



REPUBLIC OF KENYA



KENYA LAW
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**Anvi Emporium Ltd v Amol (Appeal E011 of 2021)
[2023] KEELRC 890 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 890 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E011 OF 2021
S RADIDO, J
APRIL 19, 2023**

BETWEEN

ANVI EMPORIUM LTD APPELLANT

AND

JOEL OTIENO AMOL RESPONDENT

(An appeal from the judgment and decree in Kisumu CMC LRC No. 429 of 2019 dated 8th March 2021 before Hon R.K. Ondieki SPM)

RULING

1. In a judgment delivered on February 15, 2023, the Court directed the Appellant to compute and file with the Court underpayments found due to the Respondent.
2. The Appellant filed the computations on February 24, 2023, indicating a sum of Kshs 37,752/- as the underpayments for a period of 33 months at a daily rate of Kshs 52/-.
3. The Respondent did not agree with the computations and he also filed his computations on March 1, 2023, computing the underpayments as Kshs 161,952/- (the Respondent disclosed the relevant periods of employment, the applicable Legal Notice prescribing the minimum wage, the wage paid, number of days worked, underpayment amount and total underpayments).
4. The prescribed minimum wage was not static during the employment of the Respondent.
5. There were at least 2 Legal Notices during the period, and the computations by the Appellant are not only out rightly casual for not considering them but not also based on the then prevailing legal framework.
6. The Respondent has outlined all the material upon which the Court can establish the underpayments.



7. However, his computations are above the pleaded amount of Kshs 149,324/-. The Court will, therefore, leave the pleaded and awarded amount undisturbed.

Conclusion and Orders

8. The Court will adopt the computations by the Respondent but since the computations is higher than the pleaded amount and the pleadings were not amended, the Court awards the Respondent Kshs 149,324/- as underpayments.

9. The award to attract interest at court rates from date of filing the Cause before the subordinate Court.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 19TH DAY OF APRIL 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Appellant Ko'Winoh & Co. Advocates

For Respondent ALP Kenya Advocates

Court Assistant Chrispo Aura

