



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO 102 OF 2018

KAHINDI KARISA UNDA.....CLAIMANT

VERSUS

PENTAGON SECURITY LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Kahindi Karisa Unda against Pentagon Security Limited. The claim is contained in a Memorandum of Claim dated 2nd February 2018 and filed in court on 2nd March 2018.
2. In spite of due service, the Respondent did not enter appearance and did not file a response. The matter therefore proceeded by way of formal proof.

The Claimant’s Case

3. The Claimant states that he was employed by the Respondent on 1st May 2008 as a night guard. He claims to have earned an initial monthly salary of Kshs. 3,000 which was later increased to Kshs. 6,000.
4. On 14th May 2017, the Claimant served the Respondent with a resignation letter citing medical grounds.
5. The Claimant avers that at the time of his resignation, he was not paid his contractual benefits.
6. The Claimant further avers that during his employment, he was not allowed to go on leave nor did he take his off days. He states that he was required to work on public holidays and was underpaid.
7. The Claimant therefore claims the following from the Respondent:

- a) Unpaid leave from 2009-2017.....Kshs. 129,788.10
- b) Unpaid public holidays for 9 years.....99,837.00
- c) Gratuity for 9 years.....89,853.30
- d) Off days for 9 years.....99,360.00
- e) Underpayment for 6 years.....274,957.10

8. The Claimant also asks for a certificate of service plus costs and interest.

Findings and Determination

9. The Claimant’s claim in this case is for terminal dues made up of leave pay, public holidays, gratuity and off days.

10. On the claim for leave pay, the Claimant testified that he was not allowed to go on leave during his entire period of employment with the Respondent. In the absence of any leave records to counter the Claimant's assertion, this claim succeeds and is allowed.

11. Having been employed in the protective security services sector, the Claimant is entitled to gratuity at the rate of 18 days' pay for every completed year of service, as provided under the Regulation of Wages (Protective Security Services) Order.

12. The Claimant did not provide any particulars as to the actual public holidays worked nor did he give any breakdown of the off days worked. The claims thereon were therefore not proved and are dismissed.

13. The claim for underpayment was also not proved and is disallowed.

14. In the end, I enter judgment in favour of the Claimant in the following terms:

a) Leave pay for 9 years $(6,000/30*21*9)$Kshs.37,800

b) Gratuity for 9 years $(6,000/30*18*9)$32,400

Total.....70,200

15. This amount will attract interest at court rates from the date of judgment until payment in full.

16. The Claimant is also entitled to a certificate of service plus costs of the case.

17. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 13TH DAY MAY 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 Mbithe for the Claimant

No appearance for the Respondent