



**Nyambani v Nasib Industrial Products Limited (Cause E527 of 2022)  
[2024] KEELRC 13389 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13389 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E527 OF 2022  
DKN MARETE, J  
NOVEMBER 27, 2024**

**BETWEEN**

**SIMEON NYANGWAYA NYAMBANI ..... CLAIMANT**

**AND**

**NASIB INDUSTRIAL PRODUCTS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter came to court vide a Memorandum of Claim dated 26th July, 2022. It does not disclose any matter in dispute on its face.
2. The Respondent in a Respondent's Response to Claimant Memorandum of Claim dated 26th July, 2022 dated 7th September, 2022 denies the claim and prays that it be dismissed with costs.
3. The Claimant's case is that he was employed by the Respondent on 1st March, 2005 as a Laboratory technician (quality controller) through a letter appointment, a position the claimant held until his retirement.
4. The claimant's other case is that he was employed at a salary favourable than that of the Appropriate General Wage order but less favourable than those of the *Employment Act*, 2007. This culminated in an underpayments of Kshs.866,178.30.
5. The Claimant further avers that the Respondent continued to pay him Kshs.60,685 per month from 1st January, 2018 up to February 2022 contrary to the Appropriate Legal notice for the year which is the basic salary of Kshs.94,200/= per month which was underpayment of Ksh.33,515/= per month for 49 months to make a total of Kshs.1,642,235/=. And the Claimant claims underpayment a sum of Kshs.1,642,235/=.
6. He was also not accorded all his leave days as appropriate.
7. He claims thus;



- a. Salary Underpayments
    - 1<sup>st</sup> March 2005 – 31<sup>st</sup> April 2012 Kshs.86,846.60/=
    - 1<sup>st</sup> May 2012-31<sup>st</sup> April 2015 Kshs.224,801.20
    - 1<sup>st</sup> May 2015-31<sup>st</sup> April 2018 Kshs.641,377.10
    - 1<sup>st</sup> May 2018-1<sup>st</sup> January 2022 Kshs1,642,235.00
  - b. Leave & Prolata Leave
    - 1<sup>st</sup> March 2005-31<sup>st</sup> April 2012 Kshs. 137,046.20
    - 1<sup>st</sup> May 2012-31<sup>st</sup> April 2015 Kshs.139,969.30
    - 1<sup>st</sup> May 2015-31<sup>st</sup> April 2018 Kshs.159,089.00
    - Period between 2019 to 2022 Kshs.43,000.00
    - All totaling Kshs.3,074,366.40.
8. He prays as follows;
- a. The Respondent do pay the total amount of Kenya Shillings Kenya Shillings Three Million Seventy Four Thousand and Three hundred and sixty and Forty cents (Kshs.3,074,360.40).
  - b. Certificate of Service for the years in service.
  - c. Cost of the suit.
  - d. Interest at cost rate to be in the cause from the date of termination until the date of full payment.
  - e. Any other relieve the court may deem fit to grant.
9. The Respondent's case is a denial of the claim.
10. She however admits that;
- a. It hired the Claimant as a laboratory technician on or about 1<sup>st</sup> March 2005;
  - b. The contract was reduced into writing and duly executed by the parties;
  - c. The Claimant's starting gross salary was Kshs.16,000/=, made up of basic salary (Kshs.13,913.00) and housing allowance (Kshs.2,087.00);
  - d. The claimant's salary increased progressively over the years such that by the time of his retirement on 31<sup>st</sup> January 2021, his gross salary was Kshs.60,686.00.
11. The Respondent's further case is an elaborate tabulation of non-compliance with the wage guideline and also denies that he did not take leave during his term of service. This is as follows;
4. The Respondent states that according to the Basic Minimum Consolidated Wages Guidelines covering the period between 2010 and 2021, the following matters are;
    - i. The claimant's job description, that is Laboratory Technician, does not fall within any category of the employees covered by the orders;



