



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 1432 OF 2014
FRANCIS GEORGE OMANYO.....CLAIMANT
VERSUS
INTER SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The claimant averred that he was employed by the respondent as a security guard from 2003 until 1st July 2014 when he resigned. His basic salary was Kshs.10,052/-.
2. Upon resignation he demanded his terminal dues but the same were never paid.
3. The respondent in its brief memorandum of respondent averred that the claimant was paid all his terminal dues upon resignation.
4. The respondent further averred that the claimants claim was statute barred in certain respects.
5. In his oral testimony in Court, the claimant stated that he worked for the respondent for eleven years and was earning a salary of Kshs.10,052/= by the time he left.
6. In cross examination he stated that he never went on leave during the period he worked and that for four years he never got off for public holidays. He verbally complained about not going on leave. He further admitted that the respondent used to pay NSSF dues. He further admitted that overtime was paid but it was less than the required minimum. According to him, he was paid 1750 as overtime yet the correct amount should have been 2,500/=.
7. The respondent's witness Mr. Isaac Okwiri testified that the claimant's overtime had been paid. He further stated that the respondent accepted the claimant's resignation and that he was paid his June salary.
8. In cross-examination he denied underpaying the claimant and further stated that overtime was paid according to law. He further stated that records in the office indicated that the claimant was paid his terminal dues.
9. It is not in dispute that the claimant retired. What is disputed is whether he was paid his terminal dues and if so if they were the correct amount. The respondent did not produce any proof of payment in

Court to controvert the claimant's allegations. The Court can therefore safely assume the claimant was never paid his terminal dues.

10. The claimant avers that he was underpaid salary for the years 2011-2013. The respondent had denied this claim and further averred that the same was statute barred by virtue of section 90 of the Act.

11. The applicable Wage Order that the claimant seem to rely on and which covers the period he claims he was underpaid was the one for 2010 which came into operation on 1st May, 2010. It sets the minimum wage for Watchmen at Kshs.7,523/=.

12. From the payslips attached, the claimant was earning Kshs.8,276/= which was more than the minimum wage as per the Wage Order for 1st May, 2010. The claim for underpayment therefore does not seem to be justified.

13. Concerning the issue of leave, the Court finds it incredible that for eleven years, the claimant was who was unionisable employee never went on leave and worked through public holidays without complaining to his union to take up the matter on his behalf. His assertion that he verbally asked for leave over all these years but was never given is not believable.

14. The Court therefore awards the claimant the following as his reasonable terminal dues.

Kshs.

(a) One month's salary in lieu of notice.....10,052.00

(b) Service pay at the rate of 15 days salary

for each complete year of service.....59,235.00

69,287.00

(c) Costs of the suite.

15. It is so ordered.

Dated at Nairobi this 3rd day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 3rd day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge