



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO. 1546 OF 2010**

**ANGELINE NDILA MULI ..... CLAIMANT**

**-VERSUS-**

**B.O.G LIGHT ACADEMY PRIMARY SCHOOL .....RESPONDENT**

**JUDGEMENT**

By a Memorandum of Claim dated 29<sup>th</sup> November 2010 the Claimant alleges that she was employed by the Respondent in or about September 2001 and that she terminated her employment on 25<sup>th</sup> September 2010. That the Respondent has refused and or neglected to pay her terminal dues and issue her a Certificate of Service.

**She claims the following:-**

- (a) Leave days accrued - Kshs.157,437/=
- (b) Severance Pay - Kshs.225,000
- (c) Pension -

She prays for payment of terminal dues, costs and interest.

The Respondent filed its Memorandum of Reply on 21<sup>st</sup> December, 2010 in which it admits employing the Claimant on fixed term contract that was to expire on 31<sup>st</sup> December 2010, that the Claimant gave notice of termination of contract on 23<sup>rd</sup> September 2010 but left employment on 4<sup>th</sup> October 2010 without completing the notice period causing the Respondent disruption in its teaching schedule, that the Respondent offered to pay the Claimant her terminal dues and issue Certificate of Service. The Respondent denies that the Claimant is entitled to annual leave, severance pay or pension. The Respondent alleges that the Claimant took all her annual leave and had no accrued leave, that the Claimant was a member of NSSF and is not entitled to severance pay and further that the Respondent has no control over Claimants pension.

The parties were heard by Hon. Justice Isaac E.K. Mukunya (now retired) sitting with Mr. Udoto and Mr. Kilonzo, Members of the Court on 13<sup>th</sup> July 2011 when the Claimant's testimony was taken. The case was then adjourned to 15<sup>th</sup> February 2012 and again to 24<sup>th</sup> July 2012. Hon. Justice Mukunya however retired before the hearing date and the case was allocated to me. The parties agreed to proceed with hearing from where it had reached and the defence case was heard on 11<sup>th</sup> December 2012.

The Claimant testified that she was employed by the Respondent as a teacher on September 2001. She was not issued with a letter of appointment but was issued an employment card. She was among the pioneer teachers of the school that is run by Turkish Nationals. Her starting salary was Shs.7,000/=. By September 2010 her salary had risen to Shs.25,000/=. She produced her employment card (Exhibit 1) and payslip for August 2010 (exhibit 2). The payslip shows that her salary was Shs.28,531/= composed of a basic salary of Shs.19,735/= and house allowance of shs.8,796/=. In September 2010 she resigned due to frustration. She gave 1 months' notice on 23<sup>rd</sup> September 2010 indicating she will serve notice up-to the end of October 2010. She produced a copy of her letter of resignation (Exhibit 3). She did not serve the entire notice period. She worked for less than 10 days. She never took annual leave. She prayed for payment of her terminal benefits, service pay, annual leave and certificate of service. In cross examination she stated she was on annual contract expiring on 31<sup>st</sup> December 2010, that the contract provided that annual leave will not be carried over, that she used to have administrative duties during school holidays in April and December, that she was given 4 to 5 rest days per holiday. She further stated she was a member of NSSF.

The Respondent called Mr. Genc Mustafa, the Headmaster of Mombasa Primary Light Academy. He testified that he worked with the Claimant for about 1 month before she resigned. She gave 1 (one) weeks' notice up-to the end of September 2010. The Claimant did not clear. She demanded more than the Respondent could pay her as ex-gratia. Her certificate of service and her dues were ready for her collection but she refused to collect. The terminal dues are still being held by the school less notice. He testified further that the Claimant may have overdue leave which the school is willing to pay for, that it is not true that the Claimant never took annual leave, that the school clears all leave and pays for leave not taken. No leave is carried over. The leave is taken over school holidays.

The main facts of the case are not contested. The Claimant was employed by the Respondent as a Teacher in 2007. She worked until 23<sup>rd</sup> September 2010 when she gave notice to resign at the end of October, 2010. She however served the notice for only 1 (one) week and left at the end of September 2010.

The Claimant alleges the Respondent refused or neglected to pay her terminal dues while the Respondent alleges the Claimant refused to collect her terminal dues and certificate of service demanding more money than the Respondent could afford to pay her.

The only issue for determination is therefore whether the Claimant is entitled to the terminal dues as claimed.

I now consider each of the claims.

- a. Leave**
- |   | <b>Days</b> | <b>Accrued</b> |
|---|-------------|----------------|
| The Claimant claims leave for 9 years at 21 days per year. She claims a total of Shs.157,437/=. She admitted during cross-examination that she took a few days off during school holidays. She was not specific how many days. RW1 on the other hand stated that all teachers took 36 days annual leave during school holidays and any leave days not taken was paid for. He however admitted that the Claimant may have had some leave days which the Respondent was willing to pay. He however did not know how many days and did not produce any leave records. I find that the Claimant actually took some leave days during school holidays but was not specific about the number of days. The Respondent on the other hand has a duty to keep leave records as required by law which the Respondent failed to produce. In the circumstances I find that the Claimant has not proved that she is not entitled to all the leave days for 9 years as claimed. She failed to establish her claim for the leave days. However the Respondent also failed to produce the leave records. For this reason I find it reasonable to award the Claimant leave days for only 1 year based on the admission by RW1 that the Claimant may have had some leave days which the Respondent is willing to pay for. RW1 stated each teacher was entitled to 36 days annual leave every year but the Claimant claimed only 21 days per year. Based on the admission by RW1, I award the Claimant 36 days leave at Kshs.34,237.20 based on |             |                |

her gross salary of Shs.28,531 per month.

b. **Severance**

**Pay**

According to the Employment Act Section 40, severance pay is only payable to an employee who has been declared redundant. The claimant was not declared redundant. She resigned from employment. She is therefore not entitled to severance pay. The claim is dismissed.

c. **Pension**

**contribution**

The Claimant withdrew the claim for pension. I therefore do not have to make any finding on the prayers for pension.

d. **Certificate**

**of**

**Service**

The Claimant did not pray for Certificate of Service in her claim but stated in her testimony that she was not issued the Certificate of Service. The Respondent stated it is ready for her collection. She is entitled to the same as provided in Section 51 of the Employment Act. I therefore order for issue of a Certificate of Service to the Claimant.

I therefore give judgement to the Claimant against the Respondent as follows:

1. Kshs.34,237.20.
2. Certificate of Service.

There shall be no orders for costs.

Orders accordingly.

Read in open Court and signed on this 17<sup>th</sup> day of June, 2013.

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

In the presence of:-

**MR. MUKELE** \_\_\_\_\_ for Claimant

**NO APPEARANCE** \_\_\_\_\_ for Respondent