

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. 536 OF 2018.**

**JOSEAH KORIR.....**  
**CLAIMANT**

**VERSUS**

**LAWINA COMPANY LIMITED.....1<sup>ST</sup>**  
**RESPONDENT**

**PETER LAGAT.....2<sup>ND</sup>**  
**RESPONDENT**

**JANE CHEPCHUMBA LAGAT.....3<sup>RD</sup>**  
**RESPONDENT**

**JUDGMENT**

**Introduction**

1. In a Statement of Claim dated 10<sup>th</sup> April, 2018, and filed on 13th April, 2018, the Claimant seeks the following reliefs as against the Respondents:
  - i. A declaration that the Defendants jointly and severally unlawfully and unfairly terminated the Claimant's contract of employment;
  - ii. Damages for unfair and unlawful termination of the Claimant's employment;

- iii. Judgment for the sum of Kshs. 45,000.00 being three (3) months' salary in lieu of notice of termination of the Claimant's employment;
- iv. Judgment for the sum of Kshs. 10,000.00 being the cumulative outstanding balance of the Claimant's salary for the months of July and August 2017;
- v. Service pay for each year worked since June 2006 until 31 August 2017, calculated at one month's salary for each year worked;
- vi. Damages/compensation for denied annual leave days from June 2006 until 31 August 2017;
- vii. Damages/compensation for overtime hours worked between June 2006 until 31 August 2017;
- viii. Damages/compensation for extra roles or duties performed outside of the contract of employment between June 2006 until 31 August 2017;
- ix. A declaration that the Defendants are jointly and severally in breach of the Claimant's rights under Articles 28 and 41(1) & (2)(a, b) of the Constitution of Kenya, 2010;
- x. Damages for the breach and violation of the Claimant's constitutional and fundamental rights;
- xi. An order compelling the Defendants to issue the Claimant with a Certificate of Service as required by law;
- xii. A declaration that the Defendants are liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to

- both for failing to issue the Claimant with a Certificate of Service;
- xiii. Interest on prayers (ii), (iii), (iv), (v), (vi), (vii), (viii), and (x); and
  - xiv. Costs of the suit and interest thereon
2. The Respondent entered an appearance on 3<sup>rd</sup> May, 2018, and subsequently filed a Response to the Memorandum of Claim dated 14<sup>th</sup> June, 2018, and filed on even date, denying the Claimant's claim.
  3. The Claimant presented a total of four (4), including himself, and all their oral testimonies were taken on 1<sup>st</sup> April, 2025. The Respondent's case was heard on 9<sup>th</sup> December, 2025, through the evidence of Winnie Chepkoech Cherutoi.
  4. Submissions were received from both parties and have been duly considered.

### **The Claimant's Case**

5. The Claimant's case is that he worked as a security guard for the Respondents from June 2006 until August 2017, earning Kshs.15,000 per month as at the time of separation.
6. It is his case that in July and August 2017, the Respondents reduced his salary without justification from Kshs.15,000 to Kshs.10,000 and failed to pay him the outstanding balances. He avers that on 30<sup>th</sup> August 2017, he resigned from the Respondents' service for medical and other reasons, giving three months' notice.

7. The Claimant states that in response, the Respondents summarily dismissed him and terminated his employment immediately. He states that following the dismissal, the Respondents failed to pay his terminal dues and statutory benefits, and did not issue him a Certificate of Service.
8. The Claimant further contends that throughout his 11 years of service, he was subjected to harsh and inhumane working conditions, prompting him to seek legal redress for unfair treatment and unlawful termination.
9. The Claimant contends that the Respondents engaged in multiple and continuous violations of labour laws and constitutional rights throughout his employment, including excessive and unlawful working conditions for being required to work seven days a week without rest, undertaking 24-hour continuous shifts, being denied a weekly rest day, denial of leave entitlement, non-payment of dues, statutory non-compliance, unlawful salary reduction, unfair termination, failure to settle terminal obligations, and coercion into unlawful acts for being compelled to carry out illegal or improper instructions.
10. The Claimant contends that these actions cumulatively violated his constitutional rights, particularly Article 28 on the right to human dignity, and Article 41 on the Right to fair labour practices, fair remuneration, and reasonable working conditions.

