



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU
CAUSE NO. 74 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

RAPHAEL OTIENO WAYONGA CLAIMANT

-VERSUS-

THE CHAIRMAN, BOARD OF MANAGEMENT

ST. IGNATIUS LOYOLA SECONDARY SCHOOL–MAGADI RESPONDENT

JUDGMENT

The claimant avers that he was employed as a teacher by the respondent in January 2010 and worked until 5th February 2015 when his employment was terminated. He was never issued with a letter of appointment or a letter of termination. He was not paid terminal dues upon termination. He was teaching History/Government and CRE. He also did remedial lessons for which he was paid Kshs.300 per lesson.

Upon termination of employment the claimant was issued with a clearance form which was signed by all relevant departments except the Principal and Bursar.

The claimant's salary was shs.12,000 throughout the period he worked for the respondent. He was not paid salary for February 2015. He was also not paid his extra lessons taught in July, September and October 2014. For July he was entitled to Kshs.3,600 for September Kshs5,400 and for October Kshs.3,000.

The claimant further states that he was entitled to Kshs.56,900 which was an award for every student who scored between A and B – in the national examinations of 2013.

The claimant prayed for the following remedies in the claim –

- a. Payments of the sum of Kshs.142,100/= being claimant's terminal dues.
- b. Issuance of certificate of service/employment
- c. Costs of this claim together with interest.
- d. Any other relief the court deems fit and just to grant in the circumstances.

The respondent filed a statement of response denying all averments in the claim. The respondent did not call any witness at the hearing.

Determination

The issues for determination are whether the claimant's employment was unfairly terminated and whether he is entitled to the remedies sought.

Unfair Termination

The respondent did not contest the unfair termination. Having not contested the same and going by the claimant's evidence, I find and

declare the termination of employment of the claimant to have been unfair for failure to comply with the requirements of fair procedure as provided in Section 41 of Employment Act and Section 43 on proof of valid reason for termination of employment.

Remedies

(i) Salary in lieu of notice

The respondent in its submissions admits that the claimant is entitled to payment of salary in lieu of notice. The prayer for payment of three months' salary in lieu of notice is baseless as the Employment Act provides for only one month's salary or pay in lieu of notice (Section 35 as read with Section 36 of the Act.)

I award the claimant one month's salary in lieu of notice in the sum of Kshs.12,000.

(ii) Salary for the month of February

The claimant's employment was terminated on 5th February 2018. He is therefore entitled to five days salary in the sum of Kshs.2,000.

(iii) Gratuity/Service Pay

The respondent has conceded to payment of service pay at Kshs.30,000. The claimant having worked for five years is entitled to Kshs.30,000 which I award him.

(iv) Unpaid Remedial Fees for July, September and October 2014

The respondent avers that the documents submitted by the claimant cannot be authenticated. Having failed to submit evidence to controvert the same or the testimony of the claimant, I find that the claimant is entitled to the same which I award him at Kshs.12,600.

(v) Unpaid Teacher's Award for 2013

I find that this prayer has not been proved as the only minute where the issue was raised did not refer to the rate payable to the teachers. The prayer is dismissed.

In summary therefore I enter judgment for the claimant against the respondent as follows –

(i) Pay in lieu of notice kshs.12,000

(ii) Salary for February 2015 kshs.2,000

(iii) Gratuity/service pay kshs.30,000

(iv) Unpaid remedial fees kshs.12,600

TOTAL KSHS.56,600

The respondent shall pay claimant's costs. The decretal sum shall attract interest at court rates from date of judgment.

DATED AND SIGNED AT NAIROBI ON THIS 4TH DAY OF JULY 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 30TH DAY OF JULY 2018

MATHEWS NDERI NDUMA

JUDGE