



**Yugi v Mbuvi t/a Pemwe Security (Cause 236 of 2017)
[2022] KEELRC 1539 (KLR) (27 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1539 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 236 OF 2017**

J RIKA, J

MAY 27, 2022

BETWEEN

DICKENS ODOYO YUGI CLAIMANT

AND

PETER MBUVI T/A PEMWE SECURITY RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 9th February 2017.
2. He states that he was employed by the Respondent private security firm, as a Night Security Guard, on or about 4th May 2004.
3. He earned a basic salary of Kshs. 6,000.
4. He asked for permission from the Respondent, on 14th September 2015, to go and bury his Mother. He was to be away for 2 weeks. He was told that his salary would be deposited in his bank. He went to bury his Mother, but his salary was not deposited, compelling him to borrow money from his relatives, to facilitate his return journey.
5. He returned on 1st October 2015. He was advised by the Manager John Mbuvi, that another Guard had been deployed at the site the Claimant was serving. He was told to write a letter of retirement and would be paid his salary together with his service pay. The Claimant agreed to this. He was advised to collect his dues on 15th October 2015. When he availed himself on 15th October 2015, he was shocked to be paid Kshs. 3,000 as terminal dues. He was told there was no more money.
6. The Claimant states that he was not issued any warning letter. He was not taken through a disciplinary hearing.
7. He prays for notice; underpayment of salary from May 2010 to September 2016; house allowance from June 2008 to September 2016; annual leave from 2009 to 2015; declaration that termination was



- unfair and that the Claimant was entitled to a contract of service; compensation for unfair termination; certificate of service to issue; costs; and interest. The total monetary claim amounts to Kshs. 740,751.
8. The Respondent filed its Statement of Response on 9th May 2019. It is not disputed that the Claimant was employed by the Respondent as a Security Guard. He was granted 6 days off-duty, on 17th September 2015. He was to resume on 24th September 2015. The Respondent pleads at paragraph 6 of the Statement of Response that the Claimant reported back on 24th September 2015. He was unwilling to work at a new site assigned to him by the Respondent. He eventually deserted. The Claim has no merit.
 9. The Claimant gave evidence, and rested his case on 18th March 2021. The Respondent did not give evidence. The Respondent's case was closed on 5th November 2021. The matter was last mentioned on 1st February 2022, when Parties confirmed filing and exchange of their Final Submissions.
 10. The Claimant restated the contents of his Statement of Claim, in his evidence. He adopted his Witness Statement and Documents on record. Cross-examined, he told the Court that he worked for 9 years. He did not have a written contract. He was late on return from his Mother's burial. He had 7 days' off, but took 10 days. He called Respondent's secretary and explained that he would be returning late. He was told on return, that another Guard had taken his place. He was offered another site. It is not true that he declined the new assignment. He was asked to write a letter of retirement. He did so, but did not retain a copy.

The Court Finds: -

11. Paragraph 12 of the Statement of Claim, indicates that the Parties' separation was consensual. The Claimant pleads that: -

“ Mr. Mbuvi instructed him to write a letter of retirement adding that the Respondent would pay the Claimant his salary, together with his service pay, to which the Claimant agreed to.”
12. If it was agreed that the Claimant retires, and he is paid salary and service pay, what is the basis for these other prayers sought by the Claimant?
13. There is no reason for the Claimant to go beyond the agreement he concluded with the Respondent. The Claim appears to have been triggered when the Claimant received Kshs. 3,000 from the Respondent, way below his expectation of salary and service pay, which had been agreed between the Parties. He needed not make other claims beyond the agreement. These other claims were not included in the Parties' agreement, as pleaded at paragraph 12 of the Statement of Claim.
14. Whatever preceded the agreement between the Parties - Claimant's journey to bury his mother; delay in resuming duty; and his resistance to the new assigned site - are not relevant, and do not affect the agreement arrived at by the Parties to disengage, and free each other from mutuality of obligations.
15. It is declared that termination was consensual.
16. The Claimant earned a monthly salary of Kshs. 6,000. He was paid Kshs. 3,000, presumably for 15 days worked in October 2015. The Respondent kept its end of the bargain on payment of salary.
17. Regulation 17 [1] of *The Regulation of Wages [Protective Security Services] Order, 1998*, grants Security Guards with over 5 years' service, gratuity at the rate of 18 days' salary for each complete year of service. The Claimant was employed in May 2004 and left on 15th October 2015. He had 11 complete years of service. He is awarded gratuity in accordance with the Parties' agreement, at 18 days' salary for 11 complete years of service, at Kshs. 45,692.



18. Certificate of Service to issue.
19. Costs to the Claimant.
20. Interest allowed at court rates from the date of Judgment till payment in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF MAY 2022.

JAMES RIKA

JUDGE

