



REPUBLIC OF KENYA



KENYA LAW
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**Kibiru v Mars Security Guards (Cause 1951 of 2016)
[2025] KEELRC 184 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 184 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1951 OF 2016
J RIKA, J
JANUARY 31, 2025**

BETWEEN

KENNEDY MILIMU KIBIRU CLAIMANT

AND

MARS SECURITY GUARDS RESPONDENT

JUDGMENT

1. The Claimant amended his Statement of Claim, on 26th November 2021. The initial Statement of Claim is dated 26th August 2016, and filed on 22nd September 2016.
2. He states that he was employed by the Respondent around August 2004.
3. He states that throughout, he was not paid house allowance. Based on his monthly basic salary of Kshs. 11,000, he computes house allowance at Kshs. 1,650 monthly.
4. He worked for 144 months, and claims house allowance in arrears of Kshs. 237,600.
5. He fell ill on 7th July 2016. He contacted his doctor, who treated him and recommended bed rest. He returned to work a week later. He was dismissed verbally.
6. He was not paid his salary for the month of July 2016 at Kshs. 11,000.
7. Termination was abrupt. It was contrary to principles of natural justice.
8. There is only one Respondent to the Claim, but the Claimant pleads at paragraph 16 of the Amended Statement of Claim, that he claims jointly and severally against the Respondents, the following orders: -
 - a. Declaration that termination was wrongful and unfair.
 - b. 1-month salary in lieu of notice at Kshs. 11,000.
 - c. Salary for July 2016 at Kshs. 11,000.



- d. Annual leave for 12 years at Kshs. 132,000.
 - e. Pro-rata annual leave for 2016 at Kshs. 5,500.
 - f. Public holidays worked at Kshs. 22,166.
 - g. 12 months' salary in compensation for unfair terminations, at Kshs. 132,000.
 - h. Service pay based for 12 years worked at Kshs. 66,000.
 - i. House allowance for 144 months at Kshs. 237,000.
Total...Kshs. 617,266.
 - j. Certificate of service to issue.
 - k. Costs.
9. The Respondent relies on its Statement of Response dated 8th November 2016. A Statement of Response and Counterclaim, amended on 7th November 2022, was struck out by the Court on 22nd March 2023, having been filed irregularly. The Respondent states that the Claimant applied for the job, in writing, on 2nd July 2016. He was not employed in 2004. He wrote a letter of resignation on 19th July 2016, alleging he was ill. The Respondent did not dismiss him as alleged. His prayer for compensation and notice, have no foundation. He did not work for the month of July 2016, and salary claimed is not merited. The Respondent does not owe the Claimant terminal benefits and compensation, as prayed. It is proposed by the Respondent that the Claim is dismissed, with costs.
 10. The Claimant gave evidence on 25th November 2021, 9th June 2022, 18th October 2023, and 8th March 2024 when he rested his case. Operations Manager Jackson Ochieng', gave evidence for the Respondent on 25th July 2024, closing the hearing. The matter was last mentioned on 4th November 2024, when the Parties confirmed filing and exchange of their submissions.
 11. The Claimant adopted his witness statement and documents, in his evidence-in-chief. He restated that he was employed by the Respondent, sometime in August 2004, as a Security Guard. He worked for 12 years. He was ill, and was granted permission by the Respondent to seek medical attention.
 12. His doctor recommended bed rest. On return he presented the medical records to the Respondent, and was immediately sacked. He was paid nothing. He restated that he was denied statutory benefits as particularized in his pleadings.
 13. Cross-examined, the Claimant told the Court that he did not have a letter of employment, showing that he was employed in 2004. He did not write a job application in 2016. He wrote the letter, but the date indicated on the letter is incorrect. He conceded that he wrote the letter of resignation, dated 2nd July 2016. He was sick. He was not compelled to write the letter.
 14. On further evidence-in-chief after his amendment of pleadings, the Claimant told the Court that N.S.S.F statements of account, show he was registered by the Respondent, as its Employee, on 3rd September 2004. The employment date was indicated as 1st January 2004.
 15. On further cross-examination, the Claimant told the Court that N.S.S.F contributions were made and remitted on his account, by the Respondent. There were petty cash vouchers showing he was paid public holiday, leave and off-duty in 2005. House allowance and overtime, were shown to have been paid in vouchers generated in 2016. The Claimant signed these vouchers, acknowledging the amounts paid as full and final. The muster roll similarly, captured house allowance and overtime paid.



