



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT

NAKURU

CAUSE NO.379 OF 2016

ZEPHANIAH MAUTI OGISIA..... 1ST CLAIMANT

JOSPEPH NYAMBOGA RAINI..... 2ND CLAIMANT

ISAAC IRAVO..... 3RD CLAIMANT

VERSUS

PETER MWENDWA

T/A PEMWE SECURE SERVICES..... RESPONDENT

JUDGEMENT

The claimants were employed by the respondent as night guards and paid ksh.5,000.00 per month.

The 1st claimant as employed on 7th January, 2012; 2nd claimant employed on 7th September, 2005; and 3rd claimant employed in June, 2013.

The claims are that the Work hours were 6pm to 6am for 7 days a week without rest or compensation contrary to section 27(2) of the Employment Act. there was underpayment contrary to the wage orders and there was no annual leave allowed of paid in lieu thereof.

On 31st December, 2014 the claimants were directed to hand over their uniforms to the respondent and verbally informed that their employment had been terminated. There was no notice, hearing or payment of terminal dues.

The claimants made a report with the labour officer but terminal dues were not paid and claim the following;

1st claimant;

- a) Notice pay Ksh.11,633.55;
- b) Underpayments Ksh.200,388.50;
- c) Overtime Ksh.184,068.80;
- d) Off duty ksh.163,616.70;
- e) Work during public holidays ksh.35,111.20;
- f) Leave pay for two years ksh.17,534.70;
- g) Gratuity for 2 years ksh.11,633.55;
- h) Compensation.

2nd claimant;

- a) Notice pay Ksh.11,633.55;
- b) Underpayments Ksh.375,642.65;
- c) Overtime Ksh.437,392.95;
- d) Off duty ksh.190,412.30;
- e) Work during public holidays ksh.87,782.75;
- f) Leave pay for two years ksh.61,771.40;
- g) Gratuity for 2 years ksh.11,633.55;
- h) Compensation.

3rd claimant;

- a) Notice pay Ksh.11,633.55;
- b) Underpayments Ksh.112,770.35;
- c) Overtime Ksh.95,247.40;
- d) Off duty ksh.84,664.40;
- e) Work during public holidays ksh.18,675.95;
- f) Leave pay for two years ksh.13,890.95;
- g) Gratuity for 2 years ksh.5,816.80;
- h) Compensation.

The 1st claimant testified on behalf of the other claimants that on 31st December, 2014 the supervisor came and told them the contract of employment had ended and should hand over the company property and their uniforms. He was then told to teach and train the new team coming to take over their duties which he did until 5th January, 2015 and then paid ksh.5,000.00.

The claimants reported the matter to the labour officer and the respondent offered to settle the matter by letter dated 14th May, 2015. The payments were made in bits. The labour office did not issue a breakdown of the payments.

Upon cross-examination, the claimant testified that the 3rd claimant was paid in full. the respondent told them that the contract had expired and a new company had been given the security contract hence the termination of employment and whereupon the claimant was required to train the new team. The payments made at the labour office were not sufficient.

The defence is that the claims by the claimants were addressed by the labour officer on 28th July, 2015. The client Valley Confectionary Limited where the claimants were placed terminated contract with the respondent on 31st December, 2014. The claimants were informed of this development and requested them to report to the Nairobi office for redeployment in January, 2015 but instead they absconded duty and opted to report to the labour officer for the payment of their dues.

The 1st claimant was paid ksh.22,056.00;

2nd claimant paid ksh.49,175.00; and

3rd claimant paid ksh.22,346.00.

The parties agreed to a settlement and signed in acceptance. This was after the claimants refused to work for the respondent and no notice pay is due or compensation as alleged. The issue of underpayment, overtime, off duties, work on public holidays were addressed by the labour officer and an agreement done.

The defence is also that the leave days and gratuity dues were paid and following conciliation, the labour officer entered agreement. The claims made are not due.

John Mwendwa testified that he is the manager of the respondent and following termination of contract by the client, Valley Confectionary Limited by letter dated 8th December, 2014 he informed the claimants of the same and were given an option to move to Nairobi for redeployment but the claimants declined whereas other employees obliged. They were paid their terminal dues before the labour officer and an agreement drawn in settlement.

At the close of the hearing, both parties filed written submissions.

The 1st claimant testified in support of the claims made by the other claimants. There is a letter of consent by the 2nd and 3rd claimants allowing the 1st claimant to urge their case in a representative capacity.

The defence is that the claimants have since been paid their terminal dues as agreed before the labour officer and an agreement drawn in this regard. The agreement entered into by the claimants and the respondent before the labour officer is filed and signed by all the claimant.

The 1st claimant testified that the respondent has since paid them in bits but there was no indication as to the breakdown of the payments made.

The defence filed by the respondent on 17th November, 2016 was served upon the claimants and attached at the details and agreement. The agreement has the details in payments agreed upon. This came to the notice of the claimants and the 1st claimant testified that the 3rd claimant was paid in full settlement and he too got his payments paid in bits and his issue was with regard to the breakdown of such payments.

Thus settled, and the claimants having signed in settlement, unless otherwise proved that the settlement was achieved by fraud, misrepresentation or unlawfully, the terminal dues following termination of employment have since been paid before the Labour Officer as under section 15 of the Employment and Labour Relations Court Act, 2011.

The court finds the matter resolved by settlement. Claims herein are addressed.

Delivered in open court at Nakuru this 29th day of April, 2019.

M. MBARU

JUDGE

In the presence of: