



REPUBLIC OF KENYA



KENYA LAW
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**Kitonga v Armoured Security Services (Cause 730 of 2017)
[2022] KEELRC 13431 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13431 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 730 OF 2017
MN NDUMA, J
DECEMBER 8, 2022**

BETWEEN

MWANZIA KIMULI KITONGA CLAIMANT

AND

ARMOURED SECURITY SERVICES RESPONDENT

JUDGMENT

1. The suit was filed on 19th April, 2017 by the claimant praying for the following reliefs:-
 - (i) One month salary in lieu of notice Kshs 10,337.70
 - (ii) Payment in lieu of leave days not take Ksh 2,586,458.
 - (iii) Payment for public holidays worked and not paid double pay Kshs 15,020.40.
 - (iv) Rest days not given – Kshs 78,106.20.
 - (v) Underpayment for one year period Kshs 66,932.40.and
 - (vi) Compensation for unlawful and unfair termination of employment.
2. The suit is undefended. The claimant testified in formal proof of the claim that he was employed by the respondent on 2nd December, 2009 as a Security Officer and was given a handwritten letter produced as exhibit 'A'. That he worked continuously until 23rd March, 2015.
3. In terms of the letter, the claimant was paid Kshs 3,800 initially which was increased from 3rd May, 2010 to Kshs 4,800 per month. That the claimant demanded an increase to his salary but when he reported to work on 23rd March, 2015, he was informed that his services had been terminated. The claimant complained to the labour office. The labour office wrote a letter to the respondent dated 11th August,



2016 in which the labour office set out the demands by the claimant. The labour office demanded a response by the respondent but was not done. The respondent was invited to a conciliation meeting on 1st July, 2016 but did not attend the meeting.

4. The labour office computed the dues owed by the respondent to the claimant in a letter dated 25th November, 2016 including one with salary in lieu of leave days not taken and 12 months' salary as compensation for the unlawful and unfair termination of employment. The labour office requested the respondent to pay Kshs 334,022.30 to the claimant within 14 days. The respondent ignored the demand letter from the Labour office hence this suit.
5. The claimant has proved that he was employed by the respondent and that his employment was unlawfully and unfairly terminated by the respondent when the claimant demanded his salary to be increased.
6. The claims made by the claimant and supported by the labour office are not defended by the respondent who failed to enter appearance and file a statement of defence to the suit despite service.
7. The claimant has proved in terms of Section 107 and 108 of the *Evidence Act*, Cap 80 Laws of Kenya, as read with the provisions of the *Employment Act*, 2007, that he is entitled to payment of all the terminal benefits set out in the Statement of Claim. The Court awards him accordingly.
8. With regard to the claim for compensation, the Court has found that the termination was not for a valid reason and the respondent did not follow a fair procedure in terminating the employment of the claimant in violation of Sections 36, 41, 43, and 45 of the *Employment Act*.
9. The Claimant is entitled to compensation in terms of Section 49(1) (c) and (4) of the Act. In this regard, the claimant suffered loss and damage as a result of the unlawful and unfair termination. The claimant did not contribute to the termination. The claimant was not compensated for the unlawful loss of income. The claimant was not paid terminal benefits. The claimant had served the respondent diligently while being underpaid and denied off days and leave days for a period of over four (4) years.
10. The Court has considered the case of *Walter Ogal Auro –vs- Teachers Service Commission* [2013] eKLR, *Pamela Nelima Lutta –vs- Mumias Sugar Company Limited* [2017] eKLR and the case of *Stanlaus Onchari –vs- Creative Consolidated Systems Limited* [2020] eKLR and awards the claimant the equivalent of five (5) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs 51,685.
11. Judgment is entered in favour of the claimant against the respondent as follows:-
 - (a) Compensation Kshs 51,658.
 - (b) Terminal benefits Kshs 191,461.10 comprising of:-
 - (i) Notice payKshs 10,337
 - (ii) Payment in lieu of leaveKshs21,064.40
 - (iii) Public holidays Kshs 15,020.40
 - (iv) Rest daysKshs 78,106.20
 - (v) Underpayments Kshs.66,932. 40Total awardKshs 243,146.10
 - (c) Interest at Court rates from date of judgment till payment in full.



(d) Costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 8TH DAY OF DECEMBER, 2022.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Walala for claimant

Ekale – Court Assistant

