



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 96 OF 2012**

**GORDON OGOLLA ODHIAMBO.....CLAIMANT**

*VERSUS*

**THE BOARD OF GOVERNORS OF ST. MARY'S SCHOOL, YALA.....RESPONDENT**

Mr. Ondongo for claimant

M/S Omondi for respondent

**JUDGMENT**

1. The claimant was employed by the respondent school as a driver on a three year contract from 1<sup>st</sup> November 2008. He served until 31<sup>st</sup> November 2011.
2. The claimant exceeded the contract period by one month.
3. The respondent states that this was an oversight on its part and when this was realized by the respondent, the claimant was given termination notice on 16<sup>th</sup> November 2011 and the contract expired on 30<sup>th</sup> November 2011.
4. That at the time of termination the claimant earned a monthly salary of Kshs.30,621.
5. The claimant replied to the notice of termination on 29/11/2011, requesting that his contract be renewed but the request was declined by the respondent.
6. The claimant was given certificate of service.
7. The claimant seeks compensation for unlawful and unfair termination of employment and payment of one month salary in lieu of notice.

**Determination**

8. The issues for determination are:-

- (i) whether the contract of employment between the claimant and respondent expired by effluxion of time or the employment was unlawfully terminated by the respondent;

(ii) what remedies if any the claimant is entitled to.

**Issue i**

9. Going by the finding of Lady Justice Hellen S. Wasilwa in **Cause No. 2174 of 2012, Agnes Naliaka Masika Vs. Maendeleo ya Wanawake Organisation**, coupled with the admission by the respondent that the claimant continued working after the expiry of the three (3) year contract and was indeed paid salary for work done outside the contract period, the contract of service between the claimant and respondent had converted to a permanent employment protected under the Employment Act, 2007. Accordingly the same could only be terminated for a valid reason in terms of section 43 of the Act, and in terms of a fair procedure as provided under section 41 of the Act. This was clearly not the case and therefore the termination was wrongful and unfair in contravention of section 45 of the Act.

10. The claimant was entitled to payment of salary in lieu of one month notice and the court awards the claimant Kshs.30,621 in lieu of notice.

**Compensation**

11. The claimant had a three (3) year contract, which was renewable. The claimant did not have legitimate expectation to serve beyond the three year contract since renewal was at the discretion of the respondent.

12. For this reason, the court awards the claimant two (2) months salary as compensation for the unlawful termination of employment the respondent having inadvertently allowed the work by the claimant to spill over the agreed term of contract, in the sum of Kshs. 61,242.

**13. In the final analysis, Judgment is entered in favour of claimant as against the respondent as follows;**

**a) Kshs. 61,242, compensation.**

**b) Kshs. 30,621 in lieu of notice.**

**Total award Kshs. 91,863.**

**c) Award in (a) above is with interest at court rates from date of Judgment whereas the award in (b) is with interest from date of filing suit.**

**d) Costs to follow the outcome.**

**Dated and Signed at Nairobi this 18<sup>th</sup> day of August, 2017.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**

**Dated, Delivered and Signed at Nairobi this 18<sup>th</sup> day of August, 2017.**

**JORAM NELSON ABUODHA**

**JUDGE**

**Delivered in the presence of:**

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