



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT BUNGOMA

CAUSE NO. 73 OF 2017

[Formerly Kisumu E&LRC NO. 363 of 2016]

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

VERSUS

KLEEN HOMES SECURITY SERVICES LTD.....RESPONDENT

JUDGMENT

1. The claimant union filed suit on 13th December 2016 on behalf of the grievant MS. Clare Adhiambo Aura who was employed by the respondent on 1st August 2013 as a security guard initially at a monthly salary of Kshs. 5,000 per month. The claimant worked continuously until 17th December 2014 when she was summarily dismissed from employment. The claimant had prior to the dismissal taken 21 days leave instead of 26 days provided under protective security order 1998. The union tried to intervene unsuccessfully and the matter was reported to the Labour office. Conciliation was not successful and a certificate of unresolved dispute was issued.

2. The claimant prays for:

- a. Salary arrears for 16 days in December 2014 in the sum of Kshs. 3,076.80.
- b. One month salary in lieu of notice in the sum of Kshs. 5,000.
- c. Underpayment as per the general legal notice order no. 71 of 2012 which provided a minimum wage of Kshs. 8,873.30 in the sum of Kshs. 3,873.80 for the 9 months worked in the sum of Kshs. 34,864.20 and in terms of legal notice order no. 197 of 2016, which placed the minimum wage at Kshs. 10,116.15 from May 2014 at Kshs. 6,116.15 per month for 8 months in the sum of Kshs. 40,929.20 totaling Kshs. 75,793.20 in underpayments
- d. Arrear leave days not taken for 5 months worked and 5 days not taken for the first year plus Kshs. 750 leave travelling allowance.
- e. Overtime for 4 hours worked daily from August 2013 to December 2014 in the sum of Kshs. (46,321.20+46,938.90)
- f. Salary for Public holidays worked (Kshs. 5,048+1,983.50)
- g. House allowance (11,979.60 +12,139.40) for the entire period worked and
- h. Provision of certificate of service.

3. The total claim is for a sum of Kshs. 218,114.20. The claimant testified under oath in support of the particulars of claim and the reliefs sought and produced relevant documents including the General wage Orders for the relevant period and the certificate of unresolved dispute from the Ministry of Labour.

4. The respondent did not adduce any evidence to rebut the particulars of claim and the reliefs sought by the claimant despite having filed a response to the memorandum of claim in which general denial of the claim was made. The Respondent however had admitted that it employed the claimant on 1st August 2013 as a security guard and alleged that the claimant had absconded duty on 16th December 2014.

5. The claimant does not seek compensation for the alleged summary dismissal and only prays for payment of terminal benefits set out in the

memorandum of claim which reliefs have not been contradicted by the respondent.

6. The court finds that the claimant has proved all the reliefs set out in the memorandum of claim on a balance of probabilities.

7. The court enters judgment in favour of the claimant against the respondent as prayed in the sum of Kshs. 218,114.20. The award is payable with interest at court rates from date of filing suit till payment in full.

8. The respondent is to provide the claimant with a certificate of service within 30 days of this judgment. The respondent to pay costs of the suit.

Judgment Dated, Signed and delivered this 29th day of January, 2020

Mathews N. Nduma

Judge

BUNGOMA

Appearances

Francis Madegwa for Claimant

Fatuma Mgoli for Respondent.

Chrispo – Court clerk.