



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**

**Civil Suit 76 of 2000 RD**

**FRANCIS NZIOKA..... APPLICANT**

**VERSUS**

**WYKEM SECURITY CONSULTANTS LTD ..... RESPONDENT**

**J U D G E M E N T**

The plaintiff was an employee of the Defendant working as a watchman. The Plaintiff states that it was term or an implied term of contract of employment between Plaintiff and Defendant or it was the duty of the Defendant to take all reasonable care for the safety of the Plaintiff while engaged upon the said employment of watchman and not to expose the Plaintiff to risk of injury/damage which they knew or ought to have known and to provide proper working condition to ensure the Plaintiff did his work in safety.

On or about 30.5.2000 the Plaintiff was at his place of work as instructed by the Defendant while he was attacked by thugs and sustained serious injuries and has suffered loss and damage.

On the part of Defendant statement of defence was filed denying that the Plaintiff was their employee. However this appears false. Exhibit 1 and Exhibit 3 confirm that the Plaintiff was in the employ of Defendant as guard. On the whole the defence is a general denial.

On the hearing date the Plaintiff gave evidence. He states his salary was Sh. 2,200/= per month. On 30.5.2000 he was at work at Mtongwe at Kaydee Construction Company premises.

It was a large area with houses and buildings but he was guarding 3 houses. As he walked upstairs to check on security, he met two persons coming downstairs. They attacked him and he fell down unconscious. He recovered his consciousness when he was at Coast General Hospital after 8 days.

Exhibit 2 is a hospital card showing that he was taken to hospital at 30.5.00 and was discharged on 23.6.00. His hands were cut by men at the stairs and they do not perform well. He has many headaches and he feels dizzy. At the time of attack he was not wearing a helmet but had the company's guard uniform and a whistle. He had no boots. The premises were not fenced by wall or electric wire fence and no alarm to call for help. He was required to look after a large ground which needed more than 1 guard. He denied the allegations made by Defendant in its defence.

On cross-examination he confirmed that he was employed on 29.12.1999 and he had been on the job for 6 months. The incident took place during the day and he was not asleep.

In further evidence the Plaintiff called as witness Dr E Maina (PW2). This witness examined the Plaintiff on 27.7.2000. The Doctor referred to some documents from Coast General Hospital. The Doctor found



**Dated 27<sup>th</sup> July 2005.**

**J KHAMINWA**

**JUDGE**