11. On cross-examination, the Claimant told the court that his employer was Lawina Company Limited, the 1<sup>st</sup> Respondent, while the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were its directors.
12. Although the Claimant stated that he worked alone as security at the Respondents' premises, he admitted that one Paul Kosgei relieved him occasionally. He avers that his salary was Kshs.15,000 per month, which was paid either in cash or through Mpesa, but he did not have his Mpesa statement.
13. It is his position that he took time off to vote in 2017 and that he thereafter, on 30<sup>th</sup> August, 2017, tendered his resignation, which he argues he handed to Winnie, RW1.
14. He avers that he was unwell in April 2017, but that he worked in July and August 2017 and was last paid in August 2017. He states further that he was only paid KShs.10,000/- in July and told that the balance would be paid later.
15. The Claimant told the court that one Ms. Julie Soweto is both his counsel in this matter and his witness, having written a witness statement.
16. CW2, Edward Sigilai, told the court that the Claimant, who is also his brother, caught pneumonia and was advised by his doctor not to work at night, and so he resigned.

17.CW3, Paul Kosgei, told the court that he was also a security guard at the Respondents' premises and, between 2011 and 2013, he, together with the Claimant, worked for the Respondents as security guards.

18.CW4, Ms. Julie Soweto, also testified that she lived at the Respondents' premises guarded by the Claimant. She confirmed on cross-examination that the Claimant was a night guard and that there was also a day guard at the premises. She confirmed that the Claimant used to wash her car for her and those of other tenants in the wee hours of the morning (4 am).

19. The Claimant prays that his claim be allowed.

### **The Respondent's Case**

20.The Respondents' case is that the suit herein was improperly brought against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, arguing that they are merely directors of the 1<sup>st</sup> Respondent's company and not the Claimant's employer. They assert that including them in the suit is an unlawful attempt to lift the corporate veil. They maintain that only the 1<sup>st</sup> Respondent qualifies as the Claimant's employer and therefore deny liability on the part of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

21.While admitting that the Claimant worked as a night security guard, the Respondents dispute the nature of the employment relationship, asserting that he was engaged as

a casual worker on an intermittent, “on and off” basis rather than as a regular employee.

22.The Respondents state that they dispute the authenticity of an Employment Card produced by the Claimant, arguing that it is a forgery. They state that the 1<sup>st</sup> Respondent never issued such a badge and that the matter has been reported to Kilimani Police Station (OB No. 52/03/05/2018) for investigation.

23.Additionally, the Respondents deny the Claimant’s assertions regarding his salary, maintaining that he earned Kshs.10,000 per month as agreed, and only for the periods he worked. They insist that the Claimant must strictly prove any claim that his salary was higher.

24.The Respondents deny ever receiving a resignation letter from the Claimant, and further assert that the Claimant’s termination resulted from gross misconduct, which they intend to substantiate during the hearing.

25.The Respondents further deny owing the Claimant any dues, maintaining that all wages and entitlements were fully paid. In support of the alleged misconduct, the Respondents accuse the Claimant of absconding from duty without notice or justification, allowing unauthorized visitors into the premises, thereby compromising tenants’ security, and permitting unqualified individuals to reconnect electricity,

leading to damage to a meter box and financial loss to the 1st Defendant.

26. The Respondents argue that, based on the foregoing, they have justified the termination and deny liability for the claims made.

27. The Respondents deny the Claimant's entitlement to a Certificate of Service, asserting that if it was due, the Claimant failed to collect it for having absconded duty. They also deny all alleged violations of law and constitutional rights, maintaining that the Claimant has not proved any of the claims.

