

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. 185 OF 2018

EDWARD MBALANYA KAFUNA.....CLAIMANT

VERSUS

IDEAL SECURITY SERVICES LIMITED....
.....RESPONDENT

JUDGMENT

The Claimant filed suit on 19/2/2018 against the Respondent seeking the following reliefs:-

- (a) One month salary in lieu of notice Kshs. 12,221.00
- (b) Service pay Kshs. 12,221.00
- (c) In lieu of leave Kshs. 29,621.00
- (d) Underpayment Kshs. 161,427.00
- (e) House allowance Kshs. 61,279.00
- (f) Compensation for unlawful termination
- (g) Costs of the suit and interest

The Claimant adopted witness statement dated 5/2/2018 as his evidence in chief. He testified that he was employed as a night security guard on 1/10/2012 at a monthly salary of Kshs. 6,000.00.

That he worked from Monday to Sunday and from 6 p.m. to 6 a.m. every week. That he served a client called Hardy Stud. That he worked diligently

but on 30/7/2015, he was informed orally that his services had been terminated. That he was given no reason for the termination. That he got no hearing and no notice. That he was not paid any terminal benefits.

That he reported the matter to the labour office. That the Respondent was summoned for a conciliation meeting but did not attend. That the Claimant filed suit accordingly.

Under cross-examination the Claimant reiterated his narrative and denied that he reported to work drunk and was reported by the client. He denied that he had absconded from work upon being transferred to another station. He prays to be awarded as prayed.

That a client called RW1 Cyrus Muriithi who adopted a witness statement dated 14/10/2021 as his evidence in chief. He testified that the Claimant was employed in the year 2012 as a security guard. That the Claimant was not diligent as he reported to work drunk and he absented himself from work occasionally.

That a client reported the Claimant for reporting to work drunk. That the Claimant was informed about the complaint by the client verbally and was given a dispatch note to serve a different client. That the Claimant failed to report at the new station and absconded work. That he never came back to work until he filed this suit. That the Claimant was not served with a warning letter but was simply transferred to a new station.

That the complaint by the client was dated on 20/7/2015 but his letter has an erroneous date of 19/7/2015.

RW1 did not have details of the salary and allowances the Claimant was paid. RW1 did not know therefore if the Claimant was paid house allowance and if he had taken his leave days. RW1 said the Claimant was paid for days worked upto the time he absconded. The letter dated 19/7/2015 was a request by a client to change the guard. The client said the Claimant was late and drunk on the day. RW1 reiterated that upon being transferred, the Claimant absconded as of 21/7/2015. That this claim was filed in 2018, three (3) years later. RW1 said the Claimant does not say he was unlawfully terminated in his statement of claim.

DETERMINATION

The parties filed written submissions which the court has considered together with the evidence by CW1 and RW1. The issues for determination are:-

- (a) Whether the Claimant absconded work or his employment was terminated
- (b) Whether the Claimant has proved he was not paid house allowance; in lieu of leave and for under payment.
- (c) What reliefs the Claimant is entitled to.

Terminal benefits

The Claimant testified that he was paid a salary of Kshs. 6,000.00 upon employment. That he was underpaid as he was at the time entitled to a minimum wage of Kshs. 12,221.00 including 15% of the basic salary as his house allowance. That the Claimant therefore claims arrear salary of Kshs. 161,427.00 for the two years worked while being paid below the minimum

wage. In addition, the Claimant seeks payment of Kshs. 61,279.00 being the unpaid 15% house allowance for the two years served.

The Claimant testified further that he did not go for leave for two years and seeks payment of Kshs. 29,621.00 being unpaid leave for the two years. Furthermore, the Claimant seeks payment of Kshs. 12,221.00 being service gratuity for the two years worked calculated at half month's salary for each completed year of service in the sum of Kshs. 12,221.00. RW1 did not have any information on the same and remain unrebutted. The Claimant has proved that he is owed the said amounts on a balance of probability and the court awards him accordingly.

Termination

The Claimant said that he was verbally dismissed from employment without notice, any hearing or any reason given. RW1 testified that the Claimant absconded from work. However, the testimony by RW1 completely contradicts the pleadings filed by the Respondent in the Respondent's response to the statement of claim filed on 27th March 2018 and dated 13th March 2018 in which the Respondent expressly pleaded as follows. Paragraph 5 of the response:-:-

“The Respondent denies the contents of paragraph 5 of the statement of claim specifically that the Respondent employed the Claimant as a security guard taking the night shift on or about 1st October 2012 with a monthly payment of Kshs. 6000,00 and puts the Claimant to strict proof thereof.” The Respondent further stated at paragraph 6 of the response that:-

“The Respondent admits the contents of paragraph 6 of the statement of claim save that at no any time was there any employer-employee relationship between the Claimant and the Respondent.”

In court, RW1 admitted that the Claimant was a security guard employed by the Respondent, who absconded employment on 21st July 2015 and his employment was not terminated by the Respondent at all.

The statement of response and the testimony before court by RW1 are completely incompatible. This completely discredits the testimony by RW1 and the court deems it unbelievable.

Accordingly, the court accepts the version told by the Claimant that he worked for the Respondent for about two years and he was verbally dismissed from work, without notice, hearing or reason given on 20/7/2015.

Accordingly, the court finds that the Respondent unlawfully and unfairly dismissed the Claimant from employment and the Claimant is entitled to compensation in terms of section 49(1)(c) as read with (4) of the Employment Act, 2007.

In this respect, the Claimant had served two years. He was underpaid; did not go on leave; was not given notice of termination or paid in lieu of notice and was dismissed unlawfully and no contribution to the decision has been proved by the Respondent who chose to completely deny the existence of the relationship in its statement of defence.

The court relies on the decision of this court in ***Daniel Kiplangat Kipkaibut versus SMEP Deposit Taking Micro Finance Limited [2010] eKLR*** and the case of ***John Kayese Likhilani versus Lavington Security Limited [2022] eKLR*** to find that Claimant is entitled to three (3) months salary in compensation for the unlawful and unfair dismissal and for payment of service gratuity in terms of Regulation 17 of the Regulation of Wages (Protective Security Services) Order, 1998.

Accordingly, judgment is entered in favour of the Claimant against the Respondent as follows:-

- (a) Kshs. 12,221.00 in lieu of one-month notice.
- (b) Kshs. 12,221.00 service gratuity
- (c) Kshs. 29,621.00 in lieu of untaken leave.
- (d) Kshs. 161,427.00 under payment for two years.
- (e) Kshs. 61,279.00 house allowance
- (f) Kshs. 42,162.00 being 3 months gross salary in compensation for the unlawful and unfair dismissal.

Total amount Kshs. 318,931.00

- (g) Interest at court rates from date of judgment till payment in full.
- (h) Costs of the suit.

Dated at Nairobi this **16th Day of October 2025.**

Mathews Nduma
JUDGE

Appearance:

Ms. Karanja for Claimant

Mr. Okongo Omogeni for Respondent

Mr. Kemboi – Court Assistant

ORIGINAL