



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 194 OF 2013

(Formerly Cause No. 2148 of 2012 at Nairobi)

THOMAS JOSHUA ODONGO.....CLAIMANT

-VERSUS-

ANGLICAN CHURCH DIOCESE OF NAKURU.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 26th September, 2014)

JUDGMENT

The claimant filed the statement of claim on 24.10.2012 through Ndeda & Associates. The claimant prayed for payment for:

- a. One month pay in lieu of notice Kshs.9,450.00.
- b. Severance pay or gratuity Kshs.85,854.60.
- c. Off duties or rest days Kshs.378,223.30.
- d. Public holidays Kshs.77,329.20.
- e. Overtime Kshs.425,381.55.
- f. Total **Kshs.976,328.55.**

The response to the statement of claim was filed on 7.12.2012 through Sheth & Wathigo Advocates and the respondent denied all the claimant's claims. The reply to the statement of response was filed on 16.10.2013.

The claimant testified to support his case. The respondent's witness was Joseph Kimani Thiong'o (RW), the respondent's church minister.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The court makes findings as follows:

- a. The claimant has prayed for one month pay in lieu of notice being **Kshs.9,450.00**. The claimant was declared redundant and given the notice dated 5.4.2012 for termination effective 30.04.2012 because the respondent had opted to hire a professional security firm. It is obvious that the notice was less than the one month notice prescribed in section 40 of the Employment Act, 2007. The court finds that the claimant is entitled as prayed for.
- b. The claimant has prayed for severance pay or gratuity Kshs.85,854.60. The claimant was terminated from employment as a guard on account of redundancy. Section 40 entitled the claimant to severance pay of at least 15 days for each completed year of service. The claimant

served for 12 years and earned Kshs.9,450.00 per month and the court finds that under the section, the claimant is entitled to **Kshs.56,700.00**.

- c. The claimant prayed for off duties or rest days being Kshs.378,223.30, public holidays Kshs.77,329.20, and overtime Kshs.425,381.55. RW testified that the claimant rested on Sundays and a reliever would be employed. The claimant admitted that point and alleged in his testimony that during off day on Sunday he paid the reliever but that was not shown to have been the case. The pay slips filed do not show the deduction of Kshs.800.00 to pay the reliever. The evidence showed that the reliever was in fact paid by the respondent. The claimant had a lunch break and there was no evidence of dispute on unpaid overtime throughout the service. The claimant had claimed pay for public holidays including days in December when he was on leave. The court has considered that there was no grievance on unpaid dues for work done on public holidays. In the circumstances, the claims will fail.

In conclusion, judgment is entered for the claimant against the respondent for:

- a. The respondent to pay the claimant **Kshs.66,150.00** by 1.11.2014, in default, interest to be payable at court rates from the date of the termination 30.04.2012 till full payment.
- b. The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nakuru** this **Friday, 19th September, 2014**.

BYRAM ONGAYA

JUDGE