



**Kenya National Private Security Workers Union v Midal Group [K] Limited  
(Cause E060 of 2023) [2025] KEELRC 1583 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1583 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E060 OF 2023**

**J RIKA, J**

**MAY 30, 2025**

**BETWEEN**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION ..... CLAIMANT**

**AND**

**MIDAL GROUP [K] LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed its Statement of Claim dated 1st December 2023, and amended on 5th May 2024.
2. The Claim is presented on behalf of Kevin Ochieng, a member of the Claimant Union and former Employee of the Respondent.
3. He was employed orally by the Respondent as a Security Guard, on 1st March 2021. He was paid a monthly salary of Kshs. 7,800.
4. The Claimant states that the Grievant, on the night of 1st September 2022, was allegedly found in possession of a maasai shuka [a traditional maasai shawl] while on duty, by the Respondent's supervisors.
5. He was summoned to the Respondent's office the following day, 2nd September 2022. He was asked to hand over his tools of trade, including the uniform. He was told to leave, and would receive further instructions from the Respondent's Director Robert Kibuji.
6. He was not given a hearing.
7. The Grievant sought the assistance of the Claimant. The Claimant reported trade dispute to the Ministry of Labour. The Conciliator heard representations from the parties, and recommended that the Grievant is paid for work performed on public holidays, pending leave, rest days and underpayment of salary. The Conciliator stated that it was not clear if the Grievant was dismissed, or deserted duty.



8. The Claimant urges the Court to grant the following orders: -
  - a. Declaration that termination was unfair and unlawful.
  - b. 1 month salary in lieu of notice at Kshs. 19,502.
  - c. Annual leave and leave traveling allowance, 1st March 2021 to 1st September 2022 at Kshs. 28,153.
  - d. Rest days over the same period at Kshs. 37,120.
  - e. Normal overtime over the same period at Kshs. 150,041.
  - f. Underpayment of salary at Kshs. 163,622.
  - g. Public holidays at Kshs. 22,403.
  - h. 12 months' salary in compensation for unfair termination at Kshs. 234,034.  
Total... Kshs. 654,878.
  - i. Certificate of Service.
  - j. Costs.
  - k. Any other suitable relief.
9. The Respondent filed its Statement of Response, on 12th June 2024. Its position is that the Grievant was paid the correct salary, in accordance with the applicable minimum wage guidelines. He consented to what was paid. He worked from 7.00 p.m. to 6.00 a.m. He utilized his weekly rest days.
10. He was truant and absconded work for 5 consecutive days. He was caught sleeping on duty by his supervisor, on 23rd August 2022. He covered himself with a maasai shuka.
11. He was summoned to the office to answer to the charge of sleeping while on duty. He did not appear as required on 2nd September 2022. He vanished. The Respondent never terminated his contract. Attempts by the Respondent to reach him were futile. He is not entitled to the prayers sought, having absconded.
12. The Grievant gave evidence and closed his case on 23rd October 2024. The Respondent's witness Elvis Omondi Otieno gave evidence on 5th March 2025, closing the hearing. The Claim was last mentioned on 29th May 2025 when the Parties confirmed filing and exchange of their closing submissions.
13. The Grievant relied on his witness statement on record, and documents – [1-6] as is evidence -in- chief. He restated that his supervisor visited him at night. The supervisor removed a maasai shuka, from his bag. The Grievant explained that it was to protect him, from the night chill. He was summoned to the office the following day and accused of sleeping on the job.
14. Cross-examined, the Grievant told the Court that the Conciliator found he was employed in May 2021, not March 2021. He agreed that he was employed in May 2021. He was told that his salary would be Kshs. 7,800 monthly. He accepted it. He had been told that it would be raised. The maasai shuka was not part of his uniform. He did not abscond. He was not issued a letter of termination. He was dismissed by the Director, through word of mouth.
15. Elvis Omondi Otieno relied on his witness statement, in his evidence-in-chief. He exhibited documents [1-2] filed by the Respondent. He worked for the Respondent as Sector Manager. He confirmed that the Grievant was employed by the Respondent as a Security Guard. He absconded duty for 5



consecutive days. He was caught sleeping on duty, while wrapped in a maasai shuka. When he was offered an opportunity to explain himself the following day, he absconded. He never showed up again. The Respondent next saw him on 22nd December 2022, when he lodged complaint against the Respondent with the Claimant, alleging that he had been unfairly dismissed by the Respondent. His Claim has no foundation.

16. Cross-examined, Otieno told the Court that he did not exhibit the muster roll. He did not have anything to show that the Grievant absconded. There was no letter inviting him to a disciplinary hearing. The Respondent attempted to reach the Grievant through phone.
17. The issues are whether the Grievant's contract was terminated by the Respondent fairly or at all; and whether he merits the prayers sought.

