



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 410 OF 2015

TRANSPORT WORKERS UNION.....CLAIMANT

-VERSUS-

TOMIC ENTERPRISES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2020)

JUDGMENT

The claimant filed the memorandum of claim on 17.03.2015 claiming failure by the respondent to pay terminal dues for its members Godfrey Kinyanjui and Daniel Nyaneti (the grievants). The 1st grievant Kinyanjui claims and prays for:

- a) Pay in lieu of the waived notice Kshs.35,000.00.
- b) March 2013 salary balance Kshs.18, 000.00.
- c) Pay for July 2013 salary Kshs.35,000.00.
- d) Payment for 26 days worked in August 2013 Kshs.30, 333.00.
- e) Pay in lieu of 3 years pending annual leave Kshs.73, 521.00.
- f) 8 years' service benefits at 15 days per year Kshs.140,000.00.
- g) Certificate of service.
- h) Total claim Kshs.331, 894.00.

The 2nd grievant Nyaneti claimed and prayed for:

- a) Unpaid 8 months' salary for February to September 2013 at Kshs.11,000.00 p.m Kshs.88,000.00.
- b) Outstanding leave 2 years 9 months Kshs.29, 323.00.
- c) 2 years' service pay at 15 days per year Kshs.15, 232.00.
- d) Underpayment of wages per wage orders Kshs. 5, 740.70.
- e) Certificate of service.
- f) Total claim Kshs.138, 295.00.

Despite service of the summons to enter appearance and the hearing notice, the respondent did not enter appearance, file a response or attend the hearing. The grievants testified to support their respective cases and relied on the memorandum of claim and their respective documents

on record.

The 1st grievant Kinyanjui testified that he worked for the respondent from October 2005 to 2013 for about 8 years. His pay as a driver was Kshs. 35,000.00 per month. He testified that he resigned from employment by the letter dated 26.08.2013 because the respondent had failed to pay his salary arrears. By that letter he notified that he would work up to 25.09.2013 when the notice would lapse. His further evidence was that NSSF was deducted but not remitted consistently. His claims as set out in the memorandum of claim were stated in the letter of one month notice to terminate employment.

The 2nd grievant Nyaneti testified that he worked for the respondent as a turn boy for 3 years and was paid Kshs.8, 000.00 and later Kshs. 11, 000.00 per month. His evidence was that the employer told him to go away at a time he had worked for 8 months without pay and his NSSF was never remitted.

The claimant has filed documents showing that a trade dispute was reported but the respondent's management and proprietor one Papu Shantilal Makwana failed to co-operate. The letter for referral of the dispute to the Court is dated 25.07.2014.

The Court has considered the evidence, the memorandum of claim and all material on record. The Court finds that on a balance of probability the grievants have established that they were employed by the respondent and the employment ended in circumstances as per their respective evidence. The claimants have further established that they are entitled to the payment as prayed for and as verified by their respective affidavits. In particular the Court finds that the grievants are entitled in terms of sections 28 and 35 of the Employment Act, 2007 and as per their respective terms of service and their respective evidence.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- 1) The payment of Kshs.331, 894.00 to Godfrey Kinyanjui and Kshs.138, 295.00 to Daniel Nyaneti by 01.05.2020 failing interest at court rates to be payable thereon from the date of this judgment till full payment.
- 2) The respondent to deliver a certificate of service to each grievant in 30 days from the date of this judgment.
- 3) The respondent to pay the claimant's partial costs of the suit fixed at Kshs. 30, 000.00 only.

Signed, dated and delivered in court at **Nairobi** this **Friday, 6th March, 2020**.

BYRAM ONGAYA

JUDGE