



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 985 OF 2013

CHARITY WAMBUI MURIUKI.....CLAIMANT

VERSUS

M/S TOTAL SECURITY SURVEILLANCE LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant averred that she was employed by the respondent as a light van driver on 10th April, 2007 at a monthly salary of Kshs 10,000/= per month without housing allowance. This was later increased to Kshs 15,000/= per month still without house allowance.
2. The claimant further averred that contrary to Regulation of Wages (Protective Security Services) Order, 1998 she worked 72 hours a week instead of the authorized 52 hours without payment of overtime. The claimant further averred that she worked during public holidays for 12 hours and as never paid overtime.
3. The claimant therefore claimed Kshs 733,972.99 on account of house allowance, overtime, work during public holidays and balance of gratuity unpaid.
4. The respondent in response to the claimant's averments pleaded that she was paid a consolidated 4.salary which included house allowance as per management contract dated 10th April, 2007 which was attached. The respondent further pleaded that the claimant's salary was increased to Kshs 15,005 per month pursuant to Kenya Gazette supplement No 68 which stipulated that the minimum wage for light drivers was Kshs 11,580. The wage order was annexed as exhibit.
5. Concerning overtime, the respondent pleaded that the contract of employment dated 10th April, 2007 at paragraph 8 required that the claimant informs the respondent of any hours worked in excess, which she did not.
6. In her oral testimony in court the claimant repeated the averments in the memo of claim and stated further that she resigned because she was not able to cope with the hours of work and that upon resignation she was paid the sum of Kshs 41,450/= and did not know what it was for. In cross-examination she admitted that she never complained about working overtime.
7. The respondent's witness Mr Patrick Kinyanjui informed the court that the claimant was paid gratuity though she resigned and that she was paid ½ salary for every year worked. In cross-examination he stated that employees are explained for documents before they sign and that he explained to the claimant the

final payment before she signed for it.

8. The claimant herein resigned from employment citing inability to pay bus fare everyday from Embakasi to the respondent's base camp. The letter did not give the cause of the claimant's inability. The letter raised no issue over underpayment. The claimant in her memorandum of claim attached and highlighted several sections of the Employment Act and Regulations of Wages and Conditions of Employment Act – Wage Order for 1998 to demonstrate and support her claim for overtime and non-payment of house allowance. The claimant however did not apart from reciting these statutory provisions produce any additional evidence showing her salary was below the applicable minimum wage order and further that her salary was net of house allowance.

9. The respondent on its part attached documents to support its position that the claimant never worked overtime and that her salary was as per the applicable wage order and included house allowance. The management employment contract document signed by the claimant provided at clause 8 that any hours worked in excess should be forwarded to the respondent through direct report. The claimant in her evidence in court stated that she never complained about working overtime.

10. Further whereas the claimant claimed her salary did not include housing allowance, she did not produce any of her payslips to show her pay did not include housing allowance. Clause 6 of the contract of employment provided that the claimant was entitled to a consolidated salary payable in arrears at the end of every month. A consolidated salary includes basic pay and allowances payable to an employee and housing allowance is usually one of them. It was therefore incumbent upon the claimant to demonstrate by production of her payslip that housing allowance was not one of the allowances paid in the consolidated salary.

11. Concerning underpayment the respondent attached Wages Order for 2006 which showed that the minimum wage for a driver then was Kshs 7,012/=. The claimant's monthly salary was stated as Kshs 10,000/= which was way above the minimum wage. The claimant admitted receiving Kshs 41,450/= which she claimed she did not know its purpose. The respondent on the other hand stated that the claimant was paid gratuity at the rate of ½ salary for each year worked.

12. The court therefore concludes that the claimant has failed to prove the claim to the required standards and hereby dismisses the same with costs.

13. it is so ordered.

Dated at Nairobi this 21st day of July 2017

Abuodha J. N.

Judge

Delivered this 21st day of July 2017

In the presence of:-

..... for Claimant

.....for Respondent

Abuodha J. N.

Judge