



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**

**CAUSE NO 42 OF 2017**

**Formerly Nakuru Cause No 250 of 2015**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION .... CLAIMANT**

**VERSUS**

**S & I SECURITY LIMITED .....RESPONDENT**

.....

**JUDGEMENT**

1. The grievant Mr. Julius Kibor pleaded that he was on 1<sup>st</sup> January,2008 employed by the respondent as a security guard. His opening salary was Kshs. 4,500/= per month. The grievant worked until 15<sup>th</sup> May,2015 when he decided to resign from employment by giving the respondent one month's notice. He was issued with a clearance form which indicated he cleared with the respondent on 16<sup>th</sup> June,2015.
2. The grievant further pleaded that he was issued with a letter from the respondent which acknowledged his notice of resignation and where he was promised the payment of his final dues within 7 days but none was made as promised.
3. The Claimant herein further pleaded that the respondent issued a memo to all its staff that they should not deal with the union staff particularly Mr. Odima and that anyone found sharing information with him would face the consequences.
4. The dispute was therefore referred to the Ministry of Labour who appointed Mr. Torini of Eldoret Labour office to act a conciliator. The Claimant forwarded its written memorandum on 20<sup>th</sup> July, 2015 and on 21<sup>st</sup> July the conciliator invited the parties to a conciliation meeting on 5<sup>th</sup> August,2015. The Claimant appeared alone but the respondent appeared with an advocate which was contrary to section 48 of the Employment Act and insisted he be present at the conciliation meeting. The conciliator called off the meeting after the advocate refused to listen to the advice that he was not to participate in the proceedings. The conciliator then proceeded to issue a certificate of an unresolved dispute.
5. The Claimant further alleged that the respondent was paying wages below minimum wage and that the grievant never went on leave for the period he worked. The Claimant union further averred that the grievant worked overtime without payment.
6. The respondent on his part pleaded that it did not have a collective bargaining agreement or recognition between the Claimant Union and themselves and that what was annexed by the Claimant was a forged document.
7. The respondent further stated that the letter acknowledging the grievants resignation further indicated that his final dues were to be worked out and he was to collect the same after seven days but he never visited the respondent officers thereafter. According to the respondent, the claim was brought in bad faith since the grievant resigned on 15<sup>th</sup> May, 2015 citing family responsibilities and on 16<sup>th</sup> May, 2015 the respondent issued him with a letter acknowledging his resignation. On 16<sup>th</sup> June, 2016 he was issued with a clearance form and subsequently on 29<sup>th</sup> June, 2015 he lodged a claim at the Labour Offices in Eldoret.
8. The respondent further pleaded that the contents of paragraph 10,11 and 12 of the memo of claim were not disputed but averred that the figures appearing in appendix 10 were exaggerated to paint a bad picture of the respondent. According to the respondent, the grievant went for all his leave and off days and there was no day the grievant worked overtime without remuneration.
9. At the hearing only the Claimant attended to give evidence. The matter proceeded ex parte after the Court was persuaded that the respondent was duly served.
10. The Claimant repeated most of the averment in the memorandum of claim and further stated that he never went on leave during the

period he worked and that he was never paid overtime. According to him he worked until 15<sup>th</sup> May, 2015 when he disagreed with his wife and opted to resign from work. He gave a months' notice.

11. The claim before me is essentially about payment of terminal dues and allegation of failure on the part of the respondent to pay the gazetted minimum wage, overtime and leave pay for leave not taken.

12. On the question of leave and off days, although the grievant averred that he never went on leave, and off, the respondent attached together with response to the claim documents to demonstrate that the grievant took leave and off days for the period claimed. The Claimant never responded to the documents and or offer any evidence to the contrary. The claim for leave is therefore not sufficiently proved to merit any award.

13. On the issue of underpayments, the Court has reviewed and considered the operative minimum wage guidelines for the period in dispute attached with the claim vis a vis the payments (received by the Claimant as per the attached pay slips and is persuaded that this claim is merited and hereby awards the same.

14. In conclusion the Court awards the grievant Mr. Julius Kibor the sum of Kshs. 297,921/= on account of underpayment of wages. This award shall attract interest at court rates until payment in full. The Claimant shall further have costs of the suit.

15. It is so ordered.

Dated at Eldoret this        day of                2019

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 3<sup>rd</sup> day of October 2019**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**