



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 296 OF 2017

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT

v

JRS SECURITY GROUP.....RESPONDENT

JUDGMENT

1. JRS Security Group (the Respondent) employed Amos Ngeresa Opingo (the Grievant) in 2007 as a security guard. The Grievant died on 23 December 2014 while still in employment.

2. On 4 July 2015, the Kenya National Private Workers Union (the Union) filed a Memorandum of Claim alleging breach of contract. The Union sought underpayment of salaries, accrued leave, gratuity, and house allowance.

3. The Respondent filed a Response on 15 May 2018, wherein it challenged the legal capacity of the Union to sue. The Respondent also denied breach of contract.

4. The Respondent further asserted that the family of the Grievant had discharged it from any claims in respect to the Grievant's employment after it made a payment to them of Kshs 16,200/-.

5. The Union filed a Reply to the Response on 6 February 2019.

6. Limited Grant of Letters of Administration Ad litem to the estate of the Grievant was issued by the Chief Magistrates Court on 26 February 2020.

7. The Cause was heard on 18 December 2019, 15 June 2021, and 16 December 2021.

8. The Union filed submissions on 13 January 2022, while the Respondent filed submissions on 8 February 2022.

Legal capacity

9. The Respondent though raising the question of legal capacity did not address the Issue in its submissions, and the Court takes it that the objection was abandoned.

Underpayments

10. The Union alleged that the Grievant was underpaid from December 2011 to December 2014.

11. The Union cited Legal Notices No. 64 of 2011, 71 of 2012 and No. 196 of 2014.

12. The basic salary of a day watchman in 2011 was Kshs 7,586/-. The Respondent was paying the Grievant Kshs 6,500/-.

13. In 2012, a security guard's prescribed minimum basic wage was Kshs 9,266/-. The Respondent was paying the Grievant Kshs 7,000/-.

14. From 1 May 2013 to 30 April 2014, the minimum basic wage for a security guard was Kshs 9,780/-. The Grievant was getting Kshs 7,500/-.

15. It is clear to the Court that the Respondent was in breach of contract by not paying the Grievant the prescribed minimum wage.

16. The Respondent did not interrogate the amounts pleaded by the Union, and the Court finds that the Grievant was underpaid by Kshs 64,511/-.

Accrued leave

17. Section 28(4) of the Employment Act, 2007 circumscribes how much leave can be carried forward.

18. The Union did not place before the Court any evidence that the Grievant applied for leave and was denied or that he carried forward the leave with the approval of the Respondent, and relief is declined.

Gratuity

19. The Respondent paid the family of the Grievant Kshs 16,200/- in lieu of gratuity, and the family discharged the Respondent from further liability.

20. The Court declines to grant this head of the claim.

House allowance

21. The Union prayed for Kshs 25,988/- being unpaid house allowance.

22. Section 31 of the Employment Act, 2007 requires an employer to provide housing or pay an allowance to cover rent.

23. The Respondent contended that it was paying the Grievant a gross salary covering house allowance, but no evidence was placed before the Court to indicate that the Grievant was earning a gross or consolidated wage.

24. The Court will allow this head of the claim.

Conclusion and Orders

25. The Court finds that the Respondent was in breach of contract, and judgment is entered for the Claimant on behalf of the Grievant as follows:

(i)	Underpayments	Kshs 64,511/-
(ii)	House allowance	Kshs 25,988/-
	TOTAL	Kshs 90,499/-

26. The award to attract interest at court rates from the date of judgment.

27. No order on costs as there was no evidence that the parties had a recognition agreement.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 30TH DAY OF MARCH 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr Madegwa, Secretary
For Respondent Odhiambo Ouma Advocates
Court Assistant Chrispo Aura



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