



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 224 OF 2016

(a) Whether the dismissal of the claimant was for a valid reason and done following a fair procedure.

(b) Whether the claimant is entitled to the reliefs sought.

Issue (a)

7. The totality of the evidence before court has shown that the claimant was guilty of sleeping whilst at work and had been caught red-handed with stolen vegetables by RW1. The claimant was given opportunity to show cause and to appear at a disciplinary hearing accompanied by a union official. The explanation given to the Board was deemed unsatisfactory and the claimant in the court's considered view was dismissed from work for a valid reason and a fair procedure was followed in arriving at the decision to dismiss the claimant from work.

Reliefs

Notice Pay

8. The claimant was paid three months salary upon termination. It was not explained what the three months salary represented. The court finds that the claimant was a union member and his terms of service were governed by the security services wages order.

9. The claimant ought to have been paid a minimum wage of Kshs. 10,116.15 at the time of dismissal. The claimant was underpaid throughout the period he served the respondent. The court finds that the claimant is entitled to one month's pay in lieu of notice in the sum of Kshs. 10,116.15.

Leave days.

10. The claimant had not taken leave for the year 2014. He is entitled to one month salary in lieu of leave not taken in the sum of Kshs. 10,116.15.

Service pay.

11. In terms of the security services wages order, the claimant is entitled to 18 days salary in respect of every concluded year of service. The claimant had served the respondent from 1st August 2000 to 25th July 2014 a period of 13 completed years. The claimant is therefore entitled gratuity calculated at 18 days salary of the last salary he earned. The court awards him Kshs. 78,905.97 being gratuity in respect of 13 years served.

Overtime

12. The claimant worked twelve hours every day and did not get off days in a week. The claimant however did not claim overtime for the thirteen years served. The only valid claim for payment of overtime is with respect to the last three years of service. The rest of the claim is statute barred. The claimant is therefore to compute overtime in respect of four extra hours worked for the last three years served and file with the court within 30 days. The respondent is to file a counter computation within 14 days of service.

13. In the final analysis judgment is entered in favour of the claimant as against the respondent as follows:

(a) Kshs. 10,116.15 in lieu of one month notice.

(b) Kshs. 10,116.15 in lieu of leave days not taken.

(c) Kshs. 78,905.97 service pay for 13 years.

(d) Overtime calculated at four (4) extra hours for the last three years of service to be computed and filed as directed in this judgment within 45 days.

(e) Interest at court rates from date of filing suit till payment in full.

(f) Costs of the suit.

14. For the avoidance of doubt, the claim for compensation was dismissed.

Judgment Dated, Signed and delivered this 9th day of July, 2019

Mathews N. Nduma

Judge

Appearances

M/S Oketch for claimant.

M/S Odhong for Respondent

Chrispo – Court Clerk