



**TREPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NO 663 OF 2017**

**PHILIP OLUOCH KASARE.....CLAIMANT**

**VS**

**ASHTON APPARELS (EPZ) LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is an employment dispute between Philip Oluoch Kasare as the Claimant and Ashton Apparels (EPZ) Limited, as the Respondent.
2. Kasare states his claim in a Memorandum of Claim dated 2<sup>nd</sup> August 2017 and amended on 10<sup>th</sup> July 2018. The Respondent’s defence is by way of a Memorandum of Response dated 27<sup>th</sup> April 2018 and a further Response dated 23<sup>rd</sup> August 2018.
3. The matter went to full trial where the Claimant testified on his own behalf. The Respondent called its former Group Human Resource and Administration Manager, Masila Ngungu.

**The Claimant’s Case**

4. The Claimant states that he was employed by the Respondent on 4<sup>th</sup> March 2013, in the position of Machine Operator. He earned a monthly salary of Kshs. 14,279 as at the time of leaving the Respondent’s employment.
5. The Claimant claims that he never took annual leave nor was he compensated in lieu thereof. He further claims that he was underpaid.
6. The Claimant’s claim against the Respondent is as follows:

- a) Accrued leave from March 2013 to June 2017.....Kshs. 66,055.10
- b) Underpayment from 2013 to June 2017.....271,602.48
- c) Certificate of service
- d) Costs

**The Respondent’s Case**

7. In its Memorandum of Response dated 27<sup>th</sup> April 2018 and filed in court on 30<sup>th</sup> April 2018, the Respondent states that the Claimant was employed as a Mass Production Machinist, on fixed term contracts renewable at the discretion of the Respondent, culminating with the contract dated 3<sup>rd</sup> January 2017.
8. In its further Response to the amended claim, the Respondent states that the Claimant was first employed on 26<sup>th</sup> March 2014 at a gross monthly salary of Kshs. 12,479. The Respondent adds that at the end of his contract, the Claimant earned a monthly salary of Kshs. 14,279.
9. The Respondent states that the Claimant’s fixed term contract came to an end by effluxion of time.

10. The Respondent further states that the Claimant was formally informed of the lapse of his contract, though there was no obligation to do so.

11. The Respondent avers that the Claimant was paid his terminal dues, including accrued leave days and was issued with a certificate of service, receipt of which he acknowledged.

12. In its further Response, the Respondent states that the Claimant's leave was encashed as and when it fell due as follows:

a) 2014 - Kshs. 6,560

b) 2015 - Kshs. 7,641

c) 2016 - Kshs. 10,506

d) 2017 - Kshs. 3,682

13. In response to the claim for underpayment, the Respondent states that the Claimant was paid in accordance with the applicable Wages Order. The Respondent adds that following publication of a wage increase in July 2017, after the Claimant had left employment, the Claimant was called back to collect his arrears for May 2017 and June 2017, being Kshs. 1,791 and Kshs. 3,311 respectively.

### **Findings and Determination**

14. In his Memorandum of Claim, the Claimant does not lay any claim for unfair termination of employment and he makes no prayer for compensation. In his testimony before the Court, he stated that his claim was for leave pay, underpayment and costs.

15. Regarding the claim for leave pay, the Respondent states that the Claimant's leave was encashed as and when it fell due and gives the following particulars in this regard:

a) 2014 - Kshs. 6,560

b) 2015 - Kshs. 7,641

c) 2016 - Kshs. 10,506

d) 2017 - Kshs. 3,682

16. This is confirmed by the Claimant's payslips filed in court.

17. On the claim for underpayment, the Respondent states that the Claimant was always paid as per applicable Wages Order and points out that following publication of a wage increase in July 2017, the Claimant was called back to collect his arrears for May 2017 and June 2017.

18. Again, the Court did not find any evidence of underpayment and this claim must also fail.

19. In the end, the Claimant's entire claim fails and is disallowed.

20. Each party will bear their own costs.

21. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 22<sup>ND</sup> DAY OF APRIL 2021**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

Miss Oweya h/b for Mr. Anaya for the Claimant

Miss Opolo for the Respondent