



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 333 OF 2015

(Before Hon. Justice Mathews N. Nduma)

HENRY NYABUTO MOMANYI.....CLAIMANT

VERSUS

THE CHAIRMAN BOARD OF

MANAGEMENT NYAMONYO HIGH SCHOOL.....RESPONDENT

J U D G M E N T

1. The suit was brought vide a Statement of Claim on 8th September, 2015 seeking:-

(i) A declaration that the Claimant's dismissal was unlawful and an award of damages for the dismissal.

(ii) Payment of underpayments in the sum of Kshs.2,723.60 per month for 53 months and costs of the suit.

2. The claim is supported by a list of documents; a witness statement by the Claimant filed on the even date, and oral testimony under oath by the Claimant.

3. The Statement of claim and Notice of Summons were served

on the Respondent on 21st September, 2015 and a Return of Service sworn by John Patrick Onyango a duly qualified process server filed on 6th November, 2015.

4. The Respondent did not enter appearance nor file a statement of defence.

5. The matter proceeded to formal proof on 23rd February, 2018.

6. The Claimant has proved the case of unlawful and unprocedural dismissal on a balance of probabilities. The Claimant was employed on 1st October, 2010 as a night watchman and worked diligently and continuously when he was summarily dismissed without notice, notice to show cause or a disciplinary hearing. He was falsely accused of taking poison which allegation he denied.

7. For the 53 months he worked, he was paid Kshs.3,500 per month instead of the minimum statutory wage of Kshs.6,223.60. The Claimant is entitled to payment in respect of the underpaid salary for the period.

8. The Claimant had served for over four (4) years and is entitled to compensation under section 49(1)(c) of the Employment Act, as read with sub-section (4) for the unlawful dismissal. He wished to continue working; was dismissed for no valid reason; was not paid any terminal benefits including gratuity in terms of security wage order upon dismissal. The Claimant suffered loss and damage. The court awards him five (5) months salary as compensation for the unlawful and unfair dismissal.

9. Payment in lieu of notice is not claimed and is not awarded. Similarly gratuity in terms of security wage order is not claimed and is not awarded.

10. Judgment is entered in favour of the Claimant as against the Respondent as follows:-

i. Kshs.31,118 in compensation for the unlawful dismissal.

ii. Kshs.144,350.80 arrear salary being underpayments for 53 months.

Total award Kshs.175,468.60.

iii. Costs of the suit.

Judgment Dated, Signed and delivered this 31st day of October, 2018

Mathews N. Nduma

Judge

Appearances

Mose Nyambega for Claimant

Chrispo – Court Clerk