



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.977 OF 2014

PIUS ACHESA MATE.....CLAIMANT

- VERSUS -

GARMEET CHANA T/A RAJU'S GARAGE.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 2nd November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 13.06.2014 through Ashitiva & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. The respondent to pay the claimant a sum of Kshs.134, 313.30 being:
 - i. Underpayment of Kshs.5, 716.50 plus Kshs.5, 733.00.
 - ii. Public holidays Kshs.8, 640.00.
 - iii. Unpaid house allowance Kshs.17, 244.00.
 - iv. Unpaid salary days worked in July 2013 Kshs.5, 700.00.
 - v. Unpaid overtime Kshs.62, 640.00.
 - vi. Pay in lieu of notice Kshs.9, 000.00.
 - vii. 15% basic monthly wage being house allowance Kshs.19, 639.00.
- b. Costs of the suit.
- c. Any other relief the Court deems fit to grant.

The statement of defence was filed on 09.09.2014 through Kaka Kamau & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

On 16.07.2018 at the hearing of the suit, the parties agreed and a partial judgment by consent was recorded against the respondent for:

- a. Underpayment Kshs. 6, 864.00.
- b. Unpaid house allowance Kshs.17, 244.00.
- c. Unpaid July salary 2013 Kshs.5, 700.00.
- d. Total Kshs.38, 448.00.
- e. Parties to make submissions on issue of further under payment and if loan of Kshs.4, 500.00 is due to the respondent.

The claimant testified and the respondent opted to rely on the documents and pleadings. Parties filed submissions.

The Court makes findings on the residual issues as follows:

1. The claimant testified that he was a member of the Kenya National Private Security Workers Union. The respondent relies on the meeting between the union and the respondent on 30.07.2013. The agreement which is not in dispute is that the claimant was to be paid Kshs. 38, 448.00 less loan of Kshs. 4, 500.00 so that the net due was Kshs.33, 948.00. The Court returns that the agreement was binding and the respondent is entitled to recover the amount accordingly.

2. The correspondence between the union and the respondent confirm that the claimant had been absent from duty for 5 days without permission and parties agreed to terminate the employment relationship per the agreement between the union and the respondent. The claimant is bound and is not entitled to any further claims including pay in lieu of notice as was prayed for.

In conclusion, the partial judgment will prevail with orders that the respondent is entitled to recover the Kshs.4, 500.00 and each party to bear own costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 2nd November, 2018**.

BYRAM ONGAYA

JUDGE