



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT BUNGOMA

CAUSE NO. 18 OF 2018

PROTUS SIFUNA.....CLAIMANT

VERSUS

BOARD OF MANAGEMENT

SIANGWE GIRLS SECONDARY SCHOOL.....RESPONDENT

JUDGMENT

1. The suit was brought vide a statement of claim dated 23.2.18 on the 26.2.2018 seeking for the following reliefs;-

a). Two months salary in lieu of notice Kshs. 7,220/=

b). 12 months compensation for unlawful termination..... Kshs. 43,320/=

c). Leave pay/due..... Kshs. 11,663/=

d). Salary arrears

July 2014 to December 2017..... Kshs. 265,444/=

e). Service gratuity Kshs. 14,440/=

f). Overtime

21 hours every week for 144 weeks Kshs. 54,583/=

g). Public Holidays worked Kshs.15,884/=

h). House allowance arrears

July 2014 to December 2017 Kshs. 36,000/=

TOTAL CLAIM Kshs. 448,554/=

2. The suit is supported by a witness statement recorded on 23.2.2018 and filed on 26.2.2018. The same was adopted under oath as evidence in chief by the claimant.

3. The claimant further relies on the annexed documents to the claim.

4. The statement of claim and summons to enter appearance were served on 28.2.18, on the school bursar M/s Metrine Masika. The process

server Mr. Emmanuel Wanyonyi filed an affidavit of service on 26.3.2018.

5. The claim is undefended and the claimant has proved the following facts on a balance of probabilities.
6. That he worked for the Respondent as an office messenger from July 2014 upto to August 2015 when he was deployed to the security department.
7. The initial salary was Kshs. 6,000/= but was reduced to Kshs. 3,610/= upon deployment.
8. The claimant worked diligently until 19.2.2017 when the Respondent suspended the claimant on account of attending to duties late.
9. The claimant received a letter dated 11.1.2018 inviting him to attend a Board of Management meeting on 12.1.2018. The claimant attended.
10. The Board recommended the claimant be reinstated immediately however the Respondent neglected and or refused to implement the directive by the Board of Management but instead the claimant was invited to attend an interview by a letter dated 15.1.2018.
11. The claimant was interviewed and was informed by the Respondent that he did not qualify to be employed.
12. The claimant states that the conduct by the Respondent was unfair labour practice and amounted to constructive dismissal of the claimant without payment of terminal benefits.
13. The claimant has proved that he was unlawfully and unfairly constructively dismissed from employment in violation of Sections 41,43 and 45 of the Employment Act, 2007.
14. The claimant is entitled to compensation in terms of Section 49 (1) (c) and 49(4) of the Act.
15. The claimant had served for three and a half years. Was unfairly treated and let go in a deceptive and demeaning manner.
16. The claimant suffered loss and damage and the court awards him six (6) months salary in compensation for the unlawful dismissal in the sum of Kshs. 21,660/=.
17. The court awards the claimant reliefs proved on a balance of probabilities as follows:-
 - a). ***One months salary in lieu of notice kshs. 3,610/=.***
 - b). ***Kshs. 11,063/= in lieu of leave days not taken.***
 - c). ***Kshs. 14,440/= service gratuity.***
 - d). ***Kshs. 36,000/= being house allowance at 15% of basic salary.***
18. The claim for arrears salary not paid, overtime and public holidays worked have not been sufficiently proved and are disallowed.
19. In the final analysis judgment is entered in favour of the claimant as against the Respondent as follows:-
 - a). ***Kshs. 21.660/= being 6 month's salary in compensation.***
 - b). ***Kshs. 3,610/= in lieu of notice.***
 - c). ***Kshs. 36,000/= house allowance.***
 - d). ***Kshs. 14,440/= service gratuity.***
 - e). ***Kshs. 11,663/= in lieu of leave days not taken.***

Total amount Kshs. 87,373/=.

 - f). ***Interest at court rates from date of filing suit till payment in full.***
 - g). ***Costs of the suit.***

Dated at Bungoma this 28th 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.