



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

**CAUSE NO. 101 OF 2013**

**(Formerly Cause No. 1011 of 2012 at Nairobi)**

**ERIC KHASIALA MAMBA.....CLAIMANT**

**-VERSUS-**

**ROHI CHILDREN HOME.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 17<sup>th</sup> October, 2014)

**JUDGMENT**

The claimant was employed by the respondent for a term of one year from 1.01.2009 to 31.12.2010 as a teacher. The claimant performed with due diligence and ended his 1<sup>st</sup> contract successfully. The parties concluded the 2nd contract for 2 years to run from 1.01.2011 to 31.12.2012.

The court has considered the evidence on record. The claimant claims that during the 2<sup>nd</sup> contract his salary was lowered and he had some differences with his supervisor who showed a sense of jealousy due to the claimant's exemplary service. About 14.02.2011 the claimant attended an interview for alternative better paying employment. The issue in this case is whether the claimant was terminated. The claimant's evidence was that since he left the respondent's employment, he had not been jobless at any one time. The respondent's case and evidence is that the claimant left employment by resignation when he got alternative employment. The court has considered the evidence and finds that the claimant was not terminated from employment by the respondent but he voluntarily resigned to go for alternative employment.

The claimant filed the memorandum of claim on 14.06.2012 through Nyaga S.M & Company Advocate. He prayed for judgment against the respondent for:

- a. A declaration that the purported termination of contract amounts to breach of contract.
- b. A declaration that failure by the respondent to issue a certificate of service is unlawful and attract penal consequences under section 51 of the Employment Act N. 11 of 2007.
- c. Kshs. 629, 000.00 being contractual and terminal benefits as provided by the contract and the law comprising Kshs. for unexpired term of contract at Kshs.17, 000.00 per month being Kshs. 374, 000.00; severance pay of Kshs. 204, 000.00; and unpaid leave of Kshs.34, 000.00.

The response to the memorandum of claim was filed on 13.07.2012 through Githui & Company Advocates. The respondent prayed that the suit be dismissed with costs.

The court has considered the evidence, the pleadings and submissions and makes the following findings

on the reliefs prayed for:

1. As the claimant resigned from employment, he is not entitled to the declaration in prayer (a).
2. The claimant is entitled to a certificate of service under section 51 of the Act as a statutory requirement. However, there is no evidence that the respondent had refused to deliver the certificate to the claimant prior to filing of the suit.
3. Since the claimant resigned from employment he is not entitled to pay for the unexpired period of the 2<sup>nd</sup> contract of 2 years and in absence of a termination at the instance of the respondent, he is not entitled to the severance pay. The respondent's case was that the claimant took leave during the regular school vacations. There was no evidence of dispute about leave while the employment relationship existed. Accordingly, the prayer for pay in lieu of the 2 years' leave will fail.

In conclusion, judgment is entered for the parties for:

- a. The respondent to deliver to the claimant the certificate of service by 1.12.2014.
- b. Each party to bear own costs of the suit.

**Signed, dated and delivered** in court at **Nakuru** this **Friday, 17<sup>th</sup> October, 2014**.

**BYRAM ONGAYA**

**JUDGE**