



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT BUNGOMA**

**CAUSE NO. 19 OF 2018**

**MARK WAFULA.....CLAIMANT**

**VERSUS**

**BOARD OF MANAGEMENT**

**FRIENDS SECONDARY SCHOOL KIBISI.....RESPONDENT**

**JUDGMENT**

1. By a statement of claim filed on 26.2.2018, the claimant seeks the following reliefs:-

- a). One months pay in lieu of notice .....Kshs. 3,000/=
- b). Twelve months compensation for unlawful termination..Kshs. 36,000/=
- c). Leave pay/due .....Kshs. 65,769/=
- d). Service gratuity ..... Kshs. 57,000/=
- e). Salary arrears  
January 1998 to August 2017 ..... Kshs. 905,160/=
- f). Overtime  
21 hours every week for 456 weeks.....Kshs. 143,640/=
- g). Public Holidays worked .....Kshs.83,600/=
- h). House allowance arrears  
January 1998 to August 2017 .....Kshs. 102,600
- TOTAL CLAIM ..... Kshs. 1,396,769/=**

2. The claim is based on facts set out in the statement of claim and a witness statement of the claimant signed on 12.2.18 and filed on 26.2.2018.

3. The claimant was employed by the Respondent on 1.1.98 as a night watchman to guard the Respondent's school.

4. On 23<sup>rd</sup> August 2017, the claimant was summoned to the Principal's office and suspended indefinitely for alleged absence without permission and theft of school property.

5. Claimant reported the matter to the Union on 8.11.2017 requesting to be reinstated in vain.

6. The claimant was not given a show cause letter nor was he called to a disciplinary hearing. He remained suspended and out of work until he filed this suit.
7. The conduct by the Respondent amounted to an unlawful and unfair constructive summary dismissal.
8. The claimant testified under oath and adopted the written statement and the documents annexed to the statement of claim as his evidence in chief.
9. The Respondent was served with the statement of claim and summons to enter appearance on 26.2.18. The same was served on one Zipporah Wafunafu the Bursar of the school.
10. The claimant filed an affidavit of service served by Emmanuel Wanyonyi the process sever.
11. The claim is therefore undefended.
12. The claimant has proved the claims set on under paragraph 7 of the statement of claim on a balance of probabilities and the court enters for judgment in favour of the claimant as against the Respondent as follows:

*a). One months salary in lieu of notice Kshs. 3,000/=*

*b). Three (3) years salary in lieu of leave kshs. 9,000/=*

*(The rest of the claim is time barred).*

*c). Service gratuity kshs. 57,000/=*

*d). Salary arrears for 3 years (the rest of the claim is time barred)*

*Kshs. 3,000/= x 12 months x 3 years = Kshs. 108,000/=.*

*e). There is no evidence to support the claim for overtime and the same is dismissed.*

*f). There is no evidence to support the claim in respect of public holidays worked and the same is dismissed*

*g). Unpaid house allowance at the rate of 15% of Kshs. 3,000/= for three years, (the rest of the claim being time barred).*

*( 3,000 x 15% x 12 x 3)*

*Kshs. 16,200/=.*

### **Compensation**

13. The claimant was suspended indefinitely and was not subjected to any form of disciplinary process. The conduct by the claimant amounted to unlawful and unfair constructive dismissal in violation of Sections 41,43 and 45 of the Employment Act 2007. The claimant is entitled to compensation in terms of Section 49 (1) (c) and 49 (4) of the Employment Act, 2007.

14. In this respect, the claimant was constructively dismissed without payment of any terminal benefits. Claimant was under paid for a long time and was owed large sums of arrear salary, including house allowance. In short, the Respondent abused the services of the claimant and engaged in unfair labour practice. Most of the claims by the claimant are time barred.

15. He has suffered immense loss and injury.

16. This is an appropriate case to award the claimant the maximum 12 months salary in compensation for the unlawful and unfair dismissal in the sum of kshs.(3,000x12) 36,000/=.

17. In the final analysis judgment is entered in favour of the claimant as against the Respondent for a sum of kshs. 220,200/=.

The amount to be paid with interest at court rates from date of filing suit till payment in full.

18. The Respondent to pay costs of the suit.

**Dated at Bungoma this 28<sup>th</sup> day of September, 2018**

**HON. MATHEWS NDERI NDUMA,**

**JUDGE**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**BUNGOMA.**

**Appearances:-**

*Mr. Were for Claimant*

*Mr. Chrispo Aura – Court clerk.*