



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

EMPLOYMENT AND LABOUR RELATIONS AT ELDORET

CAUSE NO 380 OF 2017

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

VERSUS

S. I SECURITY LIMITED.....RESPONDENT

J U D G E M E N T

1. The grievant averred that she was employed by the respondent as a security guardess on 10th October, 2014 and worked up to 15th January 2016 when she resigned from employment on the reason that she was going for further education and asked the respondent to tabulate her final dues. Her salary at the time was Kshs. 6,000/= per month which excluded overtime, public holidays and further that her salary was below gazette minimum wage.
2. The respondent did not tabulate and pay the grievant her dues despite intervention by the Union and the Ministry of Labour. The Conciliation consequently issued a certificate of unresolved dispute and referred the dispute to the Court.
3. The respondent in the response to the claim stated that the grievant resigned on 23rd February, 2016 and her salary then was Kshs. 6,000/=. The respondent further averred that the resignation letter attached to the memorandum of claim was a forgery in respect of which the grievant's secretary general Peter Odima is an accused person in Eldoret Criminal case No 308 of 2018. The respondent further alleged that the said letter of resignation attached to the Claimant's memorandum of claim was a forgery meant to insinuate the Claimant was not paid her all her dues.
4. The respondent further denied the tabulation by the Claimant union and further averred that the grievant by the time of resignation had had exhausted all her paid and unpaid leave.
5. At the hearing only the grievant assisted by the union attended court. The respondent though served failed to attend court to rebut for the averments in the claim.
6. This Court is however not strictly bound by rules of evidence. The respondent despite not attending Court made serious allegations against the Claimant Union's General Secretary Mr. Peter Odima to wit that he had been accused of forgery of some of the documents the Claimant union exhibited as evidence in support of the claim. The respondent further pleaded that the grievant had by the time of resignation taken all her leave days. The respondent attaches leave forms allegedly signed by the grievant.
7. The Claimant union never filed any response to refute these serious allegations both on the person of its General Secretary and also on the grievant over her claim for overtime and untaken leave. These are allegations the Court cannot just ignore and enter judgement against the respondent simply because they did not attend to the hearing. The grievant and the union ought to have rebutted these serious allegations and not rode on the fact that the respondent never attended Court.
8. On the issue of underpayment, the grievant apart from mere allegation of underpayment never attached any pay slip or evidence of payment to show how much the respondent was paying her in order for the Court to compare with the minimum wage and ascertain the amount of the underpayment if at all.
9. The onus of proof of any claim rests on party who expects the Court to enter judgement in his or her favour.
10. In the Court's view the Claimant has not surmounted this burden. The claim is therefore found without merit and is hereby dismissed with no order as to costs .
11. It is so ordered.

Dated at Eldoret this 14th day of November 2019

Abuodha Jorum Nelson

Judge

Delivered this 14th day of November, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent

Abuodha J. N.

Judge