



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
OF KENYA AT NAIROBI

CAUSE NO. 1 OF 2014

PETER MAINA MWANIKI.....CLAIMANT

VERSUS

PCEA SILANGA HIGH SCHOO.....1ST RESPONDENT

PCEA KIBERA PARISH.....2ND RESPONDENT

JUDGMENT

1. The Claimant filed suit on 3rd January 2014 wherein he sought salaries and arrears. The Claimant averred that by letter of 3rd December 2006, the Respondents employed the Claimant as their deputy head teacher upon the following terms:- monthly salary Kshs. 20,000/-, house allowance Kshs. 6,000/-, annual increment Kshs. 1,000/-, annual travelling allowance Kshs. 30,000/-. He averred that in accordance with the said agreement commenced working for the Respondents on 1st January 2007 and continued for 39 months when his contract was terminated. He further averred that the Respondent owed him Kshs. 877,500/- being salary arrears – Kshs. 527,500, house allowance Kshs. 234,000/-, annual increment 26,000/- and travelling allowance Kshs. 90,000/-. He thus sought judgment against the Respondent for

- a. Kshs. 877,500/-,
- b. costs of the suit
- c. interest on a) and b) above
- d. exemplary damages.

The Claimant attached a statement and documents in support of his case.

2. The Respondents filed a statement of defence on 17th November 2014. In it, the Respondents denied preparing or executing the alleged agreement dated 3rd December 2006 and stated that by that date, PCEA Silanga High School was not in existence. The Respondents stated that the employment, development and administration of PCEA Silanga High School are in the hands of the Board of Governors of the school which had not been sued by the Claimant. The Respondents stated that the Claimant has never been the deputy head teacher of PCEA Silanga High School. The Respondents averred that it did not owe the Claimant the sum of Kshs. 877,500/- or any other sum at all. The Respondents thus sought that the Claimant's suit be dismissed with costs. After interlocutory judgment was entered despite the defence filed, another firm of advocates sought leave to file defence and the leave was granted and the

interlocutory judgment set aside. In the new defence filed, the Respondent's asserted that the Claimant was engaged as a volunteer teacher and not as a salaried employee and that the Claimant was only entitled to a monthly stipend of Kshs. 1,000/-. The Respondents averred that they did not offer any letter of employment to the Claimant and that the letter and contract of employment had been falsified with the intention to mislead the Court. The Respondents stated that the Claimant was never dismissed from his work but that the Claimant left on his own volition as he got another job as a probation officer. The Respondents denied all the claims raised by the Claimant with regards to any pending dues and averred that all stipend sums owed to the Claimant had been paid in full. The Respondents thus sought that the Claimant's case be dismissed with costs.

3. The suit was heard on 19th November 2014, and the judgment reserved for 16th December 2014. The Claimant testified that he was a probation officer attached to Marsabit County probation office. He stated that he had been contracted on 3rd December 2006 by the 2nd Respondent to teach at the 2nd Respondent as a deputy head teacher. He testified he was to earn Kshs. 20,000/- as a monthly salary, Kshs. 6,000/- house allowance and Kshs. 1,000/- per year as annual increment effective January of each year. He stated that he worked from 1st January 2007 but when it came to payment he was paid Kshs. 10,000/- only. He testified that he was informed by Geoffrey Kivindu that the school had issues and that money from the US and UK donors was held up. He was told he would be paid but was not. He stated that he worked for 29 months and at times received nothing and that the most he got was Kshs. 10,000/- a month. He testified that his salary accrued to Kshs. 527,000/-, house allowance accrued to Kshs. 234,000/- since he was not housed at the school. He stated that the annual increment accrued to Kshs. 26,000/- for those months while travelling allowance accrued to Kshs. 90,000/- for the 39 months he had worked for the school and the total came to Kshs. 877,500/-. He testified that this is what he claimed from the church and the school and that the church was reluctant to pay. He stated that he had been demanding the money since 2007 and was forced to seek redress from Court through the claim. He thus sought payment of the sum of Kshs. 877,500/-, costs of the suit plus interest and exemplary damages.

4. The Respondents moved Court on the 10th of December 2014 and arrested the delivery of judgment and after hearing both parties, the Court set aside the proceedings of 19th November 2014 and the case was reset. The Claimant testified afresh on 4th May 2015, and he also called a witness Zack Ouma. He stated that he was employed by the Respondent as a deputy teacher and was not paid his dues hence the suit in Court. The witness stated that he was also a former employee and was paid Kshs. 4,000/- at start and later was paid Kshs. 8,000/- a month. He did not know how much the top teacher earned.

5. The Respondent called a few witnesses who testified on 18th May 2016 and 22nd June 2016. The first was Daniel Lukorito Misiko who testified that he was acting deputy head teacher when the Claimant was engaged in May 2007. He stated that problems with the Claimant started when the Claimant began telling the students stories about intimate sessions the Claimant had had with the Claimant's wife at the expense of teaching. He stated that they were all volunteer teachers and earned a token of Kshs. 10,000/- a month but his was raised to Kshs. 15,000/- by the time he left. He stated they were about 9-10 volunteer teachers and that the school was sponsored by PCEA Kibera Parish in partnership with a parish in Scotland. He testified that at the time he left there were 73 or 74 students and those who could afford fees paid Kshs. 17,600/- per year. On being questioned by the Claimant he stated that the Claimant was approached as a result of there being no Kiswahili teacher. He stated that he was owed Kshs. 59,500/- as per the document that the Claimant had been asked to prepare. The next witness was Geoffrey Njoroge who testified that he was a planner by profession and was appointed as the Chairman of the Board of Trustees of the School in January 2013. The school is located in Kibera at a place called Silanga estate and the objective is to see if they could facilitate and help students from the slum attain education. He stated that sometimes in 2014 he was notified of an issue relating to an alleged debt of Kshs. 877,500/- owed to the Claimant. He asked the auditor to undertake an audit and after doing so it emerged that some of the claims made by the Claimant were not genuine and the school declined to pay. He testified that the school had a weak financial base and the volunteer teachers were paid a token of between Kshs. 8,000/- and Kshs. 10,000/-. In cross examination by the Claimant he testified that there was no information on the Claimant's employ at the salary he claimed. He stated that the Claimant was not a salaried teacher but a volunteer as the vouchers presented showed and that from the documents in the office it could not be established there was

