



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO.1701 OF 2017**

***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**BENSON KAMANDI IMBUKI.....CLAIMANT**

**VERSUS**

**SPUR SECURITY SERVICES LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The Claimant filed a Memorandum of Claim dated 26<sup>th</sup> April, 2017 and he filed an affidavit of service dated 23<sup>rd</sup> April, 2018 attesting to the effect that he served the statement of claim on the Respondent.

2. The Respondent did not file the response and the case proceeded undefended.

**CLAIMANT'S CASE**

3. The court considered the claim as well as the affidavit of support of the claim. The Claimant's submissions were also considered.

4. Claimant says he was employed as a security guard by the Respondent at a salary of Kshs.9,942/= per month. He says he was employed on 1<sup>st</sup> September, 2010.

5. He says on 17<sup>th</sup> February, 2017 he was wrongfully and unfairly terminated.

He says he was not given any reason for the termination and neither was he issued with notice and no payment was made to him in lieu of notice. Furthermore he says his outstanding wages were not settled. Severance pay and vacation pay were also unpaid.

6. He now claims for damages amounting to Kshs.797,798.92 plus 12 months compensation amounting to Kshs.146,653.20 as more particularized on paragraph 10 of the statement of claim.

**ISSUES FOR DETERMINATION**

7. (i) was Claimant unlawfully terminated?

(ii) is he entitled to the claims prayed?

**DECISION**

8. The Claimant says he worked for the Respondent as a security guard from 1<sup>st</sup> September, 2010 till 12<sup>th</sup> February, 2017. He was earning a salary of Kshs.9,942/=.

9. He says his employment was terminated without any valid reason or notice.

10. The Respondent not having defended the claim means the claim by the Claimant is uncontroverted and is bound to be considered by the court. The Claimant filed his written submissions dated 6<sup>th</sup> February, 2022. The court considered the Claimant's pleadings and evidence via

affidavit of support or claim as well as his submissions.

### **DETERMINATION**

11. The pertinent issue for consideration is whether the Claimant was unlawfully terminated or not and secondly is he entitled to the reliefs claimed.

12. The court considered the evidence and the facts and also the Claimant's submissions, in making its determination. The Claimant alleged he was unlawfully terminated from the Respondent's employment without any reason.

The Employment Act 2007 provide in Section 45 (1) that no employer will terminate the employment of an employee unlawfully.

Section 45 (2) of the said Employment Act further provide that a termination of employment by an employer is unfair if the employee fails to prove that the reason for termination is valid.

13. In the current case the Respondent did not defend the case and therefore did not controvert or dispute the evidence given by the Claimant.

14. Section 43 of the Employment Act 2007 also provide that in any claim arising out of termination of a contract the employer shall be required to prove the reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45 of the Employment Act.

15. In the instant case the Respondent failed to prove the reason for termination of the Claimant's employment having failed to even file a defence and so the court is bound to declare the termination of his employment unlawful.

16. In the **CASE OF WALTER OGAL ANURO VS TEACHERS SERVICE COMMISSION CASE NO.955 OF 2011** the court noted that for termination to pass the fairness test, it ought to be shown that there was not only substantive justification for termination but also procedural fairness. Further Section 43 of the Employment Act obligated an employer to prove the reason for termination of employment and where the employer failed to do so the termination is deemed to have been unfair.

17. The Respondent having failed to defend his case in essence he did not dispute the Claimant's claims. The court has no choice but to declare the termination of the Claimant from employment both unlawful and procedurally flawed as per the evidence adduced by the Claimant as well as his submissions.

Judgement is subsequently entered on behalf of the Claimant.

### **RELIEFS AWARDED**

18. The court finds the Claimant is entitled to some of the reliefs claimed as follows:-

- (a) One month salary in lieu of notice Kshs.12,221.10 in harmony with regulations of wages (general amendment order 2015).
- (b) Wages underpayment Kshs.71,133.90 as per the above order.
- (c) Unpaid house allowance Kshs.77,778.59 as Respondent did not prove he paid the same.
- (d) Unpaid overtime is not particularised and is unproved declined.
- (e) Unpaid leave Kshs.46,265.60 as Respondent did not prove he gave leave.
- (f) Unpaid worked rest days unproved and unspecified declined.
- (g) Service pay Kshs.52,776/= as no proof of remittances to NSSF.
- (h) 3 months equivalent for compensation considering period he served the Respondent Kshs.36,663.30.

Claimant is awarded a total of Kshs.296,838.49.

19. Costs follow the event and the Claimant having succeeded in his claim is awarded costs.

The Respondent will also pay interest at court rates till full payment from the date of the Judgement.

Finally Claimant to be given a certificate of service.

**Delivered, dated and signed in Nairobi this 18<sup>th</sup> day of March, 2022.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**