



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.381 OF 2016

DENNIS MOGIRE NYANG'ACHA.....CLAIMANT

VERSUS

INTERCITY SECURE HOMES LIMITED.....RESPONDENT

JUDGEMENT

The claim was filed on 28th September, 2016; the respondent was served and failed to enter appearance or file defence. The court satisfied with the return and affidavit of service filed by John Abuom heard the claimant under the provisions of Rule 15(3) of the Employment and Labour Relations Court (Procedure) Rules, 2016.

The claimant was employed by the respondent on 1st June, 2015 as a day guard and without any written contract of service. The wage paid was ksh.6, 500.00 per month an underpayment against the applicable wage orders.

The claim is that the work hours allocated were 6am to 6pm for 7 days each week without a break or rest and no annual leave or public holiday rest. There was no compensation thereof.

After the claimant had worked for a period of 6 months the respondent made an allegation that there was a lost tyre at his work station and proceeded to effect a deduction of ksh.2, 000 from his wages. There was also a deduction of Ksh.4, 800 for shoes and uniform. Such type had been stolen at night and when the claimant was not on duty.

On 10th January, 2016 the claimant was summoned by the administrator and directed to clear and after which his employment was terminated.

The claims made are the following

- a) Notice pay Ksh.11,623.20;
- b) Underpayments ksh.35,862.40;
- c) Overtime Ksh.39,184.45;
- d) Off duties Ksh.36,074.00;
- e) Public holidays ksh.7,463.60;
- f) Prorated leave 7 months ksh.5,463.00
- g) Uniform deduction Ksh.4,8800.00;
- h) Unpaid salary for 20 days ksh.9,686.00; Salary deduction Ksh.2, 000.00; Compensation

The claimant testified in support of his claims.

Without a defence the claims remain unchallenged. Without the work records to confirm the terms and conditions of employment the court is left with the pleadings and the evidence of the claimant.

The claimant as a day guard had his wage regulated under the Wage orders. Upon the assessment of the court on the applicable wage guidelines the claims made are compliant and he is awarded ksh.35, 862.40.

The work records including the hours of work are not made available by the failure of the respondent to attend. On the overtime worked the claimant is awarded ksh.35, 862.40.

On the claims for work without rest days this is a right secured in law and where the claimant was not compensated, such is due at Kshs. Ksh.36, 074.00.

The claim for work during public holidays is without evidence as to which day in issue.

Pro-rated leave for 7 months premised on the basic pay under the provisions of section 28 is ksh.3, 032.10.

The unpaid wage is due as no reason is given for withholding Ksh.9,686.00 similarly the deduction of a wage without proof or evidence that the claimant caused the loss of the tyre while off duty is in error. The explanation thereof is denied of this court and this is due at Ksh.2, 000.00.

The claimant worked for 7 months with the respondent and his terminal dues outlined above, no notice is awarded. The claimant testified that he was called to the office and informed that his employment would be terminated. On the short period of work, notice being summary and the payment of the owing dues as assessed above, such well compensates him. Compensation not shall be awarded.

Accordingly, judgement is hereby entered for the claimant against the respondent in the following terms;

- a) Underpayments ksh.35,862.40;**
- b) Overtime Ksh.39,184.45;**
- c) Off duties Ksh.36,074.00;**
- d) Prorated leave 7 months ksh.3,032.10;**
- e) Uniform deduction Ksh.4,800.00;**
- f) Unpaid salary for 20 days ksh.9,686.00;**
- g) Salary deduction Ksh.2,000.00.**

Delivered at Nakuru this 14th day of November, 2019.

M. MBARU

JUDGE

In the presence of:

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