- ii. Before the claimant joined the Respondent, he had worked with Crown-Berger Kenya Limited and his last pay was Kshs.15,000/ per month, so when he was hired by the Respondent he started with a superior pay of shs.16,000.00.
  - iii. The highest pay category in the 2010, wage guideline is Artisan Grade 1, with gazetted minimum wages of Kshs.15,216.00, per month;
  - iv. As at 1<sup>st</sup> May 2010, when the 2010 wages guideline took effect, the Claimant was already earning a gross salary of Kshs.28,200.00, way above the minimum wages of Kshs.15,216.00 per month.
  - v. The next wages guidelines issued on 16<sup>th</sup> May 2017, fixed the highest paid category, that is Artisan Grade 1 at Kshs.29,169.00 at which point in time the Claimant's gross pay was Kshs.55,044.00 again way above the minimum wage.
  - vi. At the time of his retirement on 31<sup>st</sup> January 2021, the Claimant was earning a gross salary of Kshs.60,686.00, which was above the highest minimum wages of Kshs.30,627.45 for Artisan Grade 1, according to the order issued on 19<sup>th</sup> December, 2018.
12. In the foregoing premises, the Respondent denies each and every allegation made by the Claimant in the following paragraphs of his memorandum;
- a. Paragraph 5, to the effect that his starting salary was less favourable, because his starting salary was an upgrade from his last salary, at his previous employment and was above the highest possible minimum wages order for that particular period;
  - b. Paragraph 6, to the effect that he was underpaid accumulated amount of Kshs.86,846.60, between 1<sup>st</sup> March 2005 and 31<sup>st</sup> March 2012, a period of 94 months;
  - c. Paragraph 7, to the effect that he was underpaid by an amount of Kshs.866,178.30 between 1<sup>st</sup> April 2012 and 3<sup>rd</sup> April, 2018;
  - d. Paragraph 8, to the effect that the applicable legal notice covering the period from 1<sup>st</sup> January 2018 to 1<sup>st</sup> January 2021 (when he retired), fixed his basic pay at Kshs.94,200/, resulting into accumulated amount of Kshs.1,642,235.00.
13. Again, according to the contract of employment between the Claimant and the Respondent which ran from 1<sup>st</sup> March 2005 to 31<sup>st</sup> January 2021, the claimant was entitled to annual leave of 21 working days in each year of service.
14. He was also issued with a certificate of service and duly signed for it.
15. The issues for determination therefore are;
- 1. Whether the Claimant was underpaid during his tenure of employment by the Respondent.
  - 2. Whether the Claimant is entitled to payment of leave and pro rata leave as prayed.
  - 3. Whether the Claimant is entitled to Certificate of Service for the years worked for the Respondent.
16. The 1<sup>st</sup> issue for determination is whether the Claimant was underpaid during his tenure of employment by the Respondent. The Claimant in his written submissions dated 12<sup>th</sup> February, 2024



submits a case of being entitled to higher wages as per wage guidelines under Section 48 of *Labour Institutions Act*, 2007.

17. The Respondent on the other hand submits that from the onset, Laboratory Technician are not covered under the terms of the minimum wage order ever issued during the currency of the Claimant's employment. He is therefore not entitled to this claim.
18. Again, the claimant was always paid ahead of the minimum wage order. This is expressed as follows;
  7. Despite not being covered under any minimum wage order, the claimant was always paid at a rate that was way above the highest paygrade provided in the minimum wage orders. We now invite the court to examine the Claimant's salary schedule from March 2005 to February 2022. This set of documents appears from page 28 to page 43 of the Respondent's bundle of documents dated 7<sup>th</sup> September 2022.
19. It is the Respondent's penultimate submission that the alleged claim for underpayment is merely thrown at the court, without an iota of evidence or at all in such support. The evidence adduced on the contrary supports a case of no underpayment.
20. The Respondent further rubbishes the claim for unpaid on overtaken leave vide his bundle of documents at pages 28-43 which provides the contrary.
21. Moreover, the Respondent also produced copies of the Claimant's itemized pay statements which show that the claimant was often paid "leave pay" when he did not go on leave. These are at pages 44 to 79 of the Respondent's bundle of documents. Even more than that, the Respondent also produced summary workings of the claimant's leave days throughout the period of employment. These are at pages 80 to 82 of the Respondent's bundle of documents. The Claimant's pending leave days at the time of his retirement, which are showed at page 82, were encashed and paid to him as showed on his final itemized pay statement at page 79.
22. This also applies to the claim for a certificate of service which was issued and signed for at the time of exit or departure.
23. The Respondent's case overwhelms that of the Claimant. The Claimant has failed to demonstrate a case of entitlement to any further payment in terms of wages. This is more so when the Respondent clearly points out to a situation of paying the Claimant at rates above the complained of wages order. I therefore find a case of no underpayment of the Claimant by the Respondent and hold as such. And this answers the 1st issue for determination.
24. The 2nd issue for determination is whether the Claimant is entitled to payment of leave and pro rata leave as prayed. He is not. This is because he failed to demonstrate a case of accrued and untaken leave.
25. The 3rd issue for determination is whether the Claimant is entitled to Certificate of Service for the years worked for the Respondent. He is not. This is an afterthought, the Claimant having been issued with a certificate of service dated 9th May, 2022 of which he acknowledged receipt.
26. I am therefore inclined to dismiss the claim with orders that each party bears the costs of the same.

**DELIVERED, DATED AND SIGNED THIS 27<sup>TH</sup> DAY OF NOVEMBER 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

**Appearances:**



1. Mr. Amuga instructed by Wilfred Babu & Company Advocates for the Claimant.
2. Miss Okuto holding brief for Omuga instructed by Omuma Advocates LLP for the Respondent.

