



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 154 OF 2016**

*(Before D. K. N. Marete)*

VITALIS ODONGO OKUMU.....CLAIMANT

VERSUS

KUDHEIHA.....RESPONDENT

**JUDGEMENT**

This matter was originated by way of a Memorandum of Claim dated 3rd November, 2016. The issue in dispute is therein cited as;

- a) Failure to represent the claimant in a labour dispute despite reports of the same being made by the claimant to the respondent.*
- b) Compensation for loss of opportunity to sue the claimant's former employer for wrongful termination.*

The Respondent in a Memorandum of Response to the claim dated 7th December, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that at all material time to this cause, he was employed and served in various capacities at St. Ignatius Loyola, Mawego Girl's Secondary School and was a union member of the respondent.

It is the claimant's further case that on 10th August, 2009 his services were terminated without notice whereas he reported the matter to the respondent for action and this was agreed on *inter parties*.

The claimant's further case is that having reported the matter to the respondent and provided her with the relevant documents, he never heard from her again

and on follow up, he was informed that he would be informed at the appropriate time.

The claimant's other case is that on or about the year 2011, he was informed by the respondent that attempts to negotiate with the employer had backfired and the matter would be filed in the industrial court.

The claimant further restates his case as hereunder;

12. *The claimant avers that he continued to unsuccessfully pursue his claim with the respondent until sometime in October, 2016, when he called the respondent for an updated on his case, he was told that his file had gone missing in the offices of the respondent.*

13. *The Claimant's further investigation of the matter revealed that the respondent did not file the matter in court as promised despite advice from the Ministry of Labour to the respondent to file the matter in court.*

14. *The claimant avers that he then sought legal opinion from his lawyers who advised him that he (his) case was time barred and cannot be pursued against the employer after three years following the date of termination.*

He prays as follows;

*a. Declaration that the claimant was entitled to representation by the respondent in settling the labour dispute that arose following the termination of the claimant from employment on 10<sup>th</sup> August, 2009.*

*b. Declaration that the respondent is liable to compensate the respondent for the loss suffered due to failure on the part of the respondent to execute their duty owed to the claimant.*

*c. Compensation in damages.*

*d. In the alternative, compensation in terms of what the claimant would have been awarded against his employer, if the respondent had filed the suit against unlawful termination of the claimant; and*

*e. Costs*

The Respondents case is that the claimant's case was pursued up to the level of conciliation but is unclear of what transpired at this level. She also casts a shadow on the viability of the claimant's case which she deems to have been unworthy or unmerited of further pursuance.

The issues for determination are;

1. Whether the claimant establishes a case for award of damages for negligence?

2. The award of damages.

3. Who bears the costs of the case?

The 1st issue for determination is whether the claimant establishes a case for award of damages for negligence? The claimant raises a case of lack of appropriate management and representation on the part of the respondent union. This is not rebutted in defence or at all. Instead, the respondent in her detailed defence fails to answer the claimants concerns of negligence and inertia on her part.

The respondent attempts to install a defence on grounds that the claimants matter may not have been worthy of pursuance at the next level due to his conduct in the matter. This was, to her, a weak case bordering on gross misconduct and therefore a likelihood of failure in court. That is why she did not pursue it at that level.

The parties filed their respective written submissions in support of their cases but these did not fundamentally differ with their pleadings and witness statements.

In all, the claimant establishes a case of negligence which the respondent does not come out in rebuttal. The claimant's case is a display of mismanagement and lack of adequate attention by the respondent and this is not explained to any degree of adequacy by the said respondent. She does not answer as to why

she did not file a claim in court on behalf of the claimant. I therefore find a case of negligence of duty by the respondent and hold as such. And this answers the 1st issue for determination.

The 2nd issue for determination is the award of damages to the claimant. I have not had the privilege of hearing the claimant's case for wrongful termination of employment and therefore would not know which way it would go or what would come out of it. However, this is an established case of negligence by a party involved in a filial relationship with the other. The respondent was always duty bound to serve the claimant in a transparent, inclusive and involving manner. She did not.

This is a disturbing matter. It is a case in its own category, unless we are told that this kind of cases go unpronounced or unnoticed. Cases where trade unions or any other employer/employee federations ignore or fail to perform their due roles or labour relations should be abhorred and condemned in the strongest terms. This should not recur.

I am therefore inclined to allow the claim and award damages as follows;

(i) General damages for negligence.....Kshs.40,000.00

(ii) Costs of the case .....Kshs.20,000.00

Delivered, dated and signed this 17th day of October 2017.

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Juma instructed by Juliet Juma & Company Advocates for the Claimant.
2. Mr. Dolo instructed by Onyango Dolo & Company Advocates for the Respondent.