

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.120 OF 2013

ALI SORA BORU.....CLAIMANT

-VERSUS-

SAMRAT SUPERMARKET..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2015)

JUDGMENT

The claimant filed the memorandum of claim on 18.05.2013 in person and prayed for a sum of Kshs.415,706 under the headings of overtime for three years Kshs.146,208.00; off days worked for three years Kshs. 21,600.00; house allowance for three years Kshs.65,794.00; gratuity for 5 years Kshs.30,460.00; pay for public holidays worked Kshs. 12, 184.00; underpayments for 3 years Kshs.114,624.00; 26 days of annual leave Kshs.9,840.90; 6 days worked and not paid Kshs.2,811.70; and pay in lieu of termination notice Kshs. 12,184.00. The claimant later appointed C.M. King'ori Advocates to act for him in the suit.

The statement of response was filed on 09.12.2013 through Gichuhi Mwangi and Associates. The respondent prayed that the suit be dismissed with costs. The claimant filed a reply to defence on 04.02.2014.

The claimant was employed by the respondent's proprietor one Anil as a shop assistant earning Kshs.6,000.00 at every end month. The appointment was verbal and effective 20.10.2007. On 7.05.2013 one Ramnik Pethad as one of the respondent's owners asked the claimant not to report at work but to go back home and write an explanation as to how he was given 180gm soap by a promoter of the soap one PZ Cussons. On 7.05.2013 the claimant wrote explaining that the soap was given to him by the sales lady for the Promoter, PZ Cussons. Upon receiving the letter the claimant testified that the said Ramnik pocketed the letter and then he asked the claimant to go home. The claimant reported the case to the Labour Officer at Nyeri on 15.05.2013 but no positive response was forthcoming and he decided to file the suit.

The claimant testified that he received the promotion soap from the promoter and there was nothing wrong in doing so especially that no allegations of theft were made against him.

It was his testimony that he was underpaid for 5 years, he was not paid the 6 days worked in May 2013, he was not given a termination notice, and he claimed gratuity for the 5 years served. It was his evidence that he was not paid house allowance; and he worked for 12 hours daily from 8.00am to 8.00pm when the shop closed. Further, it was his testimony that he worked throughout the weekend and public holidays without a rest as prescribed under the relevant wage orders. At termination, the claimant testified that he earned Kshs.9,000.00 whereas minimum statutory pay for shop assistant was Kshs.12,184.00. In cross examination the claimant lamented that the respondent had belatedly registered him for NSSF and NHIF.

The respondent's witness was Ramnik S. Pethad(RW). It was his evidence that the staff including the claimant had been captured on CCTV taking the respondent's goods without paying. The claimant then refused to report on duty the following day. After the claimant wrote the statement, RW testified that he never appeared at work again. The CCTV record was not shown to the claimant or produced at the hearing.

The court has considered the evidence on record and finds that the respondent did not offer any evidence to rebut the claimant's evidence in support of the specific prayers made in the statement of claim. The respondent's submission delved into the issue of fairness or otherwise of the claimant's termination but which was not one of the claimant's prayers. The respondent did not pay for the claimant's NSSF throughout the service and the court finds that the claimant not having been belatedly registered for NSSF, the claim for gratuity as made is reasonable and fair.

In conclusion, the court finds that the claimant is entitled to the sum of Kshs.415,706.00 as prayed for. Judgment is entered for the claimant against the respondent for:

- a. The respondent to pay the claimant **Kshs.415,706.00** by 1.05.2015 failing interest to be payable thereon at court rates from the date of the suit 18.11.2013 till full payment.
- b. The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 6th March, 2015**.

BYRAM ONGAYA

JUDGE