



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CASE NO. 196 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**PETER KIGE OLUOCH.....CLAIMANT**

**VERSUS**

**MESHACK OTIENO AIDA.....RESPONDENT**

**JUDGMENT**

1. The claimant seeks maximum compensation for unlawful and unfair termination of employment and terminal benefits comprising underpayments, payment in lieu of leave days not taken and unpaid house allowance.
2. The respondent filed a memorandum of defence on 29<sup>th</sup> September, 2017. The claimant joined issues with the respondent in a reply to the memorandum of defence filed on 30<sup>th</sup> October 2017.
3. The claimant testified as CW1 that he worked for the respondent as a farm manager from August 2013. That he worked continuously until August 2016 when he was dismissed from work. That the claimant earned Kshs. 6,000 per month. That the claimant was underpaid and when he asked the respondent for a salary rise, the boss became angry and sent the claimant home summarily and replaced him with another farm manager. The claimant was not given show cause letter, was not given reasons for the dismissal nor was he called to a disciplinary hearing. CW1 stated that the dismissal was unlawful and unfair and that he be compensated in respect thereof. The claimant testified that he was not given annual leave for the three years worked and was not paid in lieu thereof. The claimant testified also that he was not housed nor paid housing allowance for three years. CW1 stated that the salary of Kshs. 6,000 was below the minimum wage for a farm manager. That he demanded to be paid better but was sacked instead.
4. Claimant wrote a letter of demand but it was not heeded. Claimant relied on regulation of wages 2013 and 2015 to demand award in respect of underpayments claimed. The wages order provided minimum salary for a farm foreman. That he supervised over ten (10) workers in the sugar farm. That he also kept records. He reported to work at 8.00 a.m in the morning up to 5.00 p.m. The claimant was not given letter of appointment and worked for 6 days a week. CW1 denied that he had absconded duty.
5. The defendant did not attend the hearing and therefore the evidence by CW1 is uncontroverted. The claimant has proved on a balance of probabilities that he worked as a farm manager for the respondent for a period of 3 years. That he was underpaid as he received Kshs. 6,000 per month contrary to the minimum wage set out in the General Wage Order for a farm foreman for the period 2013 to 2015. That he was not granted leave for the three year period and was not paid in lieu thereof. That he was unlawfully dismissed for demanding salary increment. The court finds that the respondent violated *Sections 36, 41, 43 and 45 of the Employment Act, 2007* and the claimant is entitled to compensation in terms of *Section 49(1) (c) and (4) of the Act*.
6. In this regard the court notes that the claimant did not contribute to the dismissal. The claimant was underpaid for three years and was not granted leave. The claimant was not paid terminal benefits upon dismissal. The claimant was not compensated for the sudden loss of employment. The claimant lost career prospects and suffered loss and damage. The claimant had not obtained alternative employment. The court also considers *E&LRC Cause No. 293 of 2015 Pamela Nelima Lutta vs Mumias Sugar Company Limited* in which Maureen Onyango – Judge awarded the claimant who had served for 17 years the maximum compensation equivalent to 12 months salary in compensation.
7. In the present case the court awards the claimant the equivalent of three (3) months salary in compensation in the sum of Kshs. (9,808 x 3) = Kshs. 29,424.
8. Furthermore the court awards the claimant Kshs. 7,704 being underpayments for the three years worked and Kshs. 29,424 in lieu of three

years annual leave not taken.

9. Judgment is entered in favour of the claimant as against the respondent in the total sum of Kshs. 66,552. The award is payable with interest at court rates from date of filing suit till payment in full except compensation whose interest is to be reckoned from date of judgment.

10. Respondent to pay costs of the suit.

**Judgment Dated, Signed and delivered this 14<sup>th</sup> day of October, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

P.D Onyango for Claimant

Mr. Odhiambo for Respondent.

Chrispo – Court Clerk