



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**  
**CAUSE NO. 282 OF 2013**

*(Before Hon. Lady Justice Maureen Onyango)*

**GEOFREY EGESA ODONGO .....CLAIMANT**

**VERSUS**

**EXECUTIVE SECRETARY.....1ST RESPONDENT**

**KENYA NATIONAL UNION OF TEACHERS**

**BUSIA BRANCH.....2ND RESPONDENT**

**J U D G E M E N T**

The Claimant was the Executive Secretary of the Respondent, Kenya National Union of Teachers' Busia Branch from April, 2004 to 5th March, 2011 when he resigned.

He alleges that upon retirement he was entitled to a sum of Kshs.630,000 as allowances and related expenses, terminal benefits of Kshs.757,982, three months salary in lieu of notice in the sum of Kshs.491,325 and unpaid pension contributions at the rate of 31% of salary pay in the sum of Shs.101,125.48. He alleges the Respondent failed to pay the said sum necessitating the filing of this claim.

In the Memorandum of Claim filed on 14th October, 2013 he seeks payment of the said benefits in the total sum of Shs.1,980,432.48, costs, interest and any other relief the honourable court may deem just and expedient.

At the hearing the Claimant testified that the Respondent paid him Shs.867,868 leaving a balance of Shs.1,112,564. He testified that in an effort to resolve his claim a meeting was held on 23rd March, 2012 in the branch office which was attended by the branch Chairman, Secretary and Treasurer at which agreement was reached that his terminal benefits were erroneously captured as 60 months instead of 84 months; he was entitled to 3 months salary in lieu of notice, and thirdly, that he was not entitled to the claim for pension as it was paid together with his monthly salary and he was responsible to remit it to Teachers Service Commission. He testified that it was further resolved that all payments will be subjected to taxation except travelling allowance and related expenses. He testified that the agreement was reduced into minutes and signed by the Chairman and branch Secretary. The claimant testified that he subsequently received a letter dated 29th March, 2012 confirming the resolutions of the meeting. He testified that the Respondent later changed its mind through the letter dated 22nd October, 2013.

He prayed that the court awards his prayers.

The Respondent filed a defence on 9th December, 2013 denying the claim of Shs.1,980,432.80 and contended that the Claimant's full terminal benefits in the sum of Shs.867,868 was settled through the Claimant's account No. 01116067881300 via electronic money transfer at Co-operative Bank Busia Branch through the Respondent's national office. The Respondent further averred that the Claimant's pension was paid through his salary and he was responsible to make arrangements to remit the pension to the Director of Pensions.

At the hearing the Respondent called 2 witnesses. RW1 Mark Oseno Hannington, the Branch Executive Secretary, KNUT Busia Branch and RW 2 Carolyne Oyoo Ndolo, and Accountant at KNUT Headquarters in Nairobi.

RW1 testified that he was the successor of the Claimant in office. The Claimant served for one and a half terms from April 2004 to March, 20011. In the first term the Claimant served 24 months and in the second term he served for the full term of five years. That the Claimant' gross pay at the end of the first term was Shs.51,779 per month while at the end of the second term his gross pay was Shs.101,000. He testified that there were additional allowances for daily travel in the second term which were not paid in the first term.

RW1 testified that by letter dated 16th January, 2012 from the Treasurer the branch office was authorised to discuss settlement with the Claimant. The meeting with the Claimant was held on 3rd March, 2012 and a series of issues were resolved including months of service and what was to be paid. The resolutions were then sent to head office for ratification and approval. The Claimant was eventually paid through the head office by instalments of Shs.50,000/= per month. Transport and related expenses were not paid to the Claimant. Payments made were based on guidelines of the National Treasurer. The head office did not give the branch office any written documents why Claimant was not paid for 24 months service but were told that a person is not paid for a period that is less than a full term.

