



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.128 OF 2018

KIPLANGAT ARAP KOECH CLAIMANT

VERSUS

DALSIT KONDOLARESPONDENT

JUDGEMENT

The claimant filed the Memorandum of Claim on 8th May, 2017, the respondent was served summons on 21st June, 2018 and there was no appearance or defence filed. There are returns to confirm service vide affidavit of Morris Ayiego filed on 11th December, 2018. The respondent was also served with a notice to attend court on 15th July, 2019 and failed to attend.

In the absence of any appearance and defence the claimant was heard under the provisions of Rule 15 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

The claim is that the claimant was employed by the respondent as a security guard at Njoro, Nakuru County from 22nd February, 2017 to 11th May, 2017 a period of 2 months and 17 days and when his employment was terminated without notice, hearing or any reasons being given.

The claim is also that the claimant remained at work from 6pm to 6am and without payment for overtime work. The wage due would be paid after every two weeks at Ksh.250.00 per day which was an underpayment.

The claim is for the following dues;

- a) Notice pay ksh.10,089.00;
- b) Overtime pay ksh.20,125.90;
- c) Public holiday ksh.627.60;
- d) Salary for May, 2017 Ksh.3,699.30;
- e) Underpayment Ksh.6,731.40;
- f) Compensation Ksh.60,534.40 and
- g) Costs

The claimant testified in support of his claims.

The failure by the respondent to attend and or file work records with regard to the claimant denied this court crucial material in addressing the claims made. There is no challenge to the claims made even to deny or confirm employment. The respondent served with summons and notices to attend and failed to attend only leaves the court with the claims unchallenged.

The evidence is that the claimant worked for the respondent for 2 months and 17 day and on 11th May, 2017 the manager dismissed him without any reasons resulting in unfair termination of employment. Section 43 of the Employment Act, 2007 requires the employer to give reason(s) leading to dismissal or termination from employment. Where there are no reasons, notice or payment of terminal dues, by virtue of section 45 of the Act, termination of employment is unfair the compensation is dues by virtue to section 49 of the Act.

Noting the duration of employment, the dues payable to the claimant shall be assessed.

A security officer working at Njoro, Nakuru County in February to May, 2017 was to earn Ksh.5,844.20 per month and with a house allowance of ksh.876.60 all being Ksh.6,720.60 per month. The daily wage was ksh.296.20.

The claimant was earning Ksh.250.00 per day.

The total paid each month was therefore Ksh.7,500.00 an amount way over and above the minimum wage due under the applicable Wage Orders. I take it such wage was paid and well covered the claimant's work overtime as it was in excess of ksh.780.00 each month and noting the hourly rate allowed under the Wage Orders was ksh.54.70.

The Wage Orders the claimant has relied upon relates to wages due to Nakuru and covers the period from 1st May, 2017 unlike what was to apply to the claimant for Njoro area and the wage orders in place from February, 2017 remained the same for the year 2015.

On the claims made there was no underpayment and overtime claim is addressed.

On the claim for work during the public holiday, the due day worked in this regard for the 2 months and 17 days is not stated.

For work during the month of May, 2017 where this was not paid for work done, on the paid rate of ksh.250.00 the claimant was entitled to a daily wage of Ksh.349.50 all at ksh.3,844.50.

Without notice and any reasons being given for termination of employment, the claimant is entitled to notice pay at the last rate of his wage all at Ksh.7,930.40.

These dues awarded adequately compensates the claimant.

Accordingly, judgement is hereby entered for the claimant against the respondent for the payment of notice pay at ksh.7,930.40; unpaid wages ksh.3,844.50 and costs of the suit.

Delivered at Nakuru this 17th day of December, 2019.

M. MBARU

JUDGE

In the presence of: