



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 1782 OF 2014
AUGUSTUS MBUSYA NDILO.....CLAIMANT
VERSUS
SWEDKEN TOURS.....RESPONDENT

JUDGMENT

1. The claimant averred that he was employed by the respondent as a driver on 2nd November, 2012 drawing a basic salary of Kshs.700 per month. He claimed he was never paid house allowance. He further contended that he was paid wages below minimum prescribed by the prevailing Wages Order and further that he worked overtime and was never compensated.
2. According to the claimant, he never went on leave for the period he worked and that on 31st May, 2014 while on duty he was summoned by the respondent while on duty and stopped from working without any reason.
3. The respondent entered appearance through Ms. Kago, Muthama & Company but did not seem to have filed a response to the Memorandum of Claim. The trial too proceeded ex parte after the Court was persuaded that the respondent was duly served.
4. The claimant testified that he was paid a basic salary of Kshs.3,000 and 17% commission on total collection in 24 hours.
5. According to his evidence, his services were terminated on 31st May, 2014. He was told that his vehicle had high fuel consumption and he was therefore accused of siphoning fuel. He denied doing so. His supervisor told him the matter was under investigation. It was his evidence that he was never subjected to any disciplinary hearing and that his termination was verbal.
6. The matter proceeded ex parte hence the Court never had the benefit of listening to the respondent's side of the story. The onus of proof of reasons for termination always rests with the employer. Further the matter proceeded ex parte hence the evidence of the claimant remain uncontested.
7. The relevant wages order placed salary for a driver in Nairobi at Kshs.13,201.55 per month. The Court will therefore award the claimant the difference between this amount and the Kshs.3000 per month which the claimant was paid by the respondent for eighteen months.
8. The claimant will further be awarded:-

Kshs.

- a. Leave allowance.....4,740.00
- b. One month's pay in lieu of notice.....13,201.55
- c. Six month's salary as compensation for
unfair termination of service.....79,209.30
- d. Costs of the suit
- e. The respondent shall issue the claimant with a certificate of service.

9. It is so ordered.

Dated at Nairobi this 14th day of October 2016

Abuodha Jorum Nelson

Judge

Delivered this 14th day of October 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge