



Oruku v Captain Hawk Security Services Limited (Employment and Labour Relations Cause E086 of 2022) [2023] KEMC 303 (KLR) (20 July 2023) (Judgment)

Neutral citation: [2023] KEMC 303 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
EMPLOYMENT AND LABOUR RELATIONS CAUSE E086 OF 2022
PA NDEGE, SPM
JULY 20, 2023**

BETWEEN

DICKSON OKIRU ORUKU CLAIMANT

AND

CAPTAIN HAWK SECURITY SERVICES LIMITED RESPONDENT

JUDGMENT

1. The claimant, Dickson Okiru Oruku, instituted this suit by filing a memorandum of claim dated 04/03/2022 seeking the following prayers against the Respondent Captain Hawk Security Services LTD: -
 - a. Underpayments of Kshs 164,586.60/-
 - b. Normal overtime of Kshs. 139,948.05/=
 - c. Off-duties of Kshs. 76,021.15/=
 - d. Public holidays of Kshs. 31,099.55/=
 - e. Leave due of Kshs. 19,275.80/=
 - f. Service pay of Kshs. 8,071.85Total amount Kshs. 439,003.00/=
 - g. Costs of this claim
2. The respondent did not enter appearance and the matter proceeded undefended. It is the claimant's case that he was employed verbally by the respondent on 17th June 2020 as a night watchman receiving payment of Kshs 7000 per month. That he would work from 6.00pm to 6.00am a period of 12 hours and was not being paid overtime. He was also working during public holidays without leave or any off duties. That he served the respondent without any disciplinary issues and would get only 3 days



a month off duty. That he fell sick during work and was advised by the doctor to avoid working at night due to cold weather conditions. He left employment on 01/01/2022, returned uniform and was cleared. He has however not received his pending dues to date.

3. As forestated, the respondent, Captain Hawk Security Services Limited, has not filed a response to the memorandum of claim. It is therefore proceeded ex parte. The following documents were produced and admitted with the consent of the court.

Exhibit 1 - Identity card of the Claimant

Exhibit 2 – Mpesa statement showing payment schedules

Exhibit 3 - letter of resignation written to the respondent

4. The legal burden rested on the respondent, Captain Hawk Security Services Limited, who is the employer of the claimant to prove that the separation and termination herein was procedural or fair. Since there has been no reply or counterclaim rendered in their defense the court stands with the evidence adduced by the claimant in his claim against the respondent herein.
5. The claimant stated in his testimony that he was employed by respondent verbally on 17/06/2020 as a night watchman. He produced documents before the honorable court to prove that he was an employee of the respondent. The provisions of the employment act apply to both oral and written contracts as provided under section 8 of the employment act which stipulates that the provisions of the act shall apply to oral and written contracts.
6. Having gone through the evidence it is in my view that the claimant was an employee of the respondent, whereby they entered an oral agreement, and even though the documents does not disclose the terms and conditions of the agreement, it was incumbent upon the respondent to prove or disprove the terms of the employment contract as alleged/ proved herein.
7. Having gone through the legal notice No 2 of the wages order it is stipulated that a night watchman ought to be paid a minimum wage of 14,038.00 inclusive of housing allowance which amount to 15 percent of the basic salary. This was violated by the respondent and this indeed serves as an underpayment.
8. Section 27(1 &2) of the employment act 2007 stipulates that an employee is entitled to at least one rest day in every period of 7 days. This was also violated as the uncontroverted evidence herein is that the claimant worked from Monday to Sunday and that he used to get 3 days per month off duty for a whole month.
9. The claimant fell sick and based on the doctor's recommendation he was advised to avoid working at night due to cold weather conditions. The claimant took the report of sickness but was ignored and told to get back to work. Under provisions of section 30 (2) it is stipulated that for an employee to be entitled to sick leave with full pay under sub section 1, the employee shall notify or cause to be notified as soon as is reasonably practicable his employer of his absence and reasons for it. It is clear that the claimant did notify the respondent vide a letter dated 14th December 2021. In Jane Wangari Njoroge v En Pertet T/A Joliday Nursery school cause No 1600.of 2011 the court held that " This notice must be in writing and it's employee so requests produce a certificate of her medical condition from a qualified practitioner ..."
10. The claimant is thus hereby granted the prayers as pleaded and more specifically as follows:
 - a. Underpayment of Kshs 164,586.60



- b. Normal overtime pays of Kshs 139,948.05
 - c. Off duty pay of Kshs 76,021.15
 - d. Public holiday of Kshs 31,099.55
 - e. Normal leave pays of Kshs 19,275.80
 - f. Service pay of Kshs 8,071.85
- Total Kshs 439,003.00

g. The respondent is obliged to pay costs of the claim to the Respondent.

DATED, SIGNED AND DELIVERED IN NAKURU IN OPEN COURT THIS 20TH DAY OF JULY, 2023

HON. ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of

Wangari for the claimant

Claimant: N/A

Respondent: N/A

