



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MALINDI**

**CAUSE NO. 8 OF 2017**

**1. ZAKARIA JILO KITOKO**

**2. JOHN DUKO RHIGHO.....CLAIMANTS**

**VERSUS**

**AFRICA MUSLIM AGENCY.....DEFENDANT**

**JUDGMENT**

1. The Claimants were employed by the Respondent as Security Guards from May 2003 till June 2015 when their services were terminated on account of redundancy. The redundancy was occasioned by the closure of the operations and removal of the water pump which was being guarded by the claimants. The claimants were being paid Kshs 5,000/= per month from May 2009 until the day of the termination. Before the termination, the Respondent had sought advise from the Labour Officer Garissa about the terminal benefits payable to the claimants and on 21/11/2014, the officer advised him that each claimant was entitled to Kshs 290,503.65/= as at November 2014. The said dues were made up of one month salary in lieu of notice (Kshs 7,157.10/=), salary for November 2014(Kshs 7,157.10/=), salary underpayment (Kshs 56,323.30/=), Leave (Kshs 15,029.90/=), Rest days (Kshs 68,708.20/=), Public holidays, (Kshs 14,314.20/=), overtime (Kshs 82,449.80/=) and severance pay (Kshs 39,364.05/=).

2. After terminating the claimant in June 2015, the Respondent paid them Kshs 131,132.80/= only and the claimants instructed their lawyer to demand the balance of the sum advised by the Labour Officer plus salary for December 2014 till June 2015 at the rate of Kshs 7,157/= per month being Kshs 209,470.55/=. The sum was never paid and the claimant brought this suit claiming Kshs 202,313.45/=. The Respondent never entered appearance and as such the suit proceeded by way of formal proof on 20/9/2017 followed by filing of written submissions on 3/11/2017. The only issue for determination is whether the claimants are entitled to the reliefs sought.

**Analysis and Determination**

3. There is no dispute that the claimants were employed by the Respondent as Security Guards from May 2003 until June 2015 when they were laid off. There is also no dispute that the parties sought advice from the Labour Officer regarding the dues payable to the claimants but the Respondent paid a lesser sum than the amount advised by the Labour Officer. There is further no dispute that the claimants have brought this suit based on the said advise by the Labour Officer in addition to the claim salary for December 2014 to June 2015.

4. After carefully consideration of all the materials presented to the court, I find on a balance of probability that the advice given by the Labour Officer regarding the terminal dues payable to the claimants as at November 2015 to have been reasonable and fair. In my view, the Labour Officer was very lenient to the employer because he calculated most of the benefits based on 3 years only yet the claimants had served for over 11 years continuously.

5. If this court was to asses the dues today, the amount payable to the claimants would exceed the one advised by the Labour Officer by far. I wish therefore to adapt the assessment of the dues by the Labour Officer being Kshs 290,503.65/= for each claimant save to add the unpaid salary for the months of

December 2014 to June 2015 at the rate of Kshs 7,157.10/= being Kshs 50,099.70/=. The total terminal dues for each claimant is therefore Kshs 340,603.35/= less Kshs 131,132.80/= paid on 22/6/2015 leaving a net of Kshs 209,470.55/= However, the claimants have each prayed for Kshs 202,313.45/= and that is all I wish to award them.

**Disposition**

6. For the reasons that the Respondent never paid the claimants all their rightful dues, I enter Judgement for them in the aggregate sum of Kshs 404,626.90/= plus costs and interest from the date of filing suit.

**Dated and delivered at Malindi this 8<sup>th</sup> day of November,2017**

**Onesmus Makau**

**Judge**