



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1451 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 18th December, 2018)

KENYA NATIONAL PRIVATE

SECURITY WORKERS UNION CLAIMANT

-VERSUS-

PEPCO KENYA LIMITEDRESPONDENT

JUDGEMENT

1. The Claimant herein filed their Memorandum of Claim on 9.9.2013 claiming unfair termination of Mr. Felix Munyau Matiko and failure to pay him proper wages, overtime, rest off days, prorata leave, unpaid house allowance and public holidays.
2. The Claimants aver that Mr. Felix Matiko, the grievant herein is their member and was employed by the Respondent on 6.11.1996 as a Security Guard at an initial salary of Kshs.5,600/=.
3. The Claimants aver that the grievant started feeling sick and was treated at PCEA Hospital and doctors confirmed he had chronic chest pains as a result of the cold.
4. On 26.2.2010, the grievant was issued with a letter to present to the Respondent that due to his frequent chest pains and cold, he should retire on medical grounds.
5. The Claimants aver that the Respondents did not honour the said letter and due to persistent coughs and chest pains, the grievant applied for a resignation on medical grounds on 27th October 2011 giving 1 month notice (Appendix 2).
6. In the resignation letter, the grievant expressed that he had not been paid overtime, gratuity for 7 months and service for eight years.
7. The Claimants attempted to discuss the issue of the grievants terminal benefits with the Respondent and forwarded a tabulation for the same (Appendix 4).
8. The Respondents declined to pay the grievant as anticipated. The grievant was paid only 23,000/= and he now claims the balance of 130,653/=.
9. The Respondent filed their Memorandum of Response on 22.10.2014 through Ongweny and Moibi Advocates. They aver that they employed grievant on 2.2.2004 and he worked until 2011 when he resigned citing medical grounds.
10. They also aver that the grievant was paid all his terminal dues including gratuity of 48,807.70/= for 7 years which was paid less 20,000/= advanced to grievant on 29.12.2011 and 2,700/= loan owed to the Respondent. They therefore pray that the Claimant's case be dismissed with costs.
11. The Respondents sought to rely on salary voucher of the grievant from 2009 to 2011 which they aver were duly signed by the grievant.
12. I have considered the evidence of the parties plus submissions filed herein.
13. I note that the grievant in cross examination indicated that he was actually paid leave for the year 2010 as per the voucher dated

15/12/2010 in Respondent's list of documents dated 1.7.2014 on page 32.

14. On overtime, the grievant indicated that he used to work from 6 am to 6 pm. Various salary vouchers were put to the grievant and he admitted that some overtime was paid to him e.g. the voucher at page 43 of the Respondent's documents. Other vouchers exhibited before Court also shows that the Claimant was paid overtime dues.

15. The other claim by the grievant includes notice pay which is not payable as the grievant resigned himself. Payment of 52 rest days worked in 2010 is also pleaded.

16. The grievant also submitted that he worked during rest days as he worked 7 days every week in 2010 when a colleague was transferred to Kitengela. The Respondent refuted this aspect but never produced their muster roll to prove or disapprove this aspect. I find that this was proved by Claimant who indicated that he worked 7 days weekly without any rest days. I therefore find for Claimant on this prayer and award him as follows:-

1. $52/30 \times 10,000 = 17,333/=$

2. *I also award Claimant costs of this suit and interest on the above amount with effect from the date of this judgement.*

17. Since the Claimant was paid, other prayers sought no award is made on the same as indicated.

Dated and delivered in open Court this 18th day of December, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Oketch holding brief Miss Rweya – for Respondent – Present

Claimant – Absent