



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE NO. 14 OF 2017

DANIEL MWANJE LIHANDA

CLAIMANT

v

ELDOCHEM LIMITED

RESPONDENT

JUDGMENT

1. The Claimant framed some 13 questions as arising for the Court's determination while the Respondent proposed 7 Issues.
2. The Cause was heard on 30 October 2017 when the Claimant and a Supervisor with the Respondent testified.
3. The Claimant filed his submissions on 30 October 2017 while the Respondent filed its submissions on 31 October 2017.
4. The Court has considered the pleadings, evidence and submissions and come to the view that the *Issues* for determination can be condensed into 5 to wit, *whether the Cause is incompetent, whether the Claimant worked overtime, whether the Claimant had pending leave/pro rata leave at point of separation, whether Claimant's remuneration included house allowance and appropriate remedies.*
5. Before addressing the *Issues* as identified, it is worth noting that the Claimant resigned from employment for personal reasons and therefore this Cause is not about unfair termination of employment but breach of contract (entitlements during employment).

Whether Cause is incompetent

6. The Respondent appeared to suggest that the jurisdiction of this Court is restricted to disputes where trade unions are involved.
7. That contention is not only misguided but is also legally misplaced in light of the provisions of section 87 of the Employment Act, 2007 and section 12(1)(a) of the Employment and Labour Relations Courts Act.

Overtime

8. Although testifying that he worked from 9.00am to beyond 6.00pm, the Claimant did not disclose the contractually agreed working hours or the prescribed working hours in the industry the Respondent operated in to be entitled to overtime pay.

9. Different Regulation of Wages Orders prescribe different working hours and without evidence as to the applicable Order or indeed if there was contractual agreement on working hours, the Court is unable to determine whether the Claimant worked overtime without pay.

Paternity leave and pro-rated annual leave

10. Paternity leave becomes due when a male employee gets a baby.

11. In the instant case, the Claimant did not disclose when he got the babies, details of the babies or whether he informed the Respondent of the babies or sought paternity leave and was denied.

12. The Claimant failed to prove this head of claim to the requisite standard.

13. Under *pro-rated* leave, the Claimant pleaded an entitlement to 8 months equivalent of leave but did not make any reference to the same during testimony.

14. Without the evidential foundation to the head of claim, the Court is unable to accept that the Claimant had pending leave by time he resigned.

15. If the basis had been laid, the Respondent should have been expected to produce employment records for the Claimant and or controvert such evidence.

House allowance

16. The employer's first responsibility is to provide housing accommodation and where the accommodation is not provided, an allowance to cover rent ought to be paid.

17. In terms of section 31 of the Employment Act, 2007, where accommodation is not provided, the contract of employment should specify how much of the remuneration is for accommodation unless it is expressed that the remuneration was consolidated.

18. The contract issued to the Claimant did not indicate whether the remuneration was consolidated. The pay slips equally do not show whether there was an element of house allowance.

19. In the circumstances, the Court concludes that the remuneration paid to the Claimant did not include house allowance and finds that the Claimant was entitled at least 15% of the basic wage as house allowance.

20. The Claimant's remuneration was a constant Kshs 15,000/- and for the 103 months served, he should have been paid Kshs 231,750/-.

Appropriate remedies/Conclusion

21. Arising from the foregoing, the Court finds for the Claimant only in respect of the head of claim for house allowance.

22. The Court therefore awards the Claimant

(i) House Allowance **Kshs 231,750/-**

23. The other heads of relief are dismissed.

24. Claimant to have costs on half scale.

Delivered, dated and signed in Eldoret on this 3rd day of November 2017.

Radido Stephen

Judge

Appearances

For Claimant Mrs. Khayo instructed by Nyamwega & Co. Advocates

For Respondent Mr. Kagunza instructed by Kigen & Co. Advocates

Court Assistants Nixon/Etyang