28. On cross-examination, RW1, the manager of the 1<sup>st</sup> Respondent, told the court that the Respondents never received a resignation letter from the Claimant nor did she refuse to receive one from him. She denied that the 2<sup>nd</sup> Respondent summarily dismissed the Claimant and confirmed that she had no evidence of misconduct on his part.

29. RW1 further confirmed that the Claimant's salary was not paid at the end of each day.

### **Analysis and Determination**

30. The following issues present for determination:

- i. Whether the 2nd and 3rd Respondents are properly sued;

- ii. Whether the Claimant was a casual employee;
- iii. Whether the termination of his services was unfair and unlawful; and
- iv. Whether the Claimant is entitled to the remedies sought.

### **Whether the 2nd and 3rd Respondents are properly sued**

31. The Respondents argue that the 2nd and 3rd Respondents are only directors of the 1st Respondent and were thus wrongly joined to this suit.

32. The law is now settled that a company is a separate legal entity from its directors, as established in ***Salomon Vs Salomon & Co. Ltd (1897) AC 22*** and ***Omondi Vs National Bank of Kenya Ltd & Others [2001] EA 175 (CAK)***. In these cases, it was held that courts will only lift the corporate veil in exceptional circumstances, such as where fraud or improper conduct is established.

33. On cross-examination, the Claimant told the court that his employer was Lawina Company Limited, the 1<sup>st</sup> Respondent, and that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were its directors.

34. No evidence whatsoever was led to justify piercing the corporate veil of the 1<sup>st</sup> Respondent, and accordingly, I find and hold that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were improperly joined and ought to be struck out of these proceedings.

### **Whether the Claimant was a casual employee**

35. The Respondents dispute the nature of the employment relationship they had with the Claimant, asserting that he was engaged as a casual worker on an intermittent, “on and off” basis rather than as a regular employee. They maintain that the Claimant was a casual employee.

36. The evidence shows that the Claimant worked continuously from 2006 to 2017, and the Respondents’ witness RW1 confirmed on cross-examination that he was not paid at the end of each day, as would a casual labourer. There was also no clear evidence of intermittent engagement.

37. Further, under Section 37 of the Employment Act, continuous service converts an otherwise casual engagement into term employment. This position was affirmed in ***Nanyuki Water & Sewerage Company v Benson Mwiti Ntiritu & 4 others [2018] eKLR***, where the Court held that long, continuous service negates casual status.

38. In the upshot, the Court finds that the Claimant was a regular employee, and not a casual worker.

### **Whether the termination was unfair and unlawful**

39. The Claimant’s position is that the Respondents engaged in multiple and continuous violations of labour laws and constitutional rights throughout his employment, including unfair termination, failure to settle terminal obligations, and

coercion into unlawful acts. He contends that the Respondents summarily dismissed him from service even when he had tendered his resignation.

40. On its part, the Respondents assert that the Claimant absconded from duty in July and August 2017 and that he committed acts of misconduct. It, however, did not produce any documentary evidence of misconduct on the part of the Claimant, and RW1 admitted on cross-examination having no evidence of misconduct.

41. The Respondent did not at allude to having taken the Claimant through a disciplinary process for the purported acts of misconduct contrary to the dictates of Sections 41, 43, and 45 of the Employment Act, which require that an employer prove valid reasons and follow due process in the termination or dismissal.

42. In ***Walter Ogal Anuro v Teachers Service Commission [2013] eKLR***, the Court held that failure to issue a show cause letter and to conduct a proper disciplinary hearing renders termination procedurally unfair. Similarly, in ***Kenfreight (EA) Ltd v Benson K. Nguti [2016] eKLR***, the Supreme Court stated: -

***“Termination of employment will be unfair if the court finds that, in all the circumstances of the case, it is based on invalid reasons or if the reason itself or***

***the procedure of termination is itself not fair.”***

43. In the circumstances, I find and hold that the termination of the Claimant’s employment was unfair and unlawful.

### **Whether the Claimant is entitled to the remedies sought**

#### **Salary and Underpayment Claim**

44. The Claimant asserts that he earned a monthly salary of Kshs.15,000, while the Respondents insist that the agreed salary was Kshs.10,000. Under Section 74 of the Employment Act, the employer bears the burden of keeping employment records, and failure to produce them shifts the burden to the employer.

