



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 377 OF 2013**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 15<sup>th</sup> October, 2018)**

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

**VERSUS**

**LAVINGTON SECURITY LIMITED .....RESPONDENT**

**JUDGEMENT**

1. The Claimant herein filed their Memorandum of Claim dated 21/3/2013 on behalf of the grievant herein Mr. Aftin Deron Hassan contending that the Respondent refused to pay the grievant gratuity/service pay, pending leave, underpayment of wages and house allowance.
2. The Claimant's case is that the grievant was employed by the Respondent on 16/11/1999 as a Security Guard at an initial salary of Kshs.3,000/=.
3. They aver that the Claimant served the Respondents diligently for 13 years until 30<sup>th</sup> March 2011 when he tendered his resignation on account of his low salary which was below the minimum wage. The Claimant avers that he was also not being paid any house allowance nor standard overtime.
4. Upon his resignation, the Respondent failed to pay the grievant his terminal dues as pleaded.
5. The Claimant union attempted to resolve this matter with the Respondent but the Respondent did not cooperate. The Claimant seeks prayers as enumerated in the Memorandum of Claim.
6. The Respondent on their part filed the Memorandum of Response on 23/4/2013 through the firm of Kale Maina and Bundotich Advocates. Their main contention was that they have no recognition agreement with the Respondent and therefore the claim was untenable. They raised a Preliminary Objection on this issue, which Preliminary Objection was dismissed by the Learned Judge L. Ndolo in her ruling dated 25/6/2013.
7. The Respondents also contended that the grievant was duly paid his terminal dues upon his resignation from the Respondent's judgement.
8. The Parties filed their respective submissions herein. The issue of there being no recognition agreement between the Claimant and the Respondent was raised which had already been resolved through the ruling of Justice L. Ndolo as stated above. I agree with that position but also reiterate the fact that there being no recognition agreement between the Claimant and the Respondent does not render the Claimant unfit to defend its members. The right to join a union is enshrined under Article 41 of the Constitution and the Respondent cannot take away this right due to there being no recognition agreement between them and the union.
9. The only issue for this Court to determine is whether the grievant is entitled to remedies sought. The Claimant stated that he was underpaid. He exhibited his payslip from July 2008 showing his basic salary then was Kshs.6,160/=. There is no indication that this salary improved over time.
10. The Claimant enumerated the wages paid as against the minimum wage as per the wage guidelines from 2003 to 2011 when he resigned. The Respondent offered no evidence to the effect that they paid the grievant differently.
11. I find that the Claimant was underpaid over the years as follows:-

- 2003 – He was paid 3,000 against 3,603/=
- 2004 – He was paid 3,000 against 3,999/=
- 2005 – He was paid 3,000 against 4,279/=
- 2006 – He was paid 3,000 against the minimum wage of 4,279/=
- 2009 to 2010 – He was paid 6,160 against the minimum was of 7,640/=
- 2010 – He was paid 6,160 against the minimum wage of 8,724/=

**Total underpayment of wages = 131, 556/=**

2. During the said period, the grievant was not paid house allowance and I set this to be 15% of his basic salary =  $15/100 \times 6,160 \times 156 \text{ months} = 0.15 \times 924 \times 156 = 144,144/=$ .

3. I also award the grievant leave for 3 years =  $6,160 \times 21/30 \times 3 = 12,936/=$ .

**Total awarded = 288,636/=**

4. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 15<sup>th</sup> day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

**In the presence of:**

No appearance for Parties