



**REPUBLIC OF KENYA**

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

**CAUSE NO.1907 OF 2014**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,**

**HOSPITALS AND ALLIED WORKERS (KUDHEIHA WORKLERS)...CLAIMANT**

**- VERSUS -**

**GARDEN HOTEL, MACHAKOS.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 16<sup>th</sup> November, 2018)

**JUDGMENT**

The claimant filed the memorandum of claim on 29.10.2014 alleging failure by the respondent to pay workers' salaries contrary to section 18(2) (c) of the Employment Act, 2011. Despite service the respondent failed to enter appearance, to file defence, or to attend at the hearing. The claimant opted that the suit be determined on the basis of the pleadings and documents on record.

The claimant's case is that the respondent developed a habit of not paying workers' salaries effective sometimes in 2010. On 22.01.2013 the claimant reported a trade dispute and the Cabinet Secretary for labour appointed a conciliator. The conciliation proceedings failed to resolve the dispute and the conciliator issued a certificate on 14.08.2013 for referral of the dispute to the Court. By the letter dated 05.09.2013 the claimant wrote to the respondent pleading that the respondent pays the workers' salary arrears for April and May 2013 and the respondent appears to have cooperated and paid accordingly. However, the respondent appears to have failed to pay salaries effective January 2014 to June 2014.

The conciliator's certificate that the matter be referred to the Court is dated 03.07.2014. In the memorandum of claim filed on 19.10.2014 the claimant prays for an order that the respondent to pay the workers all accrued salaries since July 2014 to date. The claimant further prays that the Court invokes section 88 (1) of the Employment Act, 2007 and order the respondent as the employer to pay a fine not exceeding three months or both as general penalty for infringing section 18(2) of the Employment.

By the letter dated 04.02.2013 the respondent admitted that due to economic and business slumps, the respondent had salary arrears due to the workers. By the letter dated 26.07.2013 the union agreed that the respondent would make payment of salaries due to workers in full for the Month of April and May 2013 by 07.08.2013. The payment as already pointed out was effected though belatedly.

The Court has considered the material on record. The respondent admitted that due to economic constraints there were delays in paying due salaries to the workers. The Court considers that the prayer that outstanding salaries be paid would therefore be granted as prayed for.

The Court considers that the case before Court is a referral of a trade dispute and the submission that the Court invokes criminal jurisdiction by invoking section 88(1) of the Employment Act, 2007 and impose a penalty for contravention of section 18(2) of the Act is beyond the current referral and the prayer will fail. In any event such criminal proceedings will have to be initiated before the Magistrate's Court with jurisdiction to try the alleged offence.

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

- a) The order that the respondent to pay the workers all accrued salaries since July 2014 to date and to pay by 31.12.2018 failing interest to be payable thereon at Court rates from the date of the judgment till full payment
- b) The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered in court at Nairobi this Friday 16<sup>th</sup> November, 2018.**

**BYRAM ONGAYA**

**JUDGE**