



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.79 OF 2013 CONSOLIDATED WITH CAUSE NO. 80 OF 2013

JAMES GATHUMBI NGETHA.....1ST CLAIMANT

AND

GEOFFREY MUKURIA KARIUKI.....2ND CLAIMANT

-VERSUS-

THE BOARD OF GOVERNORS HIRIGA SECONDARY SCHOOL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2015)

JUDGMENT

The 1st claimant filed the memorandum of claim on 25.07.2013 through Wahome Gikonyo & Company Advocates. He prayed for an award against the respondent for:

- a. The principal sum of Kshs.1,316,493.00 being salary arrears of Kshs. 312,750.00, three months pay in lieu of notice Kshs. 25, 500.00, gratuity of Kshs.65,090.00, house allowance of 208, 500.00, overtime Kshs.505,304.00, weekly rest days Kshs.179, 699.00 and leave travelling allowance of 19,550.00.
- b. Costs of the suit.
- c. Interest on (a) and (b) above at court rates.

The respondent filed the memorandum of response on 02.10.2013 through Lucy Mwai & Company Advocates. The respondent prayed for an order dismissing the claim with costs.

The same Advocates acted for the parties in the two suits as consolidated. The 2nd claimant filed the memorandum of claim on 25.07.2013. The 2nd claimant prayed for an award for:

- a. The principal sum of Kshs. 565, 593.00 being salary arrears 131,625.00, three months pay in lieu of notice Kshs.25,500.00, gratuity Kshs.25,470.00, house allowance Kshs.87,750.00, overtime Kshs.212,706.00, weekly rest days Kshs.74,892.00 and leave travel allowance Kshs.7,650.00.
- b. Costs of the suit.
- c. Interest on (a) and (b) above at court rates.

The respondent opposed the 2nd claimant's suit by filing the memorandum of response on 02.10.2013.

The case was heard on 4.12.2014. The claimants testified to support their respective cases. The respondent's secretary Jacinta Wambui Mwaniki testified to support the respondent's case.

The claimants were employed by the respondent as watchmen. On the night of 07.07.2011 there was a theft in the respondent's school. It was reported by the respondent's driver that the school bus could not start because some of the parts had been stolen on that material night. A mechanic confirmed that parts were missing on the bus, the respondent made a report to the police and the two claimants who served as the night guards were arrested and charged with the offence of stealing contrary to section 275 of the Penal Code in Criminal Case No. 598 of 2011 at Karatina. The claimants were acquitted on 28.11.2012 under section 215 of the Criminal Procedure Code as the prosecution failed to establish the offence against the claimants. The respondent's witness confirmed that as far as the respondent was concerned the claimants had been dismissed from employment with effect from 8.07.2011 by the letter of suspension from duty dated 22.07.2011 following the decision at the respondent's meeting of 8.07.2011 and on account of the claimants' negligence in discharging their duties on the night of 7.07.2011 occasioning theft of some parts of the school bus.

The only issue for determination in this case is whether the claimants are entitled to the remedies as prayed for and as submitted. The court makes findings as follows:

- a. The claimants have established that under the relevant wage orders they were underpaid with respect to monthly salary, house allowance weekly rest days and they were not paid the prescribed leave travelling allowance, gratuity, one month in lieu of notice and 8 days worked for July 2013. Accordingly, the court finds that they are entitled as submitted. The court finds that the respondent was strictly liable for failure to comply with the statutory payments and the claimants are entitled to be paid accordingly. The court further holds that the gratuity as prescribed in the wage orders was over and above the National Social Security Fund and the claimants were entitled to both terminal dues.
- b. The court finds that the claimants clearly narrated the hours they worked and they established overtime worked and the claim will succeed. The respondent's witness testified that the claimants' duties were special; they were paid for hours worked and overtime was not due as prayed for. However, the evidence showed that the claimants worked overtime, they were underpaid and they were not paid for the extra hours served. They are entitled to the overtime as prayed for.
- c. The respondent in its submissions has conceded that the termination was unfair and offered to pay 6 months salaries in view of the unfair termination. However, the claimants did make any prayer in that regard.
- d. The court finds that the claimants are entitled as set out in their respective statements of claims.

In conclusion judgment is entered for the claimants against the respondent for:

1. The respondent to pay the 1st claimant **Kshs.1,316,493.00** and the 2nd claimant **Kshs.565,593.00** by 1.05.2015 failing interest at court rates to be payable thereon from the date of this judgment till full payment.
2. The respondent to pay the claimants' costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 6th March, 2015.**

BYRAM ONGAYA

JUDGE