16. On his final redirection, the Claimant stated that he did not receive the amounts indicated to have been paid through the vouchers. He never saw the documents before.
17. Operations Manager Jackson Ochieng', relied on his witness statement and documents [1-48], filed by the Respondent, in his evidence-in-chief.
18. Cross-examined, he told the Court that he had worked for the Respondent, for 24 years. He was there when the Claimant joined in 2005. His contract was not terminated by the Respondent; he resigned on 19th July 2016. The various cash vouchers exhibited by the Respondent, indicate payments were made in full and final settlement. The Respondent paid the Claimant's N.S.S.F and N.H.I.F contributions. He was paid house allowance and annual leave. Redirected, Ochieng' told the Court that petty cash vouchers indicated actual payments made to the Claimant.
19. The issues are whether, the Claimant's contract was terminated by the Respondent unfairly or at all; whether he resigned; and whether he merits the remedies sought.

The Court Finds: -

20. Although the Respondent pleads that the Claimant was employed on 2nd July 2016, evidence from both Parties show that the Claimant was employed by the Respondent from as early as the year 2004.
21. The N.S.S.F records indicate the Claimant was employed in the year 2004. Jackson Ochieng' told the Court that joined the Respondent in 2005. The job application made by the Claimant on 2nd July 2016, was one among a series of applications he was required to make by the Respondent, in his period of service which spanned from the year 2004.
22. The Claimant wrote a letter of resignation, dated 19th July 2016. He explained that he was resigning, due to ill-health.
23. In his evidence on the first cross-examination, he told the Court, " There is a resignation letter, dated 19th July 2016 [not 2nd July 2016]. I wrote the letter. I was sick. I resigned. I was not compelled to write..."
24. What then is the basis for the claim that his contract was terminated unfairly, or at all, by the Respondent? He terminated the employment relationship himself.
25. There is no foundation to his prayers for declaration that termination was unfair; notice pay; and compensation for unfair termination. He initiated termination. These prayers are rejected.
26. He resigned on 19th July 2016. He is not entitled to salary for the entire month, but is entitled to salary for the 19 days worked in July 2016. He is granted salary for 19 days worked, at Kshs. 8,038.
27. House allowance, annual leave, public holiday pay, were all shown to have been routinely paid, through the petty cash vouchers on record. The Claimant was not truthful, when he told the Court that he was not aware about these vouchers, and that he saw them for the first time in Court. He was aware that the vouchers were on record when he gave his evidence-in-chief, but said nothing about them, until he was cross-examined. The vouchers are signed by him, acknowledging receipt of the very benefits he is claiming. The prayers for house allowance, leave, and public holidays are declined.
28. Regulation 17 of the Regulation of Wages [Protective Security Services] Order 1998, applied to the Claimant's contract. He was a Security Guard. He worked for 12 years. Regulation 17 states that after 5 years of service, a Guard shall be entitled to gratuity at the rate of 18 day's salary, for every completed year of service, based on the exit monthly salary.



29. The Claimant seeks service/ gratuity based on his 12 years of service, and the Court does not find any reason, why he should not be paid this sum. He is granted service/ gratuity at 18 days' salary for 12 years, amounting to Kshs. 91,384.

30. Certificate of Service to issue.

31. No order on the costs.

It is ordered: -

- a. The Respondent shall pay to the Claimant salary for 19 days worked in July 2016 at Kshs. 8,038 and service/gratuity at Kshs. 91, 384 – total Kshs. 99,422.
- b. Certificate of Service to issue.
- c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025.

JAMES RIKA

JUDGE

