



**Kinyangi v Hebutullah Brothers Limited (Employment and Labour Relations Cause E930 of 2022) [2024] KEELRC 1972 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1972 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E930 OF 2022**

**MN NDUMA, J**

**JULY 25, 2024**

**BETWEEN**

**ALFRED KINYANGI ..... CLAIMANT**

**AND**

**HEBUTULLAH BROTHERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The memorandum of claim dated 13<sup>th</sup> December 2022 was filed by the claimant against the respondent seeking the following reliefs: -
  - i. Payment of retirement gratuity as per the CBA Kshs. 164,871/=
  - ii. Payment of unpaid leave allowance for 2 years and travel allowance Kshs. 47,638/=
  - iii. Payment of house allowance for the served period, Kshs. 817,600/=
  - iv. Payment of under paid salary for the served period Kshs. 638,248/=
  - v. Grant of certificate of service
  - vi. Costs and interest
2. Federation of Kenya Employers (FKE) entered appearance for the respondent but did not file a statement of response. On 22/1/2024, Mr. Ouma, advocate for the respondent told the court that FKE intended to cease acting for the respondent and matter was set for mention on 6/2/2024, to allow FKE to file application to cease acting. On 6/2/2024, Mr. Ouma did not appear for the respondent and the matter was set for formal proof on 10/6/2024.
3. The matter proceeded exparte on 10/6/2024. CW1, the claimant adopted a witness statement dated 13/12/2022 as his evidence in chief and produced exhibits '1' to '7' attached to the statement of claim.



4. The claimant adduced compelling evidence vide which he proved that he was entitled to the reliefs sought in the statement of claim.
5. That he was employed in April 2003 by the respondent and worked continuously until he retired at the age of 67 years in November 2022. That he worked as an ungraded fitter in the Aluminum section and was paid Kshs. 14,000/= monthly salary instead of Kshs. 18,319/=.
6. That he was a member of Kenya Engineering Workers Union which bargained for all its members. That the latest CBA was signed on 29<sup>th</sup> November 2021 and terms and conditions in that CBA applied to him.
7. That he was a member of NSSF and upon retirement found out that the respondent had not been remitting NSSF contributions to the fund since 2015 to the retirement date. That no remittance was made between May 2004 to May 2010 and from September 2015 to date of retirement.
8. That he was not paid his retirement dues in terms of the CBA. That he was not paid house allowance for the entire period of service. That the respondent did not remit NHIF dues.
9. That he did not go for annual leave nor paid in lieu thereof. That he reported to work from 8 a.m. to 7 p.m. with no overtime.
10. The claimant prays to be awarded as set out in the statement of claim.
11. The respondent having failed to file a defence to the suit nor attend the hearing, the evidence adduced by the claimant is not rebutted.
12. The court finds that the claimant has proved the claims made against the respondent on a balance off probability and is entitled to the reliefs sought.

Accordingly, the court awards the claimant against the respondent: -

- a. Retirement gratuity as per the CBA in the sum of Kshs. 104,871/=
  - b. Unpaid leave allowance for 2 years and travel allowance in the sum of Kshs. 47,638/=.
  - c. House allowance for the last three (3) years of service the rest of the claim having been caught by limitation period in the sum of Kshs. 129,093/=.
  - d. Underpayment for a period of three years the rest of the claim having been caught by limitation period in the sum of Kenya shillings 100,776/=
- Total award Kshs. 442,378/=
- e. Certificate of service to be granted to the claimant within 30 days of judgment
  - f. Interest at court rates from date of judgment till payment in full.
  - g. Costs of the suit

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY, 2024.**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearance:

K. Njiiri, Advocate for claimant

Mr. Ouma for respondent



Mr. Kemboi Court Assistant

