



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 151 OF 2013

[Formerly Cause No. 1134 of 2011 at Nairobi]

RONGI KIRANDI.....CLAIMANT

VERSUS

NICODEMUS MACHOKA NYAKENYANYA.....RESPONDENT

[Before Hon. Justice Byram Ongaya on Friday 21st February, 2014]

JUDGMENT

The claimant **Rongi Kirandi** filed the statement of claim on 12.07.2011 through Gordon Ogolla & Associates. The claimant prayed for judgment against the respondent for:

- a. **Notice pay Kshs.10,060.00**
- b. **Under payment Kshs.349,444.80.**
- c. **Rest days Kshs.175,444.20.**
- d. **Public holidays Kshs.40,205.00.**
- e. **Annual leave Kshs.27,601.30.**
- f. **Compensation under section 49 (c) of the Employment Act, 2007.**
- g. **Certificate of service under section 51 of the Act.**
- h. **Respondent to pay costs of the suit.**

The respondent entered appearance on 17.07.2013 through Maxwell O. Ogonda & Associates. On 19.08.2013, the claimant filed a notice of change of Advocates through Ndeda & Associates. The respondent did not file any statement of defence or response to the claim.

The case was fixed for hearing and despite service of the hearing notice, the respondent did not attend the hearing as scheduled on 26.11.2013. The claimant testified that as at the hearing of the case, he was 57 years old. The respondent employed the claimant with effect from 1.5.2004 as per exhibit **RK IV** on the statement of claim as a caretaker and security personnel. The claimant was deployed at the respondent's commercial premises in Nakuru at Kshs.5,000.00 per month throughout the period of employment till termination in 2008.

While the claimant was on official off sometimes on 8.8.2008, shops at the commercial premises were broken into and the respondent's agent terminated the claimant's employment. Interventions through the claimant's union and the labour office did not yield amicable settlement. The police issued the letter exhibit **RK 10** on the claim to confirm that the claimant was not culpable and that he was innocent in view of the breaking into the commercial premises.

It was the claimant's evidence that he was dismissed without a notice, without a hearing and without any genuine reason. The claimant prayed for judgment as prayed for in the statement of claim.

The court has considered the statement of claim, the evidence and the submissions filed for the claimant and finds that the claimant has established the claims as set out in the statement. The court finds that the claimant is entitled to the prayers as made.

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

- a. a declaration that the termination of the claimant's employment was unfair;
- b. the respondent to pay the claimant **Kshs.741,580.30** by 1.04.2014 failing interest to be payable at court rates from the date of the judgment till full payment; and
- c. the respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nakuru** on **Friday 21st February, 2014.**

BYRAM ONGAYA

JUDGE