



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 277 OF 2018**

**BETWEEN**

**JAMAL NOOR RAMADHAN.....CLAIMANT**

**VERSUS**

**JAGGED ALLIANCE LIMITED .....RESPONDENT**

*Rika J*

\_\_\_\_\_  
*Munee Katu & Associates, Advocates for the Claimant*

*Respondent in Person.*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 27<sup>th</sup> April 2018. He states, he was employed by the Respondent as a Heavy Commercial Driver, on 22<sup>nd</sup> March 2016. He earned a monthly salary of Kshs. 28,428. He states, he was paid less than entitled, under the relevant Wage Order. He worked overtime, without compensation. His contract was terminated unfairly by the Respondent, on 8<sup>th</sup> July 2017. He was not paid any benefits on termination. He prays for Judgment against the Respondent for: -

- a. Declaration that termination was unfair.
- b. A month's salary in lieu of notice, at Kshs. 35,544.
- c. Underpayment of salary from 1<sup>st</sup> May 2017 to 30<sup>th</sup> June 2017 at Kshs. 10,232.
- d. Wages for 8 days worked in July 2017 at Kshs. 10,321.
- e. Overtime worked from 23<sup>rd</sup> March 2016 to the date of termination at Kshs. 681,177.
- f. 12 months' salary in compensation for unfair termination at Kshs. 402,528.

Total...Kshs. 1,137,802

- g. Certificate of Service to issue.
- h. Costs and interest.

2. The Respondent filed its Statement of Response, through the Law Firm of Muthee Soni & Associates. The Law Firm withdrew from acting for the Respondent in the course of the hearing. It is denied that the Claimant was paid below the applicable statutory wage standard. It

is denied that the Claimant worked overtime. The rest of the Statement of Response, consists general denials, with the Claimant required to show strict proof.

3. The Claimant gave evidence and rested his Claim, on 11<sup>th</sup> March 2020. He restated the contents of his Statements of Claim and Witness on record. He exhibited the following documents: -

- ? Employment letter dated 22<sup>nd</sup> March 2016.
- ? Bundle of pay slips.
- ? General Wage [Amendment] Order for 2017.
- ? Certificate of Service.
- ? Demand letter dated 29<sup>th</sup> March 2018 issued upon the Respondent.

4. The Respondent was served with the Hearing Notice in person, after its Advocates withdrew from the proceedings, but did not attend Court.

**The Court Finds: -**

5. The Respondent has failed to give evidence. Its Statement of Response is bare. The phrase that ‘*the Claimant is put to strict proof,*’ is redundant, legal jargon-mongering, which adds no value to the response. There is nowhere in the E&LRC [Procedure] Rules 2016, where the Claimant is supposed to establish his Claim to strict proof. The Respondent has failed to give evidence, and to offer proper a Statement of Response, or any documents, to discount the Claim.

6. The Claimant has exhibited a Certificate of Service issued to him. His prayer for Certificate of Service has no foundation.

7. He has established through documents and oral evidence that he was employed by the Respondent as a Heavy Commercial Driver on 22<sup>nd</sup> March 2016. His monthly salary was Kshs. 28,428. His contract was terminated by the Respondent. There are no reasons shown, to justify the decision. Fair procedure was not observed. Termination did not meet the test of fairness under the Employment Act 2007. He merits notice and compensation for unfair termination.

8. He worked for about 16 months. His prayer for maximum compensation, at equivalent of

12 months’ salary, is an overshoot. ***He is allowed 5 months’ salary in compensation for unfair termination at Kshs. 167,720. He is allowed notice at Kshs. 33,544.***

9. ***The prayer for underpayment of salary is well- founded and allowed at Kshs. 10,232.***

10. ***Salary for 8 days worked in July 2017, is granted at Kshs. 10,321.***

11. There is no evidence of overtime worked. The contract provided for 45 hours of work in a week. The Claimant did not provide the Court with documents such as attendance sheets, showing he worked outside these hours. He was not persuasive in his evidence on hours worked, stating that he drove from the Port of Mombasa to surrounding CFS, day and night. This evidence is not sufficient to enable the Court conclude that he merits the sum of Kshs. 681,177 claimed as overtime pay. The prayer is declined.

12. ***The Claimant is granted costs, with interest at the rate of 16% per annum from the date the period of stay of execution expires.***

13. ***Stay of execution granted for 45 days from the date of this Judgment.***

***IN SUM, IT IS ORDERED: -***

- a. Termination was unfair.***
- b. The Respondent shall pay to the Claimant: compensation for unfair termination at Kshs. 167,720; notice at Kshs. 33,544; underpayment of salary at Kshs. 10,232; and salary for 8 days worked in July 2017 at Kshs. 10,321 – total Kshs. 221,817.***
- c. Costs to the Claimant.***
- d. Interest allowed at the rate of 16% per annum from the end of the period of stay of execution.***
- e. Stay of execution allowed for 45 days.***

**Dated, signed and released to the Parties under Ministry of Health and Judiciary Covid-19 Guidelines, at Chaka, Nyeri County, this**

**29<sup>th</sup> day of July 2020.**

**James Rika**

**Judge**