



**Musungu v Babs Security Limited (Cause 127 of 2015)  
[2025] KEELRC 2067 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2067 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 127 OF 2015  
MN NDUMA, J  
JULY 10, 2025**

**BETWEEN**

**VICTOR AMAKOBE MUSUNGU ..... CLAIMANT**

**AND**

**BABS SECURITY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit by a statement of claim on 3/2/2015 and filed an amended memorandum of claim on 27/2/2023.
2. The Claimant seeks the following reliefs as set out in the amended memorandum of claim:-
  - a. 3 months' salary in lieu of notice in the sum of Kshs. 28,716.00
  - b. Compensation equivalent to 12 months' salary for unlawful termination.
  - c. Severance pay for the 1 year 2 months served calculated at 15 days salary for each year worked.
  - d. Overtime worked and not paid
  - e. Costs of the suit.
2. The Claimant adopted a witness statement filed together with the amended memorandum of claim as his evidence in chief together with a verifying affidavit of the facts set out therein.
3. The Respondent filed a response to the amended statement of claim dated 3<sup>rd</sup> April 2024 vide Ngige Karomo & Associates Advocates in which it was admitted that the Claimant worked for the Respondent from 16/4/2012 as a security guard earning Kshs. 6,314.00 per month and at the time of termination was earning Kshs. 9,572.00 per month. It was averred that the Claimant deserted work and was never dismissed from employment.



4. The Claimant filed a reply to the response to the claim dated 8<sup>th</sup> April 2024 and traversed the denials set out in the memorandum of response and joined issues with the Respondent putting him to strict proof thereof.
5. The matter was set for hearing on several occasions wherein Mr. Kimani Advocate appeared for the Claimant and one Mr. Ngigi Advocate appeared for the Respondent.
6. On 15/10/2024 the matter was set for hearing and Mr. Ngigi told the court that he had no instructions to proceed on behalf of the Respondent. One Mr. Gicheru Advocate, told the court that they had been newly instructed to come on record and were not ready to proceed. The court noted that Mr. Gicheru was not yet on record on behalf of the Respondent and the suit proceeded on the Claimant's case in the presence of Mr. Gicheru.
7. The Claimant testified as CW1 and adopted the witness statement dated 14/6/2024 as his evidence in chief and produced exhibits '1' to '5' attached to the amended bundle of documents dated 14/6/21 as his evidence.
8. CW1 told the court that he worked for the Respondent for one year and two months.
9. That he worked diligently for the period and on 13/9/2013, he reported to work as usual. That he was summoned to the office where his employment was terminated with immediate effect without any reasonable cause or explanation. That the Claimant pleaded with the Respondent to pay him his terminal dues but the Respondent declined. That the Claimant had not yet taken his annual leave and worked even during public holidays since he worked during night shift from 6 p.m. to 6:30 a.m. because he had to wait for the day time guard to arrive. That he reported the dispute to the Ministry of Labour but efforts to settle the matter failed. That he suffered loss of income unfairly and suffered psychological trauma. That demand to remedy the situation was served but not responded to. The Claimant prays to be awarded as prayed.
10. Mr. Gicheru Advocate for the Respondent requested for adjournment to cross-examine the Claimant and call a defence witness. The matter was adjourned to 17/12/2024 for further hearing.
11. On 17/12/2024, there was no representation for the Respondent. The matter was set to commence hearing at 11:30 a.m. Mr. Kimani Advocate informed court that he had received notice of change of advocates that morning. Mr. Kimani applied for the matter to proceed as undefended suit. The court ordered the matter to proceed as undefended suit since there was no representation for the Respondent in court.  
  
The Claimant closed his case and the defence was deemed as closed.
12. The bottom line is that the evidence adduced by the Claimant has not been controverted. The Claimant has proved that he worked for the Respondent as a security guard from 16<sup>th</sup> April 2012 upto 13<sup>th</sup> September, 2013 when the employment was unlawfully terminated by the Respondent without notice, notice to show cause or any explanation. The termination was contrary to sections 36, 41, 43 and 45 of the *Employment Act* for failure to give notice, any opportunity to explain self or any valid reason to the termination.
13. The Claimant is entitled to payment of terminal benefits and compensation in terms of section 49[1] [c] and 4 of the *Employment Act*, 2007.



14. The court relies on the case of *Walter Ogal Anuro v TSC* [2013] eKLR and the case of *Daniel Kiplagat Kipkaibut v SMEP Deposit Taking Micro-Finance Ltd* [2016] where the court held:
- “For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness address the procedure adopted by the employer in effecting the termination”.
15. The Respondent has failed to prove that it had a valid reason to terminate the employment of the Claimant nor did it show that it followed a fair procedure before the termination having failed to adduce any evidence in that respect.
16. Accordingly, the termination was unlawful and unfair. The Claimant is entitled to payment of unpaid terminal benefits, set out in the amended memorandum of claim and evidence adduced before court as follows:
- a. One month salary in lieu of notice in the sum of Kshs. 9,572.00.
  - b. Severance pay for 1 year completed service Kshs. 4,786.00
  - c. Payment in lieu of one year and two months annual leave Kshs. 11,170.52
17. The overtime worked has not been proved by the Claimant.
18. The Claimant worked for one year. Did not contribute to the unlawful termination, was not paid any terminal benefits upon termination. The Claimant lost means of livelihood and career advancement. The Claimant was not compensated for the loss and damage suffered by fact of the unlawful and unfair termination.
19. The court awards the Claimant the equivalent for four [4] months’ salary in compensation for the unlawful and unfair termination in the sum of Kshs.  $[9,572 \times 4] = \text{Kshs. } 38,288.00$ .
20. In the final analysis, judgment is entered in favour of the Claimant against the Respondent as follows:
- a. Terminal benefits and compensation in the sum of Kshs. 63,816.52.
  - b. Interest at court rates from date of judgment till payment in full.
  - c. Costs of the suit.

**DATED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Kimani Advocate for the Claimant

Mr. Gicheru Advocate for the Respondent

Mr. Kemboi – Court Assistant

