the Respondent failed to comply with the order of the court to pay his full salary.
21. The actual sum of gross and net monthly salary payable to the claimant between the year 2014 and 2016 is in dispute and the figures are contested in the pleadings and documents filed before court.
22. The burden of proving that there was unpaid arrear salary in the sum of Kshs.430,129, lies on the Claimant.
23. The Claimant did not testify in this suit and the pleadings and annexures thereto were not adopted as evidence before court.
24. In terms of section 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya, the Claimant has failed to discharge the burden placed on him to prove his claim on a balance of probabilities.
25. Accordingly, the suit by the Claimant is dismissed for want of proof.
26. Each party to bear their own costs of the suit.

Judgment Dated, Signed and delivered this 6th day of June, 2018

Mathews N. Nduma

Judge

Appearances

P. D. Onyango for Claimant

Nchoe Jaoko & Co. for Respondent

Chrispo – Court Clerk