



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MALINDI
CAUSE NUMBER 31 OF 2018

[Formerly Cause No. 397 of 2015 at E&LRC Mombasa]

BETWEEN

DAVID KIRAGA NZAICLAIMANT

VERSUS

THE BOARD OF GOVERNORS [BOARD OF MANAGEMENT]

MIDA SECONDARY SCHOOL.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Kenga & Company Advocates for the Claimant

The Attorney-General for the Respondent

JUDGMENT

1. The Claimant filed his originating Statement of Claim on 15th June 2015. This was subsequently amended. He filed Further Amended Statement of Claim, on 12th July 2016. He states he was employed by the Respondent as a Teacher, on 3rd May 2010, earning a monthly salary of Kshs. 13,733. He was owed arrears of salary of Kshs. 59,000, as of 12th September 2013. He states this amount has remained unpaid to-date. He prays for Judgment against the Respondent for:-

- a) Arrears of salary at Kshs. 59,000.
- b) Interest from 12th September 2013 till payment is made in full.
- c) Costs.

2. The Respondent filed its Statement of Response to Further Amended Claim, on 8th August 2016. Its position is that the Claimant was engaged as a temporary, Volunteer Teacher. He was only available during the holidays. He was to be paid from fees and donations availed to the School. His exhibited letter of appointment is a forgery. His contract was terminated on account of gross misconduct. He demonstrated gross misconduct before the Board. He boycotted duties assigned to him by the Respondent. The Respondent prays the Court to dismiss the Claim with costs.

3. The Claimant gave evidence and rested his Case, on 10th October 2017. Respondent's Witnesses gave evidence between 17th October 2017 and 8th December 2017, when hearing closed. Evidence for the Respondent, which is common to 4 related Claims, was recorded under Malindi E&LRC Cause No. 30 of 2018, with the consent of the Parties.

4. The Claimant testified he was employed by the Respondent as a Teacher, on 3rd May 2010, earning a salary of Kshs. 13,733 monthly. He

left on 3rd September 2011, to study at Mombasa Pwani Technical. He returned in January 2012. He taught 1st and 2nd Term. He would rejoin the School to teach, whenever he was on holiday. He left for good in September 2013. He was owed arrears of salary of Kshs. 59,000 as of the time he left. He was not paid the agreed salary consistently. He was never paid the full salary. Records of amounts paid are captured in the letters of the Respondent, addressed to Lengo Sacco, through which the Teachers were paid.

5. Cross-examined, Nzai told the Court he had just completed form 4 when he was employed. The School was new. The Board recruited him. He did not know in what job group a Teacher earning Kshs. 13,733 would fall within. He did not have a letter of appointment showing his terms. He was not dismissed. He ceased teaching in September 2013. He did not notify the Respondent he was leaving. He did not desert. Redirected, the Claimant testified he was in Court claiming arrears of salary only, costs and interest.

6. Respondent's Board Treasurer Suleiman Bakari told the Court, Nzai was a Part-time Teacher. He was assisting the School. Suleiman did not have the Claimant's personnel file, and did not know how much salary the Claimant earned. It was possible he was owed arrears of salary. Suleiman testified that the Claimant was not paid his salary in full. On cross-examination, Suleiman testified that he computed dues owed to the Staff. The Claimant was owed Kshs. 59,000 as per computation. Suleiman told the Court this is a big sum.

The Court Finds:-

7. The Claimant was employed by the Respondent as a Part-time Teacher, on 3rd May 2010. He had just completed form 4, and enrolled at a College in Mombasa. He taught whenever he was available. He does not claim service pay, so the question of years completed in service does not arise; he does not claim compensation for unfair termination, and /or notice pay, having left for good on his volition in September 2013; he only claims arrears of salary. The Statement of Response filed by the Attorney-General is in error. This particular Claimant was never alleged to have been involved in gross misconduct as were the other Teachers. The Statement of Response is generalized, on the assumption that facts in each case filed by the Teachers are totally identical.

8. It is conceded in the evidence of the Respondent that the Claimant was a Part-time Teacher, and was owed arrears of salary at the time he left. It is not necessary that the Claimant exhibits a letter of appointment, in light of these concessions. He had an oral contract. There was no written contract produced by the Respondent, contradicting what the Claimant told the Court were his terms of service. There is a document signed by the Board Chairman and the Treasurer, indicating the Claimant was among the Employees of the Respondent, who were owed arrears of salary, as of 12th September 2013. Specifically the Claimant was owed a total sum of Kshs. 59,000.

IT IS ORDERED:-

a) The Respondent shall pay to the Claimant arrears of salary at Kshs. 59,000.

b) Costs to the Claimant.

c) Interest granted at 14% per annum from the date of Judgment till payment in full.

Dated and delivered at Malindi this 20th day of July, 2018.

James Rika

Judge