an amount owed to the Claimant. The last defence witness was Isaac Irungu Mwangi who testified that he was a preacher and one of the founders of the 1st Respondent. He testified that the Claimant was not employed by the 2nd Respondent but was a volunteer at the 1st Respondent and was only entitled to a stipend of Kshs. 10,000/- a month. He stated that the letters the Claimant had produced as employment letters were forgeries as the moderator never employs staff. He reported the matter to the police and was given an OB No. 10/16/12/2014 at KHN Police station. In cross examination by the Claimant he testified that the Claimant was not the deputy head teacher and that the position was held by Mr. Misiko. He stated that the document the Claimant was using to base his claim on outstanding payments was a forgery. He testified that the Claimant was only paid a token of Kshs. 10,000/- a month.

6. The parties were to file submissions and the Respondents submissions were filed on 21st July 2016. There were no submissions on the file on behalf of the Claimant at time of writing the judgment. The Respondent submitted that the Claimant was not to be believed as he had previously misled the Court and was found to have lied about the taxi charges to Marsabit. The Respondent submitted that the Claimant's case was also time barred as it was brought outside the statutory limit and was therefore one against which Section 90 of the Employment Act applied. Reliance was placed on the Court of Appeal decision in the case of **E. Torgbhor v Ladislaus Odongo Ojuok [2015] eKLR** and the case of **Fred Mudave Gogo v G4S Security Services (K) Ltd [2014] eKLR**.

7. Limitation has been cited as a bar to the suit. The Court would of necessity need to address the issue before rendering a determination on the facts as the law is clear. If there is limitation the suit is bad and ought to be dismissed *ex debito justitiae*. Section 90 of the Employment Act provides as follows:-

90. Notwithstanding the provisions of section 4 (1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

8. The limits imposed by statute are that a suit, in which there is a dispute in a contract for employment, should be filed within 3 years of the cause of action accruing. In the case of **Fred Mudave Gogo v GS Security Services (K) Limited [2014] eKLR**, Mbaru, J. held as follows:-

It cannot be denied that the cause of action herein is based on a contract of employment. The Claimant's employment was terminated on 8th August 2008, a period over 3 years from the date of filing this claim in the Industrial Court on the 5th June 2013 and therefore by operation of the law, the claim had already lapsed. There are no good grounds advanced for the delay in causing the claimant/applicant from filing the claim in good time.

This is not a mere technicality as it touches on the substance of the claim and a fundamental flaw if not addressed before parties file their claims. This time can be extended upon the Court being moved by a party who on good grounds finds themselves under this circumstance. That is why the law exists to assist parties who for good reasons are unable to come to court in good time. This was not the case here.

*The claim therefore does not conform to the mandatory time limitations. It must fail. **The preliminary objection is upheld. With that I dismiss the claim dated 5th June 2013. The respondent had not filed their defence and thus each party to bear their own costs.***

9. The Courts have consistently held that where a cause of action has accrued the limitation imposed by statute is meant to *protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest. In this case, the Claimant in his verifying affidavit assigns his date of termination as 24th January 2011. The Claimant's tabulation of dues attached to his claim show that he had claims only up to February 2010. In my view, his accrual of cause of action was in 2010 circa February and even if*

the outer limit is taken the accrual of cause of action would be 31st December 2013. The suit herein was filed on 3rd January 2014 which was past the limitation period. The claim was thus time barred and is fit for striking out with costs to the Respondents.

10. Even if the Court were to determine the case on the facts adduced, the Claimant testified that he was employed by the Respondents as a deputy head teacher. The Respondents brought a witness who stated that he was the acting deputy head teacher when the Claimant reported. He was emphatic that the Claimant was a volunteer teacher earning a stipend of Kshs. 10,000/- a month. This is supported by the claims the Claimant made for each month as it ranged from Kshs. 8,000/- to Kshs. 9,500/- topping off at Kshs. 10,000/- a month. The deputy head teacher at the time earned Kshs. 10,000/- a month which was raised to 15,000/- at time of departure from the 1st Respondent. The Claimant's own witness stated that he earned between Kshs. 4,000/- and Kshs. 8,000/- and was not sure how much the more senior teachers such as the Claimant earned a month. In his tabulations in support of his claim for Kshs. 877,500/-, the Claimant's dues are Kshs. 683,500/- which comprises of Kshs. 120,000/- for exams in 2007, 2008 and 2009 making a total of Kshs. 360,000/- and text books Kshs. 36,000/- Dell Computer Kshs. 40,000/- as well as registration of the school Kshs. 130,000/-. These were specific sums for which proof was required and none was availed. The Claimant's suit would also fail as he did not prove his case on a balance of probability. He came across as a person given to lying and peddling untruths and the outcome would be inevitably dismissal of the suit with costs to the Respondents.

Orders accordingly.

Dated at Nairobi this 29th day of July 2016

Nzioki wa Makau

JUDGE

Delivered at Nairobi this 15th day of August 2016

Linnnet Ndolo

JUDGE