



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 14 OF 2020

KENYA PETROLEUM WORKERS UNION.....CLAIMANT

v

NGUVU SERVICE STATION.....RESPONDENT

JUDGMENT

1. The Kenya Petroleum Workers Union (the Union) instituted these legal proceedings against Nguvu Service Station (the Respondent) on 13 February 2020, and the Issue in Dispute was stated as:

Wrongful and unfair termination of Milka Atieno Ochieng.

2. Despite being served with Notice of Summons and Memorandum of Claim on 23 July 2020, the Respondent did not enter an appearance or file a Response.

3. On 24 November 2020, the Court ordered that the Cause proceeds to formal proof and Milka Atieno Ochieng (the Grievant) testified on 22 March 2021.

4. The Court has considered the pleadings and evidence (the Court notes that the Respondent did not cooperate with the Conciliator who was appointed by the Cabinet Secretary, Labour).

Breach of contract/statute

Underpayment of salaries

5. The Grievant testified that she was earning Kshs 15,000/- while the prescribed minimum wage for a pump attendant was Kshs 20,195/- by dint of Legal Notice No. 2 of 2018.

6. The Court has looked at the Legal Notice, and it prescribed a minimum basic wage of Kshs 17,561/- to a petrol and service station employee.

7. The prescribed wage was effective 1 May 2018, and the Court finds that the Grievant was underpaid by Kshs 2,561/- from 1 May 2018 to 26 December 2018, totalling Kshs 20,488/-.

Overtime (normal and public holidays)

8. The Grievant did not disclose the prescribed minimum working hours in the sector the Respondent operated in for purposes of proving this head of the claim and relief is declined.

Pro-rata leave

9. Under section 28 of the Employment Act, 2007, an employee is entitled to at least 21 days annual leave on full pay.

10. The Grievant served the Respondent for about 10 months and was entitled to pro-rata leave.

11. The Union computed the entitlement as Kshs 16,829/-, and the Court will allow the same.

Unfair termination of employment

12. Section 35(1) of the Employment Act, 2007 requires an employer to give written notice of termination of employment, whilst section 41 of the Act obligates the employer to afford the employee an opportunity to make representations before terminating the contract of employment.

13. The Grievant testified that the Respondent employed her in March 2018 as a pump attendant and that it terminated her employment on 26 December 2018 without giving her any reasons.

14. The testimony was not rebutted, and the Court finds that the Respondent unfairly terminated the Grievant's employment on 26 December 2018.

Salary in lieu of Notice

15. The Respondent did not give the Grievant written notice and the Court awards Kshs 17,561/- as one month salary in lieu of notice.

Compensation

16. The Grievant served the Respondent for less than one year, and in consideration of the length of service, the Court is of the view that the equivalent of one month salary as compensation would be fair.

Certificate of Service

17. A certificate of service is a statutory entitlement, and the Respondent should issue one to the Grievant within 21-days.

Conclusion and Orders

18. The Court finds and declares that the Respondent unfairly terminated the Grievant's employment and further that it was in breach of contract.

19. The Grievant is awarded:

(i) Salary in lieu of notice	Kshs 17,561/-
(ii) Compensation	Kshs 17,561/-
(iii) Pro-rata leave	Kshs 16,829/-
(iv) Underpayments	Kshs 20,488/-
TOTAL	Kshs 72,439/-

20. Respondent to issue a certificate of service within 21 days.

21. No order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF JULY 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mr Olala, General Secretary

Respondent did not participate

Court Assistant Chrispo Aura