



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 69 OF 2020**

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

**VERSUS**

**SIMON ASUKA.....RESPONDENT**

**JUDGMENT**

1. The Kenya National Private Security Workers Union (the Union) instituted these legal proceedings against Simon Asuka (the Respondent), and it stated the Issues in Dispute as:

- (i) Failure to pay retirement benefits and terminal dues.
- (ii) Failure to grant annual leave and pay house allowance, extra hours (overtime) worked, underpayment of salaries and rest days (offs).
- (iii) The Grievants tendered their letters accordingly as it is provided in the provisions (sic).
- (iv) Underpayment of salaries against general wages orders.

2. The Respondent filed a Response on 21 October 2020, and the Cause was heard on 4 March 2021. Enos Manyasi and Michael Mukavana (the Grievants), and the Respondent testified.

3. The Union filed its submissions on 1 April 2021, while the Respondent filed his submissions on 5 May 2021.

4. The Court has considered the pleadings, evidence and submissions.

**Employment relationship**

5. The Grievants pleaded that they were employed by the Respondent on 7 June 2018 as watchmen and that they resigned in January 2019.

6. During oral testimony, the 1<sup>st</sup> Grievant stated that he was employed by the Respondent in 2013 on a salary of Kshs 5,000/- per month as a watchman to guard his residential house in Kakamega and that he served until 8 January 2019 when he gave notice of retirement.

7. The 2<sup>nd</sup> Grievant on his part testified that he was employed as a watchman in 2015 at a monthly salary of Kshs 5,000/- and that he too gave notice of retirement on 8 January 2019.

8. The Respondent denied that the Grievants were his employees at any point in time and testified that he only met the Grievants in Court.

9. The Court has the word of the Grievants against that of the Respondent.

10. Under cross-examination, the 2<sup>nd</sup> Grievant stated that the Respondent paid him Kshs 3,000/- at the Union offices. He admitted that he signed for the money.

11. The copy of the document signed by the Grievant, in the view of the Court, would have been sufficient secondary evidence of some relationship between the Grievants and the Respondent.

12. A copy was not produced in Court.

13. Equally corroborative would have been oral evidence from the Union official who was present when the Respondent allegedly made payment to the 2<sup>nd</sup> Grievant. Such a witness was not produced in Court.

14. On the state of the evidence and record, the Court regrettably comes to the conclusion that the Union did not prove to the requisite standard that the Grievants were in an employment relationship with the Respondent.

15. The Court must also state that the parties prosecuted their cases casually.

16. The Cause is dismissed with no order on costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 30<sup>th</sup> day of June 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Union        Mr Madegwa, Branch Secretary

For Respondent    Gabriel Fwaya, Advocate

Court Assistant    Chrispo Aura