



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 186 OF 2013**

**DENIS M.OGWARO.....CLAIMANT**

**- VERSUS -**

**D.H.L EXEL SUPPLY CHAIN (K) LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 22<sup>nd</sup> June, 2018)

**JUDGMENT**

The claimant filed the memorandum of claim on 08.02.2013 in person. The claimant prayed for judgment against the respondent for:

- a) The sum of Kshs. 184, 560.00 being unpaid salary for October 2012 Kshs.6, 482.00; 15% unpaid house allowance for period served Kshs.79, 218.00; leave allowance Kshs.20, 847.00; and 12 months' compensation Kshs. 77, 784.00.
- b) Costs of the suit.
- c) Interest on (a) above.
- d) Any other relief as the Court may deem just.

The memorandum of response was filed on 12.07.2013 through J.A.Guserwa & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs. Later on 02.02.2018 the respondent appointed Shapley Barret & Company Advocates to act in the matter. On the other hand, the claimant appointed Amutallah Robert & Company Advocates to act in the suit.

There was no dispute that the claimant was employed as a loader in 2009. The respondent assigned him to load crates at a payment of 60.00 per crate payable at end month at Kshs. 13, 898.00. The engagement was oral.

The claimant's case was that he wanted and had a grievance that his salary be increased. The following day on 22.10.2012 he was locked out. His last pay was for October 2012.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- a) The claimant confirmed that he was paid salary for October 2012 and the claim in that regard is declined.
- b) The claimant testified that he was paid consolidated salary and the court returns that the claim for house allowance was not justified.
- c) No evidence or submission was made on the claim for leave allowance and the prayer will fail.
- d) The claimant's evidence that he was dismissed when he asked for salary increment was not rebutted. On a balance of probability, the Court returns that the claimant has established that he had a valid grievance which was well founded. It was not said that his salary ever increased or that he was not entitled to seek an increment and get a fair consideration of that request on the part of the respondent. The Court holds that the initiation of the complaint by the claimant was responsible and with good foundation. The initiation of the grievance would not constitute a fair reason for dismissal or imposition of other disciplinary penalty as envisaged in section 46 (h) of the Employment Act, 2007. On that account the dismissal was unfair as read with section 43 of the Employment Act, 2007 and the Court returns that the reason was invalid.
- e) The Court has considered that the claimant did not contribute to his predicament, he desired to continue in employment and he had

served for about 3 years. The Court considers that 5 months at Kshs. 13, 898.00 per month making **Kshs.69, 490.00** will meet ends of justice.

In conclusion judgment is hereby entered for the claimant against the respondent for:

1) The respondent to pay the claimant **Kshs.69, 490.00** by 01.08.2018 failing interest at court rates to be payable thereon from the date of this judgment till full payment.

2) The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered in court at Nairobi this Friday 22<sup>nd</sup> June, 2018.**

**BYRAM ONGAYA**

**JUDGE**