RW2 testified that the Claimant's claims on allowances and other related expenses were not supported and neither were they approved by the relevant authority as the Claimant only submitted claim forms that he had signed, but were not approved by branch Chairman. That the claim was rejected for that reason and the Branch was asked to discuss with the Claimant. She further testified that the branch was giving the Claimant some facilitation for travelling and fuel. On terminal benefits for 84 months RW2 testified that there is a policy to pay for a maximum of 60 months which came to Shs.541,446 based on total monthly emoluments being basic pay, house allowance, commuter allowance, medical allowance and entertainment allowances totalling Shs.90,241. The formular is total pay times total number of months of service divided by ten(10). She further testified that the claim on salary in lieu of notice should be based on basic pay, house allowance, medical allowance, pension, entertainment allowance, commuter allowance and district allowance which for the Claimant was Shs.108,814 so that for 3 months it amounted to Shs.326,442. She testified that the approved amount was paid to the Claimant and he is not entitled to any further pay.

I have considered the pleadings and evidence. The only issue for determination is what was payable to the Claimant as terminal benefits.

The Respondent does not deny that the Claimant was entitled to the prayers in the claim being allowances and related expenses, terminal benefits and three months salary in lieu of notice. The only claim denied by the Respondent is unpaid 31% pension contribution which the Respondent avers was paid to the Claimant together with salary.

In the letter dated 16th January, 2012 the National Treasurer Albanus Mutisya confirmed payments due to the Claimant with the exception of allowances and related expenses which the National Treasurer stated were not supported nor approved, and advised RW1 to discuss with the Claimant and arrive at an amicable settlement. This was done on 23rd March, 2012 and a letter written to the Claimant by RW 1 confirming the terms agreed upon on 29th march, 2012. A further confirmation was made in the letter

from RW1 addressed to the claimant dated 5th April, 2012. The letter is reproduced below:-

**KENYA NATIONAL UNION OF TEACHER**

**BANKERS : NATIONAL BANK OF KENYA**

**Telephone 055-22053 Address all**

**BUSIA**

**correspondence to**

**KNUT/BSA/VOL.VIII/21/12  
Secretary**

**Executive**

**Our Ref:.....  
KNUT Branch**

**Busia**

**Your Ref:.....  
170,**

**P.O. Box**

**BUSIA (K)**

**Dated: Thur**

**5th April, 2012**

*Mr. Godfrey B.E. Odongo,*

*P.O. Box 51,*

**NAMBALE.**

**Brother Odongo,**

**RE: TERMINAL BENEFITS.**

*I write in response to yours dated 2nd April 2012 over ours concerning your terminal benefits Ref. No. KNUT/BSA/Vol.VIII/19/12 dated 29th March, 2012. Your appreciation to the same is acknowledged.*

*The resolutions in my correspondence I gave did not have the figures. I wish to capture the exact figures owed to you by the Branch as:*

- i) Allowances and related expenses (claim).....Kshs.630,000*
- ii) Terminal Benefits.....Kshs.754,982*
- iii) three months in lieu of notice .....Kshs.491,325*

*Note that items (ii) and (iii) are subject to taxation.*

*We agreed that commencement month of repayment shall be end of April,*

*Concerning the instalments per month and the mode of payment; I suggest we do it when you shall be coming for the first payment as above stated.*

*Once again, I wish to emphasis that we are committed to settling this matter amicably.*

*Yours truly,*

*MARCK OSENO H.*

*BRANCH EXECUTIVE SECRETARY*

**N.E.C. WESTERN**

**COPY TO**

*The Secretary General*

*KNUT Head office,*

*P.O. Box 30407*

**NAIROBI.**

The letter dated 22nd October, 2013 addressed to RW1 from KNUT National Treasurer further confirms that all payments to Claimant were to come from the Busia Branch office and not from the Headquarters.

Having confirmed the payments due to the Claimant the Respondent cannot be heard to deny the same.

I therefore find that the Respondent, admitted owing the Claimant the following:-

- (i) Allowances and related expenses Kshs.630,000/=
- (ii) Terminal benefits based on 84 months service Kshs.754,982/=
- (iii) Three months salary in lieu of notice Kshs.491,325.

Total Kshs.1,876,307.

The Claimant in his testimony conceded that he was paid pension contributions together with his salary and the same is not due.

For the foregoing reasons I enter judgement for the Claimant against the Respondent in the total sum of Kshs.1,876,307 less amount of Shs.867,868 already paid leaving a balance of Kshs.1,008,439.

The Claimant will have costs and interest on decretal sum from date of judgement.

**Dated, signed and delivered in open court this 13th day of November, 2015**

**MAUREEN ONYANGO**

**JUDGE**