



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 702 OF 2014

(Before Hon. Lady Justice Hellen S. Wasilwa on 29th February 2016)

FELIZ LIPESA SHABUYACLAIMANT

VERSUS

MR. & MRS. MEENA JATISHYA SHAH

C/A FLORAL HERITAGERESPONDENTS

JUDGMENT OF THE COURT

1. The Claimant herein filed his Statement of Claim on 30.4.2014 against the Respondents herein who are husband and wife. He contends that the Respondents were his employers having employed him on 20.3.2008 as a general labourer/decorator at a monthly salary of Kshs.4,480/= payable at the end of the month without house allowance upto 31.12.2010.
2. He avers that he was underpaid against Legal Notices No 38 of 1st May 2006, Legal Notice No. 70 of 1st May 2009, Legal Notice No. 98 of 1st May 2010, Legal Notice No. 64 of 1st May 2011, Legal Notice No. 71 of 1st May 2012, and Legal Notice No. 197 of 1st May 2013.
3. The Claimant contends that he used to work 3 hours overtime per week and this translates to 65,908.50. He further contends that he worked during public holidays and also never went for leave. He wants this court to order that he be paid a total of Kshs.336,228.40/= for the entire claim as pleaded.
4. The Claimant contends that on 5.2.2015 he was sacked by the Respondents without payment of anything.
5. The Respondents were served with a Memorandum of Claim and summons on 7.5.2014 as per the affidavit of service filed in Court on 14.5.2014. The Respondents never entered any appearance nor did they file any defence. The matter therefore proceeded as an undefended claim.
6. I have examined evidence of Claimant plus submissions filed. As against what Claimant was paid which is not contested, the Claimant was underpaid as per the existing Legal Notices to the tune of Kshs.208,534.70 which I award him. On issue of leave, I also award him an equivalent of 3 years leave for last 3 years = $9,200 \times 3 = 27,600/=$.
7. I also award Claimant:

1. *1 months salary in lieu of notice = 9,200/=*
2. *6 months salary for unlawful termination*

$$= 9,200 \times 6 = 55,200/=$$

$$\underline{\underline{TOTAL = 318,935/=}}$$

There is no proof of NSSF and NHIF statement produced and so the issue of service cannot be paid.

The Respondents will pay costs of this suit.

Read in open Court this 29th day of February, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Mwai holding brief Okemwa for Claimant – Present

No appearance for Respondent