



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.259 OF 2015

JANE JEROTICH SIRMA.....CLAIMANT

VERSUS

POSTAL CORPORATION OF KENYA.....RESPONDENT

RULING

In the judgement of the court delivered on 17th December, 2017 the court made a finding that the claimant is entitled to the salaries and house allowance from 3rd November, 2009 to 11th July, 2013 and directed the respondent to compute for inclusion in the award of the court. The salary due is not contested as being Ksh.21,255.00 but the contest is the house allowance due.

The respondent filed Affidavit of John Tonui the General Manager/Human Resource & Administration and who avers that while the claimant was earning a wage of Ksh.21,255.00 the house allowance was Ksh.9,545.00 per month. For the period of suspension, 3rd November, 2009 to 11th July, 2013 the claimant is entitled to Kshs.1,069,126.00 in salary and **Ksh.422,842.00 for house allowance.**

The claimant filed her affidavit on the facts that the order for the respondent to compute the due salary and house allowance is correct with regard to the salary being ksh.1,069,126.00 but the computation of house allowance is erroneous. The monthly allowance was ksh.12,000.00 in accordance with the pay slips issued by the respondent and attached to the Memorandum of Claim. The total house allowance due is ksh.531,600.00 for the period 3rd November, 2009 to 11th July, 2013.

In his Further Affidavit, Mr Tonui avers that the claimant was employed in the year 1981 by Kenya Post and Telecommunication Corporation which split and the claimant fell under the Postal Corporation of Kenya. Upon the split the respondent faced serious management challenges and disorganisation where some employees had salary increment as reflected in pay slips. The house allowances paid fall into different categories for those in Nairobi and other regions. The claimant was under job grade UN 9.2 from the year 2009 to December 2012 and ought to have earned Ksh.9,045.00 at the time of dismissal.

Mr Tonui also avers that the claimant was unionised and under the collective bargaining agreement (CBA), house allowance was negotiated at ksh.9,045.00 to ksh.9,545.00 on 28th June, 2013. The computation ordered by the court is based on the applicable CBA.

On the orders and directions of the court, the respondent has relied on the CBA stated to be signed on 28th June, 2012 and the job group under which the claimant fell being Grade UN 9.2. Crucial herein is the pay slips the claimant was issued during the pendency of her employment with the respondent.

Section 20 of the Employment Act, 2007 requires the employer to issue the employee with an itemised payment statement setting out the gross wage, statutory deductions and provided benefits.

20. Itemised pay statement

(1) An employer shall give a written statement to an employee at or before the time at which any payment of wages or salary is made to the employee.

(2) The statement specified in subsection (1) shall contain particulars of—

(a) the gross amount of the wages or salary of the employee;

(b) the amounts of any variable and subject to section 22, any statutory deductions from that gross amount and the purposes for which they are made; and

(c) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

In this regard, the payment statement/pay slip(s) issued to the claimant pursuant to the provisions of section 20 and in the absence of any material evidence as to how the respondent arrived at the computation of Ksh.9,545.00 is clear to the extent that on 25th October, 2009 the claimant had a basic wage of Ksh.21,255.00; House allowance of Ksh.12,000.00 and commuter allowance of Ksh.2,000.00 per month.

This is the same wage and allowances paid in September, 2009.

On this basis, the computation of the due house allowance should be premised on the payment statement issued to the claimant by the respondent pursuant to the provisions of section 20 of the Employment Act, 2007. To use any other figures without giving the foundation would be contrary to the mandatory provisions of section 20 as cited above.

The submission by the respondent that the respondent was faced with serious challenges in management of employee payslips and its systems became so disorganised that some employees had salary increments as reflected in the payslips, these are matters beyond the claimant's control. Mr Tonui as the general manager/human resource and administration for the respondent is bound by the mandatory provisions of section 20 of the Employment Act, 2007 to ensure that all employees in the service of the respondent are issued with payment statements each month of service. Such record is regulated in law as to which details it should address.

The claimant has correctly relied on the payment statements issued by the respondent. The CBA the respondent is seeking to apply was *singed* 14 days before the claimant was dismissed. The date of registration of the CBA is not stated. The enforceability of an unregistered CBA does not apply in accordance with section 59(5) of the Labour Relations Act, 2007.

Accordingly, the computation by the claimant assessed by the court is correct.

The due house allowance due is Kshs.531,600.00.

Delivered at Nakuru this 14th day of February, 2019.

M. MBARU JUDGE

In the presence of:

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