



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NO 368 OF 2013**

**FRANCIS IRUNGU KARUNGU.....CLAIMANT**

**VERSUS**

**EAST AFRICAN SEA FOOD LTD.....RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that he was employed by the respondent in June, 2002 as a heavy commercial vehicle driver and that his exit salary on 25<sup>th</sup> June, 2012 was Kshs 16,000/=.
2. In January 2012 he joined Kenya Union of Commercial, Food and Allied Workers. According to him the director of the respondent was against the respondent's employees joining a union. He contended that on 23<sup>rd</sup> June, 2012 he was summoned by Mr Ajay Singh, the respondent's transport manager who demanded that he revokes his union membership to retain his job but he refused.
3. On 25<sup>th</sup> June 2012 he resigned and demanded to be paid his benefits as per the CBA dated 28<sup>th</sup> August, 2012. According to him the respondent by a letter dated 2<sup>nd</sup> July, 2012 refuted his claims and advised him to resume duty. The respondent refuted the claimant's claim and averred that upon receipt of claimant's letter of resignation and interviewing Mr Ajay Singh and upon concluding that no such demand to revoke union membership had been made, asked the claimant to resume work as usual. The respondent further averred that the claimant was not entitled to any of the heads of claim made in the memorandum of claim.
4. In his oral evidence in court the claimant further stated that there was a valid CBA between the respondent and his union. He however did not complain to the union over his alleged grievances at work. According to him, he used to pay union dues directly. He denied obtaining alternative employment and that he stole any documents.
5. Concerning the lost tyre it was his evidence that the tyre was not new. He stated that he was robbed at work and that he had a police abstract report though not in court. Concerning leave he stated that they used to sign leave forms but remain at work and that the union knew about it. Regarding safari allowance he stated that he used to be paid Kshs 1000 per day and an overtime, he stated he had no document to show he had worked overtime and further that he had nothing to show he worked during public holidays. It was further his testimony that he asked the respondent to deduct two months' salary in lieu of notice from his terminal dues.
6. The respondent witness Mr Elvis Mogoko stated that he worked for the respondent as HR Manager and had done so for two and a half years. It was his evidence that he knew about the claimant from records kept by the respondent. It was his evidence that the claimant was a member of KUCFAW and that the respondent never prevented the claimant from joining the union. According to him the claimant's salary was as per the CBA. It was further his evidence that the respondent was satisfied with the conciliators' recommendation.
7. Concerning gratuity he stated that the same was not provided for in the contract and the CBA. Regarding safari allowance he stated that the claimant was paid in accordance with the CBA and that all allowances were paid before the journey. Concerning robbery, he stated that the respondent was concerned that the incident took place in Bomet but was reported by the claimant in Migori. He further stated that the claimant has never cleared with the respondent in order to be paid his terminal dues.
8. It is a cardinal rule of evidence that a person who alleges a fact as a basis of claim must prove that fact to the required standards for a court or any adjudicating authority to make a finding in such persons favour. Further, the court is entitled to observe and take into consideration the demenour of any witness before in deciding a matter before it.
9. The claimant herein has presented raft of claims against the respondent however in his evidence he never provided by way of any document or witness anything to support these claims to the required standard for the court to enter a judgement in his favour. For instance, the claimant alleged that he resigned from his employment because one Mr Ajay Singh wanted him to leave his union if he was to continue

working for the respondent. The claimant even after resignation did not report this incident to his union for investigation. Besides the respondent denied his allegations and asked him to resume work as normal but he never did so claiming he would be sacked if he did so.

10. In his resignation letter, the claimant seemed more preoccupied with the payment of his termination dues as claimed than the reason for which he resigned which the respondent had investigated and assured him there was no such demand and he should resume work as normal. In the course of the hearing the court observed that when confronted with certain questions regarding his claim, the claimant opted to keep quiet. For instance on his claim for untaken leave and overtime, the court noted that when he was shown the muster roll showing various days he was away on leave, the claimant chose to remain silent.

11. This dispute was taken through conciliation by the Ministry of Labour and the respondent informed the court that they did not have a problem with the conciliation recommendations.

12. The court has carefully considered the conciliator's report especially concerning the various heads of claim the claimant has presented to court and taking into account the observations concerning the claimants conduct and demenour and conduct during the trial. Further in view of the fact that the respondent does not dispute the recommendations by the conciliator, the proper order to make in resolving this dispute is to order that the claimant be paid as follows:

a. 37 days of leave	24,039.00	
b. 20 days rest days	19,798.00	
c. Salary underpayment	71,118.90	
d. Underpayment for safari outside Kenya	150,000.00	
e. Safari allowance airtime Kenya	<u>30,000.00</u>	
		294,955.90
Less:		
(i) 5 days overpaid salary	3,227.00	
(ii) 2 month's salary in lieu of notice	<u>33,589.60</u>	
		<b><u>36,816.60</u></b>
Net sum payable		
(294,955.90 – 36,816.60)		<b><u>258,139.30</u></b>

13. The decretal sum shall be subject to taxes and statutory deductions. There will be no order on costs.

14. It is so ordered.

Dated at Nairobi this 7<sup>th</sup> day of December, 2018

**Abuodha Jorum Nelson**

**Judge**

Delivered this 7<sup>th</sup> day of December, 2018

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.