



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAKURU
CAUSE NO. 167 OF 2015

DANIEL WACHIRA

CLAIMANT

v

BOARD OF MANAGEMENT, OL-JORO

OROK SECONDARY SCHOOL

RESPONDENT

JUDGMENT

1. In a Memorandum of Claim lodged with the Court on 8 June 2015, Daniel Wachira (Claimant) alleged that the Board of Management of Ol-Joro Orok Secondary School (Respondent) breached his contract of service/ unfairly terminated his employment. He sought various reliefs.
2. On 3 July 2015, Mr. Kirui, Senior Litigation Counsel for the Respondent sought leave to file a *Response* out of time and the Court directed him to file a *Response*/witness statements and documents.
3. The *Response, witness statements and documents* were not filed by 8 March 2017 (nearly 2 years after Court directive) when the Claimant requested the Court to fix a hearing date.
4. The Court therefore scheduled hearing for 9 October 2017 and the Claimant was directed to serve a hearing notice.
5. According to an affidavit of service filed in Court on 9 October 2017, a hearing notice was served upon the Attorney General on 13 March 2017. The notice was acknowledged.
6. However, when the Cause was called out for hearing on 9 October 2017, the Respondent and the Attorney General were not in Court and being satisfied with the service of hearing notice, the Court allowed the hearing to proceed.
7. The Respondent had meanwhile filed a *Response* on 20 September 2017 without obtaining leave of Court (the *Response* consisted of bare denials and putting of the Claimant to strict proof).
8. While testifying, the Claimant stated that he was employed as a night guard and used to report for work at 6.30pm and leave at 6.30am thus entitled to overtime but the wage he was getting did not include overtime pay. He sought overtime of Kshs 65,816/-.
9. The Claimant also stated that he was paid Kshs 6,000/- per month, below the prescribed minimum wage of Kshs 10,116/- for night guards, thus being underpaid by a total of Kshs 113,539/-.

10. He further testified that he did not go on annual leave. He sought Kshs 18,989/- on account of the leave.

11. As regards separation, the Claimant stated that on 18 December 2014, robbers attacked the school and he was injured necessitating sick off (his fellow guard was killed during the robbery).

12. The School Principal gave him off to recover and when he resumed in February 2015, the Principal called him to the office where he found the Deputy Principal and Chair of the Board wherein he was informed that his services were no longer required. No notice or reasons were given for the decision.

13. However after the dismissal, another guard was recruited in his place.

14. The testimony by the Claimant remaining unchallenged and/uncontroverted and considering that the Respondent did not appear in Court to discharge the burden placed upon employers by sections 41, 43 and 45 of the Employment Act, 2007, the Court can conclude that the termination of employment was unfair.

15. Having failed to file produce employment records in terms of sections 10 and 74 of the Employment Act, 2007, the Court will also find for the Claimant in respect of overtime and annual leave and service pay.

Conclusion and Orders

16. The Court finds and holds that the termination of the Claimant's employment was unfair and that the Respondent breached the employment contract and laws on remuneration and awards him

(a) 1 month pay in lieu of notice Kshs 10,116/-

(b) Service pay Kshs 14,610/-

(c) Untaken leave Kshs 18,989/-

(d) Compensation Kshs 121,392/-

(e) Overtime Kshs 65,816/-

(f) Underpayments Kshs 113,539/-

TOTAL Kshs 344,462/-

17. Claimant to have costs on half scale.

Delivered, dated and signed in Nakuru on this 8th day of December 2017.

Radido Stephen

Judge

Appearances

For Claimant Ms. Wachira instructed by Wanjiru Wachira & Co. Advocates

For Respondent Attorney General

Court Assistants Nixon/Martin