**The Court Finds: -**

18. The Claimant conceded that he was employed in May 2021, not March 2021, as a Security Guard. He left employment on 2nd September 2022. He worked for about 1 year and 3 months.
19. He was alleged to have been sleeping while on night duty, on 1st September 2022. When called to answer the allegation on 2nd September 2022, the Grievant allegedly vanished. The Respondent did not terminate his contract.
20. This recollection of events by the Respondent, surrounding the Grievant's exit from the Respondent, is unsatisfactory.
21. The Respondent alleged that initially the Grievant absconded for 5 consecutive days. When was this and why was he not taken through a disciplinary process for this offence?
22. When on the last occasion he was found sleeping on the job, the Respondent states that it called him to office on 2nd September 2022, for a hearing. There is no record of any invitation addressed to the Grievant, inviting him for any form of hearing on 2nd September 2022.
23. There were no charges communicated to him.
24. There was no letter of termination issued to him.
25. Assuming he absconded on 2nd September 2022, the Respondent acknowledges to have met him on 22nd December 2022 when he lodged a complaint with his trade union.
26. Why did not the Respondent charge him with the offence of absconding or sleeping on the job, on 22nd December 2022? If the Respondent did not terminate his contract, why did the Respondent not demand that he resumes duty on 22nd December 2022, when the Grievant resurfaced, to use the term used by Otieno in his witness statement?
27. The explanation by the Grievant that he was dismissed orally, by the Respondent's Director, on 2nd September 2022, appears more persuasive. He was asked to surrender the Respondent's tools of trade, including the uniform and leave. The Respondent does not claim that the Grievant retains these tools. He surrendered the tools and was told to await word from the Director on his employment status. No word came through from the Respondent.
28. The Respondent initiated termination by word of mouth. It did not establish valid reason or reasons, under Sections 43 and 45 of the *Employment Act*, to justify termination. The procedure adopted by the Respondent did not satisfy the minimum standards of procedural fairness, under Sections 41 and 45 of the *Employment Act*. There were no charges presented to the Grievant and no hearing accorded



- to the Grievant, on 2nd September 2022, or 22nd December 2022 when the Respondent alleges that he resurfaced.
29. Termination was unfair and the prayers for compensation and notice are merited.
  30. The Respondent paid a paltry Kshs. 7,800 as monthly salary to the Grievant. The Respondent justified this underpayment on the ground that the Grievant accepted the payment, at commencement of his employment.
  31. Section 48 [1] [a] of the *Labour Institutions Act*, 2007, stipulates that the minimum rates of remuneration or conditions of employment established in a wages order, constitute a term of employment of any Employee, to whom the wages order applies, and may not be varied by agreement. Section 48 [2] makes it an offence where an Employer, fails to pay an Employee statutory minimum remuneration.
  32. The argument frequently embraced by rogue Employers, that they paid their Employees wages below the statutory standards because their Employees consented, and never complained that they were being underpaid, has no support under the *Employment Act* or the *Labour Institutions Act*.
  33. *Legal Notice No. 125 of 2022* supports the submission by the Claimant, that the Grievant's basic salary ought to have been Kshs. 16,959 and house allowance at Kshs. 2,543 monthly. He was entitled to a consolidated monthly salary of Kshs. 19,502. He was underpaid by Kshs. 146,927 between May 2021 and September 2022. The prayer for underpayment of salary is allowed at Kshs. 146,927.
  34. He is granted notice equivalent of his 1-month consolidated salary at Kshs. 19,502.
  35. He worked for slightly over 1 year, and was not shown to have caused, or contributed to the circumstances, leading to termination of his employment. He did not disclose to the Court if he secured alternative employment, after he left the Respondent. He was paid nothing on termination. He is granted 1-month salary in compensation for unfair termination, at Kshs. 19,502.
  36. The prayers for leave, weekly rest days, normal overtime and public holidays, were not given any support by the Grievant in his evidence before the Court. His oral evidence and written witness statement which he adopted as his evidence, said nothing about these prayers. It was left for his trade union, the Claimant herein, to provide figures to these claims. The Grievant himself gave no evidence on the sums claimed under these items. The Court cannot sustain the prayers, based on the bare pleadings of the Claimant. The prayers are declined.

It is ordered: -

- a. It is declared that termination was instigated by the Respondent and was unfair and unlawful.
- b. The Respondent shall pay to the Grievant through the Claimant, underpayment of salary at Kshs. 146,927, notice at Kshs. 19,502 and compensation for unfair termination at Kshs. 19,502- total Kshs. 185,931.
- c. Costs to the Claimant.
- d. Interest allowed at court rate from the date of Judgment till payment in full.
- e. Certificate of Service to issue.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU, THIS 30TH DAY OF MAY 2025.**

**JAMES RIKA**



**JUDGE**

