



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 216 OF 2014

TRANSPORT WORKERS UNION.....CLAIMANT

VERSUS

NJUWA TAXIS & CAR HIRE LIMITED.....RESPONDENT

JUDGMENT

1. Suit was brought by a memorandum of claim on 19/2/2014 by the union on behalf of the grievant.
2. The grievant was employed as a taxi driver on 16/5/2011 and his employment was terminated on 6/7/2017. The grievant earned Kshs.13,000 at the time of termination. The grievant worked from 6 p.m. in the evening to 6 a.m. in the morning and was not paid overtime. The grievant was not given termination notice nor paid in lieu of notice. The grievant was not paid six (6) days' salary in July 2012 in the sum of Kshs.3,000.
3. The grievant further seeks payment of 24.5 days untaken leave in the sum of Kshs.12,250.
4. Overtime claimed by the grievant was calculated at 87 hours per month for the period served as calculated under item 22 (e) of the statement of claim in the sum of Kshs.60,320.
5. The grievant testified under oath in support of the particulars of claim and stated that his employment was terminated verbally without notice, notice to show cause or disciplinary hearing. The grievant seeks compensation in respect thereof.

Determination

6. The suit is undefended, the respondent having failed to file a statement of defence. The testimony by the grievant is unrebutted and the court finds that the grievant has proved he is entitled to the reliefs set out in the statement of claim on a balance of probabilities.
7. The termination of the employment of the grievant violated Sections 41, 43 and 45 of the Employment Act 2007.
8. The grievant is entitled to compensation in terms of Section 49 (1) (c) and (4).
9. The grievant had served the respondent for a period of one year only. His employment was curtailed for no justifiable cause and without following due procedure. The grievant was not paid terminal benefits upon termination. The grievant suffered loss and damage and the court awards the claimant the equivalent of four (4) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs.52,000.
10. In the final analysis Judgment is entered in favour of the grievant as against the respondent as follows:
 - a) Kshs.52,000 in compensation.
 - b) Kshs.13,000 in lieu of one month notice.
 - c) Kshs. 3,000 6 days arrear salary for July 2012.
 - d) Kshs.6,500 in lieu of leave days not taken.

e) Kshs.60,320 overtime for 87 hours in one year.

Total and award Kshs.134,820.

f) Interest at court rates from date of Judgment in respect of (a) above and from date of filing suit in respect of (b), (c), (d) & (e) above.

g) Costs of the suit.

Dated, delivered and signed this 5th day of April 2019

HON. MATHEWS NDERI NDUMA

JUDGE

Appearances:

Mr Mukuha for the grievant

Mamo: Court clerk