



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.373OF 2015

HENRY MEME MWORIA.....CLAIMANT

- VERSUS -

UNION DEVELOPERS (K) LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 26th October, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 18.03.2015 through Nchogu, Omwanza & Nyasimi Advocates. The claimant prayed for judgment against the respondent for:

- a. Underpayments Kshs.76, 826.40.
- b. Accrued annual leave Kshs. 10, 911.70.
- c. Overtime Kshs.5, 058, 688.96.
- d. Pay for public holidays Kshs. 48, 034.06.
- e. Damages Kshs. 130, 940.00.
- f. Day rest Kshs. 327, 147.84.
- g. Unpaid house allowance Kshs. 166, 403.52.
- h. Costs of the suit.
- i. Any other relief the Honourable Court may deem fit to award under the circumstances.

The claimant's case is that the respondent employed him on permanent terms as a guard effective 06.08.2002 until 09.10.2014 when the employment was terminated unfairly, unlawfully and wrongfully. The claimant's further case is that throughout the service he was underpaid.

Despite service, the respondent did not enter appearance and did not file a response or attend the hearing. The Court has considered the pleadings, evidence and submissions. The Court makes findings as follows:

- a. The claimant has prayed for underpayments, accrued leave, overtime pay for public holidays worked, unpaid house allowance and unpaid work on rest days. The claim is with respect to accumulated dues accruing throughout the service. As urged for the claimant, such claims amounted to continuing injury whose cause of action is limited to 12 months from the date of cessation thereof and per section 90 of the Employment Act, 2007. The continuing injuries ceased on the date of termination 09.10.2014 and the suit was filed on 18.03.2015 so that the claims were not time barred. The claimant testified to support the claims and the Court returns that on a balance of probability, the claimant is entitled as prayed for. The claimant is entitled to leave pay per entitlement under section 28 of the Act. The Claimant is entitled to be paid for underpayment and house allowance as per the provisions of the relevant Regulation of Wages and Conditions of Employment (General) Wages Order. The claims were particularised in the demand notice and the memorandum of claim but the respondent has not disputed any of the claims and the computation.

b. The claimant testified that on 09.10.2014 he was unfairly terminated without notice and without reasons. The Court returns that the termination was unfair for want of a valid reason as envisaged in section 43 as read with section 45 of the Employment Act, 2007.

In conclusion judgment is hereby entered for the claimant against the respondent for payment of **Kshs.5, 818, 952.48** by 01.02.2019 failing interest to be payable thereon at Court rates from the date of the suit till full payment; and the respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 26th October, 2018**.

BYRAM ONGAYA

JUDGE