



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1607 OF 2013**

**KENNETH KARANJA NDEGWA.....CLAIMANT**

**VERSUS**

**RELIABLE ELECTRICAL ENGINEERS [NRB] LTD.....RESPONDENT**

**J U D G M E N T**

**INTRODUCTION**

1. This is a claim for ksh.439,486 being the accrued leave and night shift allowances owed to the claimant by the respondent and arising from their contract of employment which started in 1998 and ended on 29/9/2003. The respondent has admitted having employed the claimant on yearly fixed term contracts until 2003. She however denies that the contracts provided for any of the night shift allowances sought by the claimant and avers that at the end of every fixed term contract, she paid to the claimant all his dues.

2. The suit was initially filed at the subordinate court on 10/6/2004 before being transferred to this court in 2013. After such a long and winding journey, I heard the suit on 4/4/2017. The claimant testifies as CW1 but the respondent and her counsel never attended court to prosecute the defence case. After the hearing, the claimant filed written submissions which I have carefully considered herein alongside the claimant's evidence.

**CLAIMANT'S CASE**

3. CW1 stated that he was employed by the respondent as a painter in 1998 and worked continuously until 29/9/2003 when he resigned due to ill health. As at the time of his resignation, his basic salary was ksh.6827 per month. He produced copy of the contract of employment dated 6/1/2003, resignation letter dated 29/9/2003 and payslips to prove the said employment relationship with the respondent. He blamed the respondent for failing to produce in court the attendance registers to support his case that he worked for her continuously. He therefore prayed for ksh.435,486 as outlined in his plaint.

**ANALYSIS AND DETERMINATION**

4. There is no dispute that the claimant was employed by the respondent as a painter from 1998 to September 2003 when he resigned on ground of ill health. There is also no dispute that the employment was on the basis of yearly fixed term contracts, the last one running from 6/1/2003. The only issue for determination herein is whether the claimant is entitled to reliefs sought.

**ACCRUED LEAVE**

5. The claimant contended that he never went for any annual leave during the whole period of his employment. The last contract of employment produced as exhibit provided for 26 working days annual leave. No evidence was adduced to prove that he utilized any leave days earned in the year 2003 before his resignation. His last payslip for September, he was not paid for the leave days earned. Likewise, his payslip for December 2002 did not reflect any pay in lieu of leave. However the payslips for December 2001 shows that the claimant was paid ksh.3418 for his leave.

6. After considering the said payslips against the contention in paragraph 3 of the defence that all the accrued dues for the claimants was paid at the end of each separate annual contract, I am of the view that upto December 2001, the claimant was paid all his accrued dues including leave. Had he not been paid, he would have demanded for the same earlier and not to wait until two other contracts end and then sue for the same. I will therefore award to him leave for 2002 and the 9 months worked in 2003 equaling to 45.5 leave days. Based on the basic salary of ksh.6827, 45.5 leave days translates to ksh.11,947.25.

### **Night Shift Allowance**

7. The claimant has prayed for night shift allowance and night shift transport allowance. The contract of employment did not provide for such allowance and no other basis has been shown by the claimant to warrant such allowances. Consequently, I dismiss the claim for night shift allowance.

### **Overtime**

8. The claimant alleged that he worked 3 ½ hours overtime on night shifts for 3 years. The particulars of the period the overtime worked is not pleaded and the corresponding gazetted hourly wages upon which the claim for the overtime is founded is also not pleaded. Likewise, no evidence has been adduced to support the said claim. Consequently, I dismiss the claim for overtime for want of particulars and evidence.

### **DISPOSITION**

9. For the reason that the claimant has proved an outstanding leave of 45.5 days, I enter judgment for him in the sum of ksh.11,947.25 plus half costs and interest from 10/6/2004, the date of filing the suit.

Dated and signed at Mombasa this 20<sup>th</sup> June 2017

**O. N. Makau**

**Judge**

Delivered at Nairobi this 30<sup>th</sup> day of June 2017

.....

Judge