45. In ***Elizabeth Washeke & 62 Others v Airtel Networks (K) Ltd [2013] KEELRC 572 (KLR)***, the Court held that where an employer fails to produce records, the employee’s assertions may be believed.

46. Given the lack of records, the Court is inclined to accept the Claimant’s position that his salary was Kshs.15,000, and that the reduction to Kshs.10,000 was unlawful.

#### **Leave and Overtime**

47.The Claimant alleges that he did not take leave for 11 years, and neither had he utilized his rest days. He contends that he worked overtime and that his work hours were excessive.

48.The employer produced no records, such as leave records, duty rosters, or payroll, which are mandatory under Section 74. The Court, however, still expects the Claimant to prove the extent of overtime and extra duties as alleged.

49.Firstly, the evidence from CW4 suggests that car washing was done voluntarily and for tenants, and not as part of employment. Further, the Claimant confirmed that he was a night guard, and that there was also a day guard who testified to the same.

50.In light of the foregoing, I find the claim for leave merited and dismiss the claim for overtime.

### **Service Pay**

51.Service pay is payable pursuant to Section 35(6), except where the employee was a member of NSSF or a contributory pension scheme.

52.The Respondents alleged non-applicability, but produced no proof of NSSF remittance. The Claimant is, in the circumstances, entitled to service pay.

### **Certificate of Service**

53.Under Section 51 of the Employment Act, issuance of a Certificate of Service is mandatory. In ***Francis Maina***

***Kamau v Lee Construction [2014] KEELRC 788 (KLR)***, the Court held that refusal to issue a certificate of service is unlawful regardless of the circumstances of exit.

54. The Claimant is therefore entitled to a Certificate of Service.

#### **Damages for unfair termination**

55. The Claimant sought damages for the unfair termination of his employment and, having found his termination unfair and unlawful, entitles him to an award of damages.

56. Considering his long service and the chances of securing alternative comparable employment, I deem an award of five (5) months' salary sufficient compensation for the unfair termination.

#### **Constitutional Claims (Articles 28 & 41)**

57. While the Claimant alleges violation of constitutional rights, employment disputes are generally adequately addressed under the Employment Act. In ***Peter Wambugu Kariuki & 16 Others v Kenya Agricultural Research Institute [2020] KEELRC 1621 (KLR)***, the Court held that constitutional remedies should not be granted where statutory reliefs suffice.

58. In the circumstances of this case, I find the claims sufficiently addressed under the Employment Act, and decline an invitation to award separate constitutional damages.

59. In conclusion, the Claimant's claim succeeds in terms of the following orders: -

- a) That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are hereby struck out of this suit.
- b) A declaration that the Claimant's employment was unfairly and unlawfully terminated by the 1<sup>st</sup> Respondent.
- c) The 1<sup>st</sup> Respondent shall pay the Claimant:
  - i. One month's salary in lieu of notice at Kshs.15,000/-
  - ii. A salary balance of Kshs.10,000/-
  - iii. Service Pay of Kshs.75,000/-
  - iv. leave pay for 3 years of Kshs.45,000/-
  - v. 5 months' salary as compensation for the unfair termination at Kshs.75,000/-
- d) A certificate of Service to be issued within 14 days of this Judgment.
- e) Costs shall be borne by the Respondent.

60. It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Kariuki h/b for Ms. Dar for the Claimant

Mr. Mwaura present for the Respondents

Ms. Esther S - C/A

ORIGINAL