



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1297 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 4th December, 2018)

TAILORS & TEXTILES WORKERS UNION.....CLAIMANT

VERSUS

SPIN KNIT LIMITED.....RESPONDENT

JUDGEMENT

1. The Claimant filed their Memorandum of Claim on 14.8.2013 alleging overworking of 52 hours instead of 45 hours per week. They also alleged wrongful dismissal of Lucy Mwangi, Hezekiah Mukabane and Livingstone Anyonje.
2. In the Claimant's final submissions filed in Court on 19.10.2015 however the Claimants indicated that they had withdrawn the prayer for overworking of the grievants and also withdrawn the claim on before of Lenny Mwangi who had been paid his final dues and also the claim for Livingstone Anyonje whom they could not trace.
3. The claim therefore remaining is for wrongful dismissal of Hezekiah Mukabane.
4. The Claimant's case is that the grievant Hezekiah Mukabane was employed by the Respondent from 12th May 1987 as a General Worker at a salary of 2,291/=. The grievant was dismissed on 13.6.1994 after he was injured as an attendant. He referred Court to Appendix 9, which is the letter dated 23.4.2010 referring this case to Court.
5. He contends that he was dismissed because he sued the Respondents for injuries sustained. He has also stated that at the time of dismissal he could not have moved to Court directly without going through the conciliation process as provided for under the Trade Dispute Act. He had to have the matter referred to the Ministry of Labour who finally released their report on 23.4.2010 (Appendix 9).
6. The Claimants contend that they did not agree with the findings of the Labour officer as the Respondents were alleging that the grievant had absconded duty, which was not true. The grievant aver that the day he is alleged to have absconded is the same day he was given a gate pass to bring medical certificate, which they knew were already in their possession as the Claimants' Appendix APP 7.
7. The grievant testified that he was not issued with any appointment letter and that he was verbally dismissed and not paid his terminal dues. He therefore seeks for judgement to be entered in his favour for Kshs.50,501 which is as per the Memorandum of Claim.
8. On 18/9/2017, J Wa Makau ordered this claim to proceed for formal proof. This case therefore proceeded for formal proof on 24/10/2018.
9. From the grievant's case, there is proof he was an employee of the Respondent. There is no indication as to how this relationship ended.
10. The Respondent never gave any evidence to counter the Claimant's evidence. The Claimant's case therefore remains unchallenged. I therefore find for the Claimant and enter judgement for the grievant Hezekiah Mukabane as follows:-

1. Wages for days worked at the rate of 1791.70 per month = 1,722/=

2. House allowance as prayed = 480/=.

3. 3 months' notice in lieu of notice as per the Collective Bargaining Agreement = 3 x 2291= 6,873/=.

4. Severance pay at 15 days for each completed year of service = $12 \times 2,291 \times 8 = 9,164/=$

5. 12 months compensation for wrongful termination = $12 \times 2291 = 27,492/=$.

TOTAL = 45,731/=

6. The grievant will also be issued with a certificate of service.

7. The Respondent will also 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 4th day of December, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Omondi for Claimant/Applicant – Present

No appearance for Respondent