



**Bwire v Wasso Security Services Limited (Cause 335 of 2017)  
[2024] KEELRC 714 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 714 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 335 OF 2017  
NJ ABUODHA, J  
MARCH 14, 2024**

**BETWEEN**

**MOSES MAKOKHA BWIRE ..... CLAIMANT**

**AND**

**WASSO SECURITY SERVICES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his statement of claim dated 10<sup>th</sup> December, 2016 and pleaded *inter alia* as follows: -
  - a. On or about 1<sup>st</sup> March, 2011 the Claimant was employed by the Respondent as a Guard at a starting monthly basic salary of Kshs 8,000/= at the time of termination.
  - b. The Claimant averred that while in employment with the Respondent his health deteriorated due to poor working conditions and following advice from his doctors at Kenyatta National Hospital he opted to resign from employment in order to concentrate on treatment.
  - c. That vide a resignation letter dated 1<sup>st</sup> September, 2016 he resigned from employment with effect from the 1<sup>st</sup> October, 2016 after issuing the Respondent.
  - d. The Claimant averred that after resigning from employment, the Respondent promised to pay him his terminal dues and arrears however after numerous follow-ups with the Respondent he was not paid his outstanding dues and arrears which he was lawfully entitled to. That this amounted to unfair labour practice.
  - e. The Claimant averred that the Respondent's action to withhold his salary and terminal dues was contrary to the law, natural justice and the same is arbitrary and inhumane.
  - f. The Claimant claimed a total of Kshs1,077,520.55 ranging from unpaid salaries, house allowances, pending leave days, public holidays, underpayments, off days, overtime and service pay.



2. The Claimant in the upshot prayed for the following against the Respondent;
  - a. A declaration that the Respondent's action to withhold the Claimant's outstanding salary and terminal dues is unlawful and unfair and that the Claimant is entitled to payment of his terminal dues.
  - b. An order for payment of the Claimant's terminal dues totaling Kshs 1,077,520.55/=
  - c. An order for the Respondent to pay the Claimant's cost of this suit plus interest.
3. The Respondent despite being granted leave to file its response on 10<sup>th</sup> June, 2019 did not do so. The Respondent's Advocates also ceased acting for it on 7<sup>th</sup> February, 2022 and since then the Respondent has never attended court or instructed another Advocate to act for it. The matter is therefore undefended.

### **Evidence**

4. The Claimant's case was heard on 23<sup>rd</sup> November, 2023 in absence of the Respondent or its counsel where the Claimant adopted his statement and documents filed in this case as his evidence in chief.

### **Claimant's Submissions**

5. The Claimant filed his submissions dated 14<sup>th</sup> October, 2022 and he submitted that he gave his notice to the Respondent upon resigning voluntarily and complied with section 35(1)(c) which provides for a notice of periodic wage interval. That he worked for the month of September without the Respondent waiving his notice hence he was entitled to his salary and other dues.
6. On the issue of whether the Claimant was entitled to the reliefs sought he submitted that he was entitled to the same having not been paid upon his resignation and the Respondent having not brought any evidence to the contrary.
7. On the relief of house allowance the Claimant contended that section 31 of the Employment Act entitled him to be provided with a house or housing allowance by the employer. That none was done in his case.
8. He further submitted that section 74 of the Act required the employer to keep employment records including the issue of house allowance. Further that the letter of appointment did not mention house allowance or mention if the salary was consolidated to include house allowance. He was therefore entitled to the said house allowance the same being not disputed.
9. Concerning untaken/unpaid leave the Claimant submitted that for the period he worked with the Respondent he never went on leave or paid in lieu. He relied on section 36 of the Act to submit that since this fact was not rebutted by the Respondent he was entitled to the same.
10. The Claimant submitted that during the duration of service he would report to work at 6.00 am and leave at 6.00pm amounting to 4 extra hours which were never paid for. He relied on section 74 of the Act to submit that no records or register was produced before the court to contradict that he did not work extra hours and if at all he worked for extra hours he was recompensed.
11. The Claimant further submitted that he was working 7 days a week without rest which was payable under section 27(2) of the Employment Act. On the issue of underpayments the Claimant submitted that between the period of 2011 to September, 2016, the Respondent used to underpay him. That he used to be paid Kshs 7,000 per month which was increased to Kshs 8,000/= per month at termination.



That this was below statutory minimum wage of a guard as provided for in the Regulation of Wages Order,2012,2013 and 2015 respectively.

12. The Claimant submitted that the Respondent did not avail records to the court that it paid him as required in the law. That the same is supported by the appointment letter where the Claimant was paid below the expected minimum. The Claimant submitted he was therefore entitled to the prayers sought and relied on the case of *Katana Mwangandi v Board of Governors Takaye Primary School*(2017) eKLR.

### **Determination**

13. In this instant case it was not disputed that the Claimant was employed by the Respondent on 1<sup>st</sup> March,2011 until 1<sup>st</sup> September,2016 when he voluntarily resigned from the Respondent's services by giving a one -month notice. He continued working during the notice period as required by the law. He is therefore entitled to be paid for the notice period.
14. The claim herein proceeded undefended therefore the court did not have the benefit of hearing the respondents side of the story. The Court will therefore be more inclined to award most of the prayers sought unless there is justification to the contrary. The claim for balance of August 2016 salary and September salary is justified since there was no evidence that the Claimant was paid the same. The Prayer for house allowance is also unjustified since the Claimant's appointment letter does not provide for the said house allowance.
15. On the prayer for unpaid/untaken leave I note that the Claimant produced a leave form of 2015 where he took 11 days leave remaining with a balance of 10 days. It is not clear if the Claimant utilized the remaining leave days. The Respondent never participated in these proceedings to deny the Claimant took the leave or not and I award the claimed amounts by the Claimant apart from 2015 at Kshs 5,216/=.
16. On the prayer for untaken/unpaid public holidays since the same was provided for in the appointment letter and there is no evidence that the Claimant took the public holidays I award the same to the Claimant.
17. On the prayer for underpayments for the said periods I confirm the same to be true and award the Claimant the under payments.
18. The prayer for off days was also provided for in the Appointment letter at the tune of 4 days a month hence the Claimant was entitled to the same with no evidence that he took the off days.
19. On the prayer for overtime the same was provided for in the appointment letter. I take in to account the nature of work of a security guard and naturally there are bound to work overtime. In the absence of evidence to the contrary the Court will award the same.
20. On the prayer for service pay the Appointment letter provided that the Respondent would be making statutory deductions on behalf of the Claimant. The Claimant is requesting for the one year when NSSF was not remitted and without any other evidence to the contrary I award the Claimant the service pay.
21. In conclusion the Claimant's claim is hereby allowed with costs as follows:
  - a. Balance of salary for August.....Kshs 4,000/=
  - b. September 2016 salary.....Kshs 10,954.70/=
  - c. House Allowance .....Kshs. 108,451/-



- d. Unpaid Leave.....Kshs 49,034.8/=
- e. Unpaid Public Holidays.....Kshs 44,184/=
- f. Underpayments.....Kshs 114,555/=
- g. Off days.....Kshs 192,803/=
- h. Overtime.....Kshs. 542,322/-
- i. Service pay for one year.....Kshs 5,477.35/=
- Total.....Kshs 1,071,781.85/ =

This award shall be subject to taxes and statutory deductions but shall attract interest at court rates from the date of judgment until payment in full

22. It is so ordered.

**DATED AT NAIROBI THIS 14<sup>TH</sup> DAY OF MARCH, 2024**

**DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF MARCH, 2024**

**ABUODHA NELSON JORUM**

**JUDGE**

