



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 28 OF 2014

GRACE WAWIRA

IRERI.....CLAIMANT

v

**THE BOARD OF MANAGEMENT, KIAMURINGA PRIMARY
SCHOOL.....RESPONDENT**

JUDGMENT

1. Grace Wawira Ileri (Claimant) commenced legal proceedings against The Board of Management, Kiamuringa Primary School (Respondent) on 10 February 2014, alleging that the Respondent evicted her from the school house and terminated her services and seeking pay in lieu of notice, accrued leave, overtime for work during public holidays and rest days, service benefits, underpayments and compensation for unfair termination, all totaling Kshs 2,611,042/-.
2. The Cause was mentioned before Court on 28 February 2014, 1 April 2014, 6 June 2014, 30 July 2014 and 3 October 2014. During these mentions none of the parties attended Court.
3. The Court variously made orders that the Claimant pay adjournment fees but there is nothing on file to indicate the same were paid.
4. Consequently, on 3 October 2014, the Court issued summons to the Claimant to show cause why the suit should not be dismissed, as a result of which the Claimant's advocate appeared in Court on 31 October 2014.
5. The Claimant's advocate informed the Court that the Respondent's Deputy Head teacher had been served. Because the affidavit of service filed on 27 October 2014 was incomplete, the Court directed the Claimant to file a proper affidavit of service and set mention for 7 November 2014.
6. On 7 November 2014, Mr. Obwatinya for the Claimant informed the Court that he had made available a copy of the signed copy of the Summons and sought a hearing date.
7. The Court being satisfied with service directed that the Cause proceed to hearing on 15 December 2014, and that a hearing notice be served.
8. The Claimant filed an affidavit of service on 15 December 2014 wherein it was deposed that the Respondent's Headteacher had accepted service of hearing notice but refused to sign or stamp on a copy thereof.
9. The Cause therefore proceeded as an undefended Cause.

10. The Claimant testified and stated that she was employed by the Respondent in 2005 as a school matron at a salary of Kshs 5,000/- but was not issued with a written contract.

11. On working hours, the Claimant stated that she used to report at 5.00 am and work until 9.00pm and that she used to work even during public holidays and rest days without payment of overtime. The school was a boarding school.

12. She also stated that she was not being issued with pay slips and used to sign for her wages in a book.

13. She further stated that on 2 August 2013 she was called by the school Committee and was informed that they were tired with her because she was not cooperating with the cooks. She was dismissed and told to hand over.

14. This was after she had reported to the Headteacher that the cooks were stealing food and that a teacher was defiling pupils.

Evaluation

15. The Claimant was being paid by the month. Pursuant to section 35(1)(c) of the Employment Act, 2007, she was entitled to one month written notice of termination of services. According to the evidence on record, this was not given.

16. Further, the Respondent has not participated in the proceedings to demonstrate that it complied with the requirements of procedural fairness in section 41 of the Employment Act, 2007 or prove the reasons for termination of the contract or that the reasons were valid and fair (sections 43 and 45 of the Act).

17. The Court therefore reaches the conclusion that the termination of the Claimant's services was unfair.

Appropriate relief

Pay in lieu of Notice

18. The Claimant sought Kshs 9,024/- as one month pay in lieu of Notice but did not disclose the basis of this amount.

19. The Claimant would be entitled to the payment of one month pay in lieu of notice and her evidence was that her wage was Kshs 5,000/-, the Court awards her the sum of Kshs 5,000/-.

9 years accrued leave

20. The Claimant sought Kshs 65,598/- as accrued leave. No evidential basis for this head of claim was laid and the prayer is declined.

Overtime (normal, public holidays and rest days)

21. Work during public holidays, rest days and beyond the agreed or prescribed hours should be paid as overtime.

22. The Claimant did not testify on the agreed working hours over the week, which public holidays or rest days she worked but she sought Kshs 62,474/- (10 public holidays), Kshs 324,864/- (52 rest days) and Kshs 1,559,347/- (normal overtime).

23. The Court is further alive to the school calendar in Kenya wherein schools are closed in April, August and December every year.

24. This head of relief is declined.

Service benefits

25. The Claimant sought service benefits of Kshs 46,855/-. The formula or how this amount was arrived at was not disclosed in evidence. It is declined.

Underpayments

26. The Claimant did not lead any evidence as to whether the underpayments sought of Kshs 434,592/- were anchored on a statutory provision or contractual agreement such as a collective bargaining agreement.

27. The Court therefore lacks a foundation/basis for allowing this claim.

Compensation

28. This is one of the primary remedies for unfair termination. The Claimant sought Kshs 108,288/- under this head.

29. The Court has reached a conclusion the termination of the Claimant's contract was unfair.

30. The Claimant served the Respondent for around 8 years. She was not paid any dues upon termination of services. Considering these two factors, the Court would award her the equivalent of 10 months wages assessed at Kshs 50,000/-.

Conclusion and Orders

31. The Court finds and holds that the termination of the Claimant's contract was unfair and awards her and orders the Respondent to pay her the equivalent of 10 months wages assessed as Kshs 50,000/- as compensation.

32. The Court also awards the Claimant costs of Kshs 15,000/-.

Delivered, dated and signed in Nakuru on this 27th day of February 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Obwatinya instructed by Obura Obwatinya & Co. Advocates