



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 158 OF 2014**

**DISHON SAENYI MUSABA**

**CLAIMANT**

**V**

**KIMS POULTRY FARM LTD**

**RESPONDENT**

**JUDGMENT**

1. Dishon Saenyi Musaba (Claimant) sued Kims Poultry Farm Ltd (Respondent) on 21 May 2014 in a vaguely worded Memorandum of Claim alleging that he was underpaid and seeking Kshs 109,870/- on account of underpayments, pay in lieu of notice, severance pay, contributions to National Social Security Fund not remitted and unpaid annual leave.
2. On 2 July 2014, the Claimant filed an Amended Memorandum of Claim in which he alleged unfair/wrongful termination of employment and seeking additionally, compensation.
3. An affidavit of service sworn by one Stanley Maina Waiganjo and filed in Court on 2 July 2014 deposed that the Respondent's General Manager Robert Moita was served. A copy of Notice of Summons duly stamped and signed was annexed.
4. On 25 July 2014, the Court fixed the Cause for hearing on 27 April 2015.
5. An affidavit of service was filed in Court on 27 April 2015 attesting to service of a hearing notice upon the Respondent's Director, Mr. Kim.
6. The Respondent, despite the service of Notice of Summons and hearing notice did not file a Response nor appear during the hearing and the Cause therefore proceeded as an undefended Cause.
7. The Claimant testified and he stated that the Respondent employed him in 2004 as a night guard. He produced a copy of a recommendation letter attesting to the employment from 2004 to April 2011.
8. On remuneration, the Claimant stated that he was earning Kshs 4,500/- in 2004, and that the prescribed minimum wage at that time was Kshs 6,974/- and the wage was never increased during the tenure of employment.
9. The Claimant further stated that he was being deducted National Social Security Fund contributions but the Respondent did not remit the same.
10. As regards the termination of employment, he stated that no reasons were offered and that the same was unfair.
11. The Claimant reported a dispute to the local Labour Office and the District Labour Officer met with the Respondent's representative and an agreement was reached on payment of wages for April and May 2011. These were paid according to the Labour Officers letter dated 27 June 2011, but other entitlements were left outstanding.
12. Consequently, the Labour Officer computed the underpayments at Kshs 63,021/35 and duly informed the Respondent through his letter of 21 July 2011.
13. The Claimant filed written submissions on 11 May 2015 and the Court has considered them.

## **Evaluation**

14. The facts as set out in the Memorandum of Claim were not responded to.
15. Further, the Claimant's evidence was not controverted.
16. The legal effect is that there are no real disputes of facts as presented by the Claimant.
17. The Court therefore finds that the termination of the employment of the Claimant was unfair.

## **Appropriate remedies**

### ***Underpayments***

18. The Claimant sought Kshs 63,021/- on account of underpayments.
19. The Labour Officer had calculated the underpayment as Kshs 63,021/35 based on the area the Claimant was employed. The letter referred to Legal Notice No. 98 of 2010. Under the Notice, the minimum wage for a night watchman was set at Kshs 6,974/-.
20. The Court would adopt the calculations by the Labour Officer and find that the Claimant is entitled to underpayments of Kshs 63,021/-.

### ***Pay in lieu of notice***

21. Under this head, the Claimant sought Kshs 6,974/-. Pursuant to sections 35(1)(c) and 36 of the Employment Act, 2007 he is entitled to the same, this being the minimum wage at the material time for the area the Claimant was working.

### ***Severance pay***

22. The Claimant sought severance pay for 7 years. He did not prove that he was declared redundant and this relief is not applicable.

### ***NSSF deductions not remitted***

23. On this head, the Claimant sought Kshs 4,200/-. The Court finds in his favour.

### ***2 years unpaid leave***

24. The Claimant sought Kshs 11,265/-. The Court awards him the same.

## **Compensation**

25. The Court has reached a conclusion the termination of the Claimant's employment was unfair.
26. The Court would award him the equivalent of 7 months wages as compensation. The Court quantifies the same as Kshs 48,818/- (based on the minimum wage of Kshs 6,974/-).

## **Conclusion and Orders**

27. The Court finds and holds that the termination of the Claimant's employment was unfair and awards him and orders the Respondent to pay him

|                                |               |
|--------------------------------|---------------|
| a. Underpayments               | Kshs 63,021/- |
| b. Pay in lieu of Notice       | Kshs 6,974/-  |
| c. NSSF deductions             | Kshs 4,200/-  |
| d. Leave                       | Kshs 11,265/- |
| e. 7 months wages compensation | Kshs 48,813/- |

**TOTAL** **Kshs 134,273/-**

28.Claimant to have costs of Kshs 30,000/-.

**Delivered, dated and signed in Nakuru on this 26<sup>th</sup> day of June 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Ms. Muthoni instructed by Karanja Mbugua & Co. Advocates

For Respondent did not file Response