



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 371 OF 2014

LOICE WAIRIMU KAMAU

CLAIMANT

v

GEORGE KANGARA GITHIGIA

1ST RESPONDENT

ZACHARIA NJOROGE MUTURI

2ND RESPONDENT

NYAHURU BUTCHERS SELF HELP GROUP

3RD RESPONDENT

JUDGMENT

1. Loice Wairimu Kamau (Claimant) was employed by Nyahururu Butchers Self Help Group in the position of messenger on 2 September 2002 at a monthly wage of Kshs 4,500/-. The wage was later increased to Kshs 7,000/-.
2. On 17 November 2011, the Claimant tendered a notice of resignation to take effect on 1 January 2012. It appears the Claimant expected to be paid terminal dues/entitlements on resignation but the same were not forthcoming.
3. The Claimant consequently approached Kenya Union of Domestic, Hotels, Educational institutions, Hospitals and Allied Workers who wrote demand letters to Nyahururu Butchers Self Help Group seeking payment of commuted annual leave not taken, house allowance for 36 months, overtime and service pay all totalling Kshs 97,568/60.
4. The Group did not respond and the Union reported a trade dispute to the Labour Office, but there was no resolution reached.
5. On 14 August 2014, the Claimant commenced legal action against George Kangara Githigia, Zacharia Njoroge Muturi (Chairman and Secretary of Nyahururu Butchers Self Help Group) and Nyahururu Butchers Self Help Group (Respondents) seeking her terminal dues.
6. The Respondents filed a Response on 13 October 2014 prompting the Claimant to file a rejoinder on 13 February 2015.
7. The Cause was heard on 16 February 2015 and 18 May 2015 and judgment was reserved to today. The Claimant filed her submissions on 17 July 2015 instead of before 1 June 2015. This late filing may explain why Respondents did not file their submissions.
8. The issue for determination in this Cause is rather straight forward and it is whether the Claimant is entitled to the heads of claims sought.

Annual leave

9. In her resignation letter, the Claimant indicated that she had not taken her leave which was due on 2 September 2011. And for this the Claimant sought Kshs 6,192/30.
10. In her testimony, the Claimant stated that she did not go on leave in 2011 and therefore she was

seeking pay in lieu of the leave.

11. The Respondents witness (1st Respondent) confirmed that the Claimant's leave pay was calculated but she did not collect the same. No computation was given of the amount.
12. With the admission, the Court finds that the Claimant is entitled to the Kshs 6,192/30 as claimed.

House allowance

13. Under this head, the Claimant sought Kshs 37,800/-. In her testimony, she stated that her monthly wage of Kshs 7,000/- was not inclusive of house allowance.
14. The appointment note issued to the Claimant and produced by the Respondent indicated that the wage of Kshs 7,000/- was without any other benefits.
15. Under section 9 of the Employment Act, cap. 226 (repealed), an employer had a statutory obligation to provide an employee with housing accommodation or pay a reasonable allowance to cover rent.
16. In so far as the Respondents did not provide the Claimant with housing and the contract did not provide for payment of any other benefits, the Respondents were acting contrary to the statutory provision.
17. The Employment Act, 2007 commenced on 2 June 2008. At section 31, it retained more or so the requirement upon an employer to provide housing or pay an allowance to cover rent.
18. But this Act went further. It requires that unless it is expressly provided that a wage is consolidated, a housing allowance is payable.
19. The Respondents were therefore still under an obligation to provide the housing or pay house allowance.
20. Considering the different statutory schemes under which the Claimant served, and that the Claimant was not provided with housing accommodation, and further that the Respondent did not interrogate or controvert the sum of Kshs 37,800/-, the Court finds the Claimant has made a case of an award of housing allowance.

Overtime

21. Under this head, the Claimant sought Kshs 19,384/-.
22. The Claimant stated that she used to work from 8.00am to 4.00pm on Saturdays and this was overtime.
23. The Respondent's witness on the other hand though confirming that the Claimant worked Monday through Saturday stated that on Saturday, the Claimant worked up to 1.00pm.
24. However, the Claimant did not disclose the agreed weekly working hours and how it was spread over the week or make any reference the applicable statutory scheme prescribing the minimum hours of work for the sector/industry she was working.
25. This claim is therefore not proved either as founded on contract or statute.

Severance pay/gratuity

26. The Claimant did not lay any contractual or statutory foundation for claiming severance pay/gratuity.
27. In any case, severance pay is only applicable in cases of redundancy. The Claimant resigned and was not declared redundant.
28. If by gratuity the Claimant meant service pay as provided for in section 35(5) of the Employment Act, 2007, she would not be entitled because her employment was not terminated. She resigned.

Conclusion and Orders

29. From the foregoing, the Court finds and holds that the Claimant is entitled to and awards her, and orders the Respondent to pay her

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| a. Annual leave | Kshs 6,192/30 |
| b. House Allowance | Kshs 37,800/- |

TOTAL

Kshs 43,992/-

30.The heads of claim for overtime and gratuity are dismissed.

31.Claimant to have costs of Kshs 15,000/-.

Delivered, dated and signed in Nakuru on this 24th day of July 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Muthanwa instructed by Muthanwa & Co. Advocates

For Respondent Mrs. Njoroge instructed by Nancy Njoroge & Co. Advocates

Court Assistant Nixon