



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 259 OF 2013**

**ABDULAHI GUYO.....CLAIMANT**

**- VERSUS -**

**THE BOARD OF GOVERNORS, LARMUDIAC HIGH  
SCHOOL.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 23<sup>rd</sup> May, 2014)

**JUDGMENT**

The claimant **Abdulahi Guyo** filed the memorandum of claim on 15.08.2013 through Ndeda & Associates. The claimant prayed for judgment against the respondent for:

- a. **One month salary in lieu of notice Kshs.2,830.00.**
- b. **Overtime Kshs.125,390.00.**
- c. **Off duties or rest days Kshs. 83,593.85.**
- d. **Annual leave for 16 years Kshs. 39,243.20.**
- e. **Balance of payment as passed by the respondent Kshs.170,495.00.**
- f. **Compensation Kshs.38,460.00.**
- g. **The Asante passed by the respondent Kshs.30,000.00.**
- h. **Total claim Kshs.491,012.85.**

The respondent filed the response to the claimant's memorandum on 27.09.2013 through Rodi, Orege & Company Advocate. The claimant prayed that the claimant's claim be dismissed with costs. The respondent filed the amended response on 10.10.2013 and the claimant filed the reply thereto on 16.10.2013.

The case was heard on 20.03.2014. The claimant gave evidence to support his case. The respondent's witnesses included Charles Gichuhi, the respondent's secretary (**RW1**), Lucy Muthoni Ndirangu, the respondent's cook (**RW2**); James Karinge, the respondent's Storekeeper (**RW3**); Nahashon Kihoro Kiriamiti, a village elder and respondent's PTA member from 1980 to 1989 (**RW4**) and Joseph Njuguna Kimani, the respondent's cook (**RW5**).

The claimant was employed by the respondent as a watchman in 1987. He worked till 2003 when he was retired. The retirement letter was dated 1.7.2003. The claimant testified that he worked as a watchman for 2 years and thereafter as a cook for 15 years. RW1 testified that the claimant was employed in 1987 and left for retirement in 2003 as per the school records. RW1 then testified that the claimant after retiring in 2003 was subsequently employed on casual basis on a date RW1 could not establish and then left employment in 2008 when the respondent was deployed to the respondent as the principal in 2008.

RW1 testified that according to the available school records, the claimant was owed Kshs.60,495.00 being salary arrears Kshs.15,550.00 and gratuity being Kshs.44,495.00. The respondent had financial problems and agreed to pay by 3 instalments. It is not disputed between the parties that the claimant was paid Kshs.60,495.00. After the payment, the claimant was not satisfied and RW1 advised him to visit the Ministry of Education for assistance because as far as the respondent was concerned, the claimant had been paid all the dues as per the available records. Some of the school records had been destroyed in a fire that destroyed part of the records.

The District Education Officer and the District Commissioner failed to resolve the issue. RW1 decided to visit the Ministry head office in Nairobi. RW1 found in the Ministry's archives the letter dated 25.5.2005 being **exhibit A.G III** on the claim bundle. By that letter, the Ministry had forwarded to the respondent a cheque for Kshs.97,958.00 including a sum of Kshs.54,945.00 for the claimant's service gratuity.

The respondent carried out reconciliation and found that the claimant was owed Kshs.38,750.00 per folio 32 of the bundle for the amended response being the letter dated 16.11.2012 addressed to the claimant by RW1. It is not disputed that the claimant was subsequently paid Kshs.38,750.00.

The claimant had pegged his claim on the letter dated 21.01.2009 showing that the claimant was owed Kshs.110,000.00 being **exhibit A.G. IV** but not signed by RW1, the supposed author. RW1 denied issuing such letter and when RW1 saw it, he remarked that it was a forgery as per RW1's letter dated 05.04.2013 at *folio 31* of amended response. RW1 testified that the forgery was reported to the police per *folio 56* of the bundle of original response.

The court has considered the pleadings, the evidence and the submissions. The only key issue for determination is whether the claimant is entitled to the remedies as prayed for. The court makes the following findings:

- a. The claimant has prayed for one month salary in lieu of notice being Kshs.2,830.00. It is not disputed that the claimant was terminated on account of retirement in 2003. There is no evidence that the claimant received the termination notice or was paid in lieu of the notice. The court however finds that the claimant is not entitled to Kshs.2,830.00 as prayed for because the claim was time barred and as will be revisited later in this judgment.
- b. The claimant has prayed for overtime of Kshs.125,390.00. The claimant did not provide evidence to establish the claim and the court finds that the prayer will fail.
- c. The claimant prayed for off duties or rest days Kshs.83,593.85. The court has considered the evidence on record and finds that the claimant failed to provide the relevant evidence to establish the claim. The prayer will therefore fail.
- d. The claimant prayed for annual leave for 16 years being Kshs.39,243.20. RW1 testified that by reason of the school calendar, the workers had more than 21 rest days every year. RW2 testified that they did not work during school holidays. In the circumstances, taking the evidence into account, the court finds that the prayer shall fail as it was not established.
- e. The claimant prayed for balance of payment as passed by the respondent Kshs.170,495.00. First, the claimant did not coherently establish the basis of the claim. Secondly, the court finds that the claim was partly based on a letter RW1 testified did not sign or issue as it was a forgery. There is no reason to doubt RW1 and the prayer will fail.
- f. The claimant prayed for compensation of Kshs.38,460.00 for unfair termination. The claimant testified that he was forced out of employment without notice and a hearing or any valid reason. It is not disputed that the claimant was born in 1948 so that in 2003, he was about or had attained 55 years of age. First, the court finds that the claimant was retired upon attaining 55 years of age. Secondly, the court finds that the claim is time barred under **section 4 of the Limitation of Actions Act, Cap. 22 Laws of Kenya** prescribing six years for contractual claims. The

respondent urged the claim was time barred under section 90 of the Employment Act 2007 but the court holds that the Act could not apply to the suit where the cause of action had accrued in 2003 long before enactment of the Act. Resting the issue, the court finds the claim, and revisiting the claim of pay in lieu of termination notice, were both time barred claims.

- g. The Asante allegedly passed by the respondent being Kshs.30,000.00 was never established. Accordingly, the claim will fail.

In conclusion, the claimant's suit is dismissed with costs.

**Signed, dated and delivered in court at Nakuru this Friday 23<sup>rd</sup> May, 2014.**

**BYRAM ONGAYA**

**JUDGE**