



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE 1055 OF 2018**

***(Before Hon. Lady Justice Maureen Onyango)***

**KENYA ENGINEERING WORKERS UNION.....CLAIMANT**

**VERSUS**

**DEVKI STEEL MILLS LIMITED.....RESPONDENT**

**JUDGMENT**

The Claimant, a trade union registered under the Labour Relations Act, filed a Memorandum of Claim against the respondent on 18<sup>th</sup> June 2015. It contends that the Respondent failed to pay Lucas Nyamwaro Nyaage, its member, his terminal dues. The Claimant prays that the Respondent be ordered to pay the grievant the amount of Kshs.120,822.00 being one month's salary in lieu of notice, gratuity, prorata leave, 2009 – 2010 underpayment of wages and house allowance underpayment.

The Claimant avers that the grievant was employed by the Respondent as a mechanic supervisor from 3<sup>rd</sup> May 2005 until 8<sup>th</sup> February 2015 when he was denied access into the Respondent's premises. That on 1<sup>st</sup> March 2010 the respondent issued the grievant with a one month retirement notice. It avers that the parties failed to settle the dispute at the shop-level hence it reported a trade dispute to the Minister of Labour and a Conciliator was appointed. However, the Respondent failed to attend the conciliation meetings thus the Conciliator issued a certificate of disagreement to facilitate filing of this matter in court.

The Respondent in its Response to the Memorandum of Claim filed on 18<sup>th</sup> August 2017 denies the averments and the claims sought by the Claimant and further avers that gratuity is a contractual obligation and that the Claimant did not have any such agreement with the Respondent.

On 29<sup>th</sup> January 2018, the Court referred the matter to conciliation and on 18<sup>th</sup> December 2018 the Conciliator's report was filed in Court. The Conciliator stated that the parties had agreed on the payment of the grievant's final dues at Kshs.118,075. However, the Respondent never signed the settlement agreement.

The parties were directed to file their respective submissions on the Conciliator's Report but there are no submissions on record filed by either party.

**Determination**

The issue for determination is whether the Claimant is entitled to the terminal dues sought.

In the agreement dated 5<sup>th</sup> October 2018 forwarded to court by the Conciliator the parties agreed thus:

*“This is to confirm that the parties herein above met and agreed to payment of the final dues of Mr. Lucas M. Nyaanga as follows;*

- |            |                |
|------------|----------------|
| 1. Notice  | Kshs.11,937.00 |
| 2. Service | Kshs.29,812.00 |
| 3. Leave   | Kshs.1,392.00  |

4. Underpayment Kshs.70,803.00

5. Leave Kshs.4,130.00

In the absence of any contest by the parties, the court adopts the findings and recommendations of the Conciliator and accordingly awards the grievant the following –

1. Notice Kshs.11,937.00

2. Service Kshs.29,812.00

3. Prorata Leave Kshs.1,392.00

4. Underpayment Kshs.70,803.00

5. Accrued Leave Kshs.4,130.00

**Total Kshs.118,074.00**

The same shall attract interest from the date of judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7<sup>TH</sup> DAY OF NOVEMBER 2019**

**MAUREEN ONYANGO**

**JUDGE**