



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 344 OF 2014

(Before Hon. Justice Mathews N. Nduma)

HESBON BENARD KUTWA.....CLAIMANT

VERSUS

SECRETARY EBBUSAMBA PRIMARY

SCHOOL BOARD OF GOVERNORS.....RESPONDENT

J U D G M E N T

1. The suit was brought by a Memorandum of Claim on 5th December, 2014 seeking payment of retirement benefits; underpayments for the period between the year 2009 and 2011; award accrued and unpaid leave days for 37 years of service. The total claim is for Kshs.383,840 set out under paragraph 7 of the Memorandum of Claim.

2. The Respondent was served with the Memorandum of Claim and Summons to Enter Appearance by Mr. Ochami Dishon a process server on 19th January, 2017. A return of service was filed on 1st October, 2015.

3. The Respondent failed to enter appearance nor file a statement of response notwithstanding that the secretary of the Respondent school was severally served with mention notices and invited to take a hearing date but failed and/or neglected to attend court at all.

4. The matter proceeded to formal proof on 5th July, 2018. The Claimant testified under oath in support of the particulars of claim set out in the Memorandum of Claim. The Claimant relied on the documents annexed to the Memorandum of Claim to prove his case.

5. The Claimant has proved on a balance of probabilities that he worked for the Respondent for 37 years between 20th January, 1976 to 31st January, 2014. That as a security guard, he earned a salary of Kshs.2,500 throughout this period. The Claimant was not paid house allowance throughout this period. However he has only claimed under payments for the period from May 2009 to May 2011 in terms of the Legal Notices cited in the Claim which include, Legal Notice No. 69 of May 2009; Legal Notice of May 2010; Legal Notice No.6477 of May 2011. These are wage orders that provided minimum wage for security guards. The Claimant was not paid service gratuity for the 37 years completed service and claims Kshs.100,981 in respect thereof.

6. The Claimant also seeks payment of Kshs.163,140 in respect of 21 days leave not granted for each of the 37 years served.

7. The court finds that the Claimant has proved on a balance of probabilities the following items in respect of which judgment is entered:-

(i) Kshs.100,991 Service Gratuity calculated at 15 days salary for each completed year of service.

(ii) Kshs.51,709 under payments for the period 2009 to 2011.

(iii) Payment in lieu of leave for six (6) years 32,754. The rest of the claim is time barred.

Total award Kshs.185,454.

(iv) Interest at court rates from date of filing suit till payment in full.

(v) Costs of the suit.

Judgment Dated, Signed and delivered this 25th day of October, 2018

Mathews N. Nduma

Judge

Appearances

M/s Imbaya for the Claimant

Chrispo – Court Clerk