



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 139 OF 2013

LICKSON MWADZAMBO JOSHUA .....CLAIMANT

VERSUS

CHIJE PRIMARY SCHOOL .....RESPONDENT

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

The claimant has sued the respondents claiming employment terminal dues for unlawful termination of his employment. The respondents did not file any response to the claim and the case was heard on 24/7/2013 when the claimant testified as CW1. He told the court that he was as a PTA teacher on 7/7/2008 and worked upto 12/9/2011 at a monthly salary of ksh.4500. That the employment contract was verbal but it was terminated by a written notice dated 3/6/2011.

That after the notice was served he continued to work until September 2011 when he cleared his handing over. That he was not paid all his salary earned during his service. He prayed for service pay, and other accrued dues totaling to ksh.110.170 plus costs and interest. He confirmed that he was not a contributor to NSSF or pension scheme.

I have perused the claim filed and considered the uncontested evidence adduced by the claimant and I am satisfied that I have the jurisdiction to determine the suit because it relates to employment and labour relations.

The issues for determination are:

- 1. whether the claimant was unlawfully dismissed.**
- 2. Whether the claimant is entitled to the relief sought.**

In answer to the first issue the claimant has admitted in evidence that he was given a notice to terminate his employment on 3/6/2011. That the notice is annexed to the memorandum of claim and it states that the claimant was given 40 days to hand over. That such period in the courts view was reasonable in the circumstances of the case whose contract was entered into verbally.

Consequently the court finds that the termination was lawful since it was not done on ground of misconduct, poor performance or incapacity. The procedure of prior hearing under the Employment Act was therefore out of question.

As regards the second issue, the claimant has pleaded that he had salary arrears of ksh.56,170 as at the time of termination. That the said sum included ksh.26870 being arrears upto 31/12/2010, ksh.20750

being arrears for January to August 2011, ksh1800 being salary for 12 days worked in September 2011 and ksh.6750 severance pay at ½ months pay per year of service.

If we reduce the severance claim, the unpaid salary comes to ksh49,420/-. The court awards the claimant the two claims of unpaid salary of ksh.49420 and service pay of ksh6750 as provided for under Section 49 and 35 of the Employment Act respectively. I will however dismiss the prayer for compensation of Ksh.54000/ for unfair termination in view of my findings on the first issue above.

Consequently I enter judgment for the claimant against the respondent for payment of the following:

- a. **salary arrears upto 12/9/2011 .....49,420**
  - b. **service pay for 3 years ..... 6,750**
- 56,170**

The respondent will pay costs and interest.

**Signed, dated and delivered this 6th September 2013**

**ONESMUS MAKAU**

**JUDGE**