



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 135 OF 2015**

**ABDI MOHAMED ABDULLAHI Alias**

**ABDIKADIR MOHAMED ABDULLAHI.....CLAIMANT**

**VERSUS**

**ROYAL SAUDI ARABIA EMBASSY.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 19<sup>th</sup> July, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 05.02.2015 through Garane & Associates advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the claimant's employment contracts with the respondent were grossly violated.
- b) That the claimant was grossly underpaid.
- c) That the respondent owes the claimant a sum of USD 105, 840 as salary arrears from his employment as a translator.
- d) That the respondent owes the claimant a sum of USD 129, 312 as salary arrears from his employment as head of research.
- e) The response owes the claimant severance pay as a translator for nine years a sum of USD 49, 726.
- f) The respondent owes the claimant allowances for transport amounting to USD 32, 649; overtime USD 43, 452; and house allowance USD 25, 404.
- g) Exemplary damages for wrongful termination one year pay amounting to USD 25, 404.
- h) That the respondent releases the claimant's personal effects which include books, files and texts in their possession.
- i) Any other equitable relief that the Court may deem fit and just to grant.
- j) Costs of the suit.

The respondent filed the statement of response on 19.03.2015 through Chaudhri & Associates Advocates. The respondent prayed that the claimant's claim be dismissed with costs together with interest thereon for such period and at such rate as the Court may determine; and for any such further relief as the Honourable Court shall deem fit to grant.

The parties recorded consent on 13.03.2018 thus, **"By consent parties to file consent and mention on 20.03.2018 at 9.00am to record the consent. By further consent, there is no dispute on salary arrears as per statement of claim and severance pay as claimed. Issues to be discussed to include overtime, transport allowance and house allowance. USD 29, 000 be delivered by 16.03.2016."** By that consent the amount payable on salary arrears and severance pay as claimed and prayed for is a sum of USD **284, 878**.

The parties failed to reach a compromise on the issues of overtime, transport allowance and house allowance. The matter went to full trial and the claimant testified to support his case whereas the respondent, despite service of a hearing notice, did not attend the hearing.

The only issue for determination is whether the claimant is entitled to overtime, transport allowance and house allowance as prayed for.

The claimant testified that he claimed house allowance for the period 1991 to 2008 when due house allowance was not paid. The failure to pay the house allowance was later rectified and for the first time paid by cheque dated 25.08.2008. He was told to be patient and by the time he was terminated in February 2014 he had not been paid.

Secondly, the claimant prayed for payment for overtime. His evidence was that in 1991 to mid 1990s he worked 9am to 9pm when he assisted the customers to apply for passports to attend Haji. Later he worked for 20 hours per day when he was assigned to work with the IGAD Somalia National Reconciliation Conference held in Eldoret. He worked on the conference for 4 months from 15.10.2002 to 15.10.2002. His work entailed writing reports and the meetings adjourned late at 12.30am. That happened for 2years and he worked with Ambassador Bethwel Kiplangat, the Kenyan great diplomat.

On transport the claimant submitted that he used own transport and it was not provided as was promised in the various contracts of service concluded between the parties.

The Court has considered the evidence, the pleadings and the submissions filed for the claimant. The Court returns that the particulars on the claims for overtime, transport and house allowances were not specifically pleaded and it is not clear how the amount claimed was arrived at. Further the claim for house allowance for the period 1991 to 2008 is clearly time barred under section 90 of the Employment Act, 2007. Particulars for overtime were not clear from the evidence provided and the basis of computation of the amount claimed remained undisclosed. Similarly the claim for transport was not particularized. The Court finds that the claims were not specifically pleaded and strictly proved. They will therefore be declined.

The claimant made submissions on unfair termination and testified that he left employment when his grievance on payments now subject of the suit was not addressed. The respondent pleaded that the costs of running the embassy spiraled and to cut on costs the claimant and other staff were terminated in public interest and the claimant's terminal dues included Saudi Arabia Riyal (SAR) 14, 000 being 2 months' salary and end of service pay SAR 40,000 making SAR 54, 000. In the circumstances the claimant is awarded **SAR 54, 000.00** as admitted for the respondent as the final terminal dues admitted. The Court further finds that the termination was unfair because it was based on the claimant's grievance about the salary arrears and already admitted by the respondent. The reason for termination was a well founded grievance and was unfair under section 46 of the Employment Act, 2007. The claimant had served for a long period sometimes in extraneous circumstances entailing long hours of work. Further he had a clean record of service and the aggravating factor was the long outstanding salaries. Under section 49 of the Act, the Court finds that an award of 12 months compensation will meet ends of justice making **USD 25, 404** as prayed for.

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

- a) The respondent to pay the claimant **USD 310, 282** plus **SAR 54, 000** by 01.09.2019 failing interest at 14% per annum be payable thereon from the date of filing the suit on 05.02.2015 till full payment.
- b) The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 19<sup>th</sup> July, 2019**.

**BYRAM ONGAYA**

**JUDGE**