



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO.142 OF 2013

KADIMA LINET KASANDI.....CLAIMANT

(Suing as the wife and administratrix of the estate of Henry Akongo Odero-Deceased)

-VERSUS-

NAKURU INDUSTRIES LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 17th October, 2014)

JUDGMENT

The claimant is the administratrix of the estate of Henry Akongo Odero (deceased). She filed the memorandum of claims on 05.06.2013 through Orina & Company Advocates. The claimant prayed for:

- a. Underpayments Kshs.221, 445. 00.
- b. Overtime Kshs.2, 004, 680.00.
- c. Public Holidays Kshs.40, 311.55.
- d. Gratuity payment arrears Kshs. 32, 690.80.
- e. Total claim Kshs. 2, 299, 128.20.
- f. Less money owed to the company Kshs. 69, 401.30.
- g. Net due claim **Kshs. 2, 229, 726.9 0.**

The respondent's memorandum of response was filed on 26.07.2013 through Robert Ndubi & Company Advocates. The respondent prayed that the claimant's case be dismissed with costs as it is malicious, ill-conceived and devoid of any basis.

Henry Akono Odero(deceased) was employed by the respondent on 17.02.2000 to the office of Chief Fire and Safety Officer. He was confirmed in appointment on 29.05.2000. He was provided a two bed roomed housing accommodation and paid a monthly salary of Kshs. 6, 500.00 and increasing to 8, 000.00 and later 10, 000.00.

The claimant testified to support her case. The respondent's witness was Depak Premchand Shah, the respondent's technical director (RW).

The main issue for determination is whether the claimant is entitled to the remedies as prayed for. The court has considered the pleadings, the evidence and the submissions and makes findings as follows:

- a. The claimant has prayed for underpayments Kshs.221, 445. 00. The deceased wrote on 3.06.2008 to complain about his underpayment. He complained that for over 9 years of service he had earned Kshs. 8,000.00 while staff in similar or lower positions compared to his office earned more. Those in positions similar to his earned Kshs. 18,000.00 to Kshs. 22, 000.00 per month. By the letter dated 9.06.2008 the respondent replied by increasing the salary to 10, 000.00 per month. RW testified that the deceased was a senior officer and was higher than the grade of Artisan I. The claimant pegged the underpayment on the grade of Artisan I which the court finds was indeed lower than that held by the claimant's husband. The court finds that the claimant has established that the deceased was underpaid and is entitled to **Kshs. 221, 445. 00** as prayed for.
- b. The claimant prayed for overtime of Kshs.2, 004, 680.00. The claimant testified that she lived with her husband and he worked for long hours without payment for the overtime served. In the letter of 3.06.2008 the claimant's husband stated that he worked for long hours without complaining. The appointment letter stated that the deceased would be vigilant throughout the 24 hours. The court has considered the evidence and find that the parties agreed that the deceased would be vigilant throughout 24 hours, the employee accepted to work for long hours without complaining or he condoned such long working hours, the parties did not agree on the overtime and periods for overtime and the measure of the overtime claimed has not been established. Accordingly, the prayer will fail.
- c. The claimant prayed for pay for work on Public Holidays Kshs.40, 311.55. The claimant established that the husband reported on duty on certain public holidays but was not paid; such as on 1.06.2001, 19.10.2001; and 12. 12.2001. The court has considered the evidence and finds that with respect to the established public holidays, the cause of action is time barred under section 90 of the Employment Act, 2007. The prayer will therefore fail.
- d. The claimant prayed for gratuity payment arrears Kshs. 32, 690.80. The justification was that the salary to be used was to be Kshs.16, 109.00 and not Kshs. 10, 100.00.The court has found that the claimant's husband was indeed underpaid and the claimant is entitled to **Kshs. 32, 690.80** as prayed for.

The amount of Kshs. **69, 401.30** is due to the respondent as the amount the claimant has admitted to owe and which the court has taken into account in making the final orders.

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

1. The respondent to pay the claimant **Kshs. 184, 734.50** plus interest at court rates from the date of filing the suit to the date of this judgment.
2. The respondent to pay the money in (1) by 1.12.2014 failing interest at court rates to be payable thereon from the date of the judgment till full payment.
3. The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nakuru this **Friday, 17th October, 2014.**

BYRAM ONGAYA

JUDGE