



**Kenya National Union of Private Security Workers Union v Jrs Security Group
(Cause 425 of 2017) [2022] KEELRC 14687 (KLR) (20 January 2022) (Judgment)**

Neutral citation: [2022] KEELRC 14687 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 425 OF 2017
S RADIDO, J
JANUARY 20, 2022**

BETWEEN

**KENYA NATIONAL UNION OF PRIVATE SECURITY WORKERS
UNION CLAIMANT**

AND

JRS SECURITY GROUP RESPONDENT

JUDGMENT

1. David P. Mugasia (the Grievant) was employed by JRS Security Group (the Respondent) in 2012 as a medium size vehicle driver.
2. On 21 May 2015, the Grievant tendered his resignation and the reason he gave was the need to attend to an ill child and the Respondent accepted the resignation.
3. The Grievant then sought payment of his terminal dues but the Respondent failed to pay the dues and the Kenya National Private Security Workers Union (the Union) reported a trade dispute to the Cabinet Secretary, Labour.
4. The Cabinet Secretary appointed a Conciliator and after getting submissions from the parties, the Conciliator in a report dated 24 July 2017, recommended that the Respondent pay the Grievant:
 - i. Underpayment of wages and house allowance for 12 months preceding the resignation.
 - ii. Earned wages for May 2015.
 - iii. Accrued leave for 3-years.
5. Despite the findings and recommendations by the Conciliator, the Respondent failed to comply and the Union moved the Court on 22 November 2017, alleging breach of contract and seeking an award in terms of the Conciliator’s recommendations.



6. The Respondent filed a Response on 15 May 2018, and this prompted the Union to file a Rejoinder on 18 June 2020.
7. On 5 March 2021, the Respondent filed an Amended Response and the Cause was heard on 4 October 2021. The Grievant and a General Manager with the Respondent testified.
8. The Union filed submissions on 22 October 2021, while the Respondent filed its submissions on 16 November 2021.
9. The Court has considered the pleadings, evidence and submissions.

Underpayment of wages

10. The Respondent admitted that the Grievant was earning a monthly wage of Kshs 10,000/-. It did not deny that the Grievant was a driver of a medium size vehicle.
11. According to Legal Notice No. 70 of 2012, the prescribed minimum wage for a driver of medium sized vehicle exclusive of house allowance was Kshs 14,563/90.
12. If house allowance at the rate of 15% of the prescribed minimum wage was factored, the gross monthly emolument should have been Kshs 16,748/40.
13. For the last 12 months prior to the resignation, the Respondent underpaid the Grievant by Kshs 80,980/80.
14. A Conciliator is a finder of facts and since he made findings of facts which have not been disputed or disproved, the Court will in the same vein allow this head of the claim in the sum of Kshs 80,980/80.

Earned wages for May 2015

15. The Grievant was entitled as of right to earned wages for May 2015, and the Court will allow this claim in the sum of Kshs 10,640/- as outlined in annexure 8 to the Statement of Claim.

Accrued leave

16. Each employee is entitled to at least 21 days annual leave on full pay.
17. The Conciliator made a finding and recommended that the Respondent pays the Grievant accrued leave for 3-years.
18. The accrued leave would be equivalent to 3-months basic wage and considering that the prescribed minimum wage was Kshs 14,563/-, the Court will allow this head of the claim in the sum of Kshs 43,689/-.

Conclusion and Orders

19. The Court finds that the Respondent was in breach of contract during the employment term of the Grievant and he is awarded:
 - i. Underpayments Kshs 80,980/80
 - ii. Earned wages Kshs 10,640/-
 - iii. Accrued leave Kshs 43,689/-Total Kshs 135,309/80



20. The decretal sum to attract interest at court rates from date of judgment.

21. Each party to bear own costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS
20TH DAY OF JANUARY 2022.**

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr Madegwa, Branch Secretary

For Respondent Odhiambo Ouma & Co. Advocates

Court Assistant Chrispo Aura

