



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO.1746 OF 2017**

**KENNEDY OMWOSO OLANDA.....CLAIMANT**

**VERSUS**

**ATHI REIVER SHALOM COMMUNITY HOSPITAL.....RESPONDENT**

**JUDGMENT**

1. The suit was filed on 9<sup>th</sup> September, 2017 by the claimant seeking compensation for unlawful and unfair dismissal from employment and payment of terminal dues including:-

**(a) One month salary in lieu of notice – Kshs 131,029.**

**(b) Unpaid house allowance in the sum of Kshs 62,539 and**

**(c) Service gratuity for 2 years – Kshs 12,029.**

2. The respondent filed a memorandum of response dated 28/1/2021 but failed to appear for the hearing of the suit. The suit proceeded exparte therefore.

3. The claimant relied on a witness statement dated 30/8/2017 as his evidence in chief and list of documents produced as exhibits in the suit marked '1' to '6'.

4. The claimant testified that he was a security guard employed by the respondent on 1/12/2013 at a monthly salary of Kshs 13,029, that he was not paid house allowance and was not registered with National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF).

5. That sometimes in July, 2016, one M/s Catherine Makiti at Athi River Shalom Community Hospital tried to hug him in a manner he considered unbecoming. Soon thereafter, the said M/s Makiti reported the claimant to the Human Resource Manager and the Quality Assurance Manager, for alleged assault knowing that the allegations were not true.

6. That on 18/7/2016, the claimant was summoned to the Boardroom and found the Head of Department, Clinical Officer M/s Lydia, quality assurance manager, a Mr. Victor, Head of Department, efficiency and monitoring unit, a Mr. Nicodemus, a team which comprised a Disciplinary Committee.

7. That the team did not provide him with a fair hearing and went ahead to summarily dismiss him from employment.

8. The claimant said he had no notice to show cause and notice of the hearing and notice of termination. The claimant prays to be awarded as claimed.

9. The respondent did not defend the suit. The testimony by the claimant is uncontroverted and the claimant has proved on a balance of probabilities that he was summarily dismissed for no valid reason and the respondent did not follow a fair procedure in violation of Sections 36, 41, 43 and 45 of the Employment Act, 2007. The claimant is entitled to compensation in terms of Section 49(1) (c) and 4 of the Act.

10. In this respect, the claimant had served for two (2) years. The claimant did not contribute to the dismissal. The claimant lost means of livelihood and has suffered loss and damage. The claimant was not compensated for the job loss and was not paid terminal benefits. The claimant has proved he is entitled to payment of gratuity, house allowance and notice pay as set out in the claim which dues were not paid.

11. Considering the case of **Kenfreight East Africa Limited –vs- Benson K. Nguti, Civil Appeal No. 31 of 2015 eKLR** the Court awards the claimant the equivalent of four (4) months' salary in compensation for the unlawful and unfair dismissal in the sum of Kshs 52,116.

12. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:

(a) Kshs 52,116 - compensation

(ii) Kshs 62,539- house allowance

(iii) Kshs 13,029 - gratuity.

Total award – Kshs 127,684.

(iv) Interest at Court rates from date of judgment till payment in full.

(v) Costs of the suit.

**Dated and delivered at Nairobi (virtually) this 14<sup>th</sup> day of October, 2021.**

Mathews N. Nduma

Judge

**Appearances**

Namada & Co. Advocates for the claimant

Omari Obare & Co. Advocates for the respondent

Ekale – Court Assistant