



**Macharia v School Management Board Our Lady Orote Boarding Primary School  
(Cause 17 of 2018) [2018] KEELRC 2607 (KLR) (20 December 2018) (Judgment)**

*Peter Omondi Macharia v School Management Board  
Our Lady Orote Boarding Primary School [2018] eKLR*

Neutral citation: [2018] KEELRC 2607 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE 17 OF 2018**

**MN NDUMA, J**

**DECEMBER 20, 2018**

**BETWEEN**

**PETER OMONDI MACHARIA ..... CLAIMANT**

**AND**

**THE SCHOOL MANAGEMENT BOARD OUR LADY ORORE BOARDING  
PRIMARY SCHOOL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant seeks compensation for unlawful dismissal and payment of terminal benefits set out under paragraph 13 of the Claim as follows:-
  - i) One month salary in lieu of notice Kshs.13,100.
  - ii) Refund of unremitted NHIF and NSSF deductions Kshs.15,200.
  - iii) Service pay calculated at 15 days salary for each completed year of service for two years Kshs.13,100.
2. The claim is undefended the Respondent having failed to enter appearance nor file a statement of defence despite service of summons to enter appearance and statement of claim on 31<sup>st</sup> January, 2018. Return of service was filed on 9<sup>th</sup> February, 2018 by Jackson Ngugi, a court process server.
3. The Claimant testified under oath and relied on a witness statement dated 6<sup>th</sup> December, 2017 in which he has detailed the facts of the case.
4. The Claimant further relies on his pleadings and annexures '1' to '6' to the statement of claim.



5. The Claimant was employed by the Respondent on 8<sup>th</sup> September, 2005 as a teacher and was not given a letter of appointment. On 11<sup>th</sup> May, 2006 he was appointed Deputy Head Master. On 4<sup>th</sup> January, 2017, Claimant was asked to sign a contract of employment indicating he was being hired as a teacher for the year 2017 at a monthly salary of Kshs.13,100.
6. The Claimant states that he performed very well as a teacher and Deputy Head Teacher throughout his employment and got certificates of appreciation in 2014, 2015, 2011, 2010, 2009 and 2007. These are produced and marked 'App.3'. On 4<sup>th</sup> September, 2017 the Claimant received a letter of summary dismissal. The letter said that the dismissal followed administrative resolve on his conduct of service delivery. He was to be paid salary for August 2017 in the sum of Kshs.11,690.
7. The Claimant states that no due process was followed before the summary dismissal but he only received a text message from the headmaster informing him of the decision to demote him from the position of Deputy Head Master on 8<sup>th</sup> January, 2017 and upon closure of the school, and re-opening on 28<sup>th</sup> August 2007, he simply realized that his name was not in the duty roaster and when he inquired from the headmaster the reason for the omission non was forthcoming. On 4<sup>th</sup> September, 2017 he got a letter of dismissal without any notice to show cause or being called to a disciplinary hearing.
8. The court finds that the summary dismissal of the Claimant violated sections 41, 43 and 45 of the Employment Act. The dismissal was not for a valid reason and a fair procedure was not followed in dismissing him.
9. The court finds that the Claimant is entitled to compensation in terms of section 49(1) (c) as read with sub-section (4). In this regard, the Claimant was not paid terminal benefits upon dismissal. The Claimant had served the Respondent diligently for a period of about 15 years. He had no disciplinary record. He was very poorly paid as a teacher earning Kshs.13,100 as at the time of dismissal. The Claimant suffered loss and damage upon loss of job unlawfully and unfairly. The court considers the equivalent of twelve months salary in the sum of Kshs.157,200 to be the appropriate remedy in the circumstances of the case.
10. The court also awards the Claimant one month salary in lieu of notice in the sum of Kshs.13,100.
11. The claim for unremitted NHIF and NSSF deductions is also granted in the sum of Kshs.15,200.
12. In the final analysis Judgment is entered in favour of the Claimant as against the Respondent as follows:-
  - a) Kshs.152,200 compensation.
  - b) Kshs.13,100 in lieu of one month notice.
  - c) Kshs.15,200 being NHIF and NSSF refund.  
Total award Kshs.180,500.
  - d) The award to be paid with interest at court rates from date of filing suit till payment in full.
  - e) The Respondent to pay costs of the suit.

**DATED, DELIVERED AND SIGNED IN KISUMU THIS 20<sup>TH</sup> DAY OF DECEMBER, 2018**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**



Mr. Rakoro for Claimant

Chrispo – Court Clerk

