



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 805 OF 2017

BETWEEN

ISACK CHACHA.....CLAIMANT

VERSUS

SECURITY ALERT SERVICES LIMITED.....RESPONDENT

Rika J

Court Assistant: Andrew Mwabanga

M.K.Mulei & Company Advocates for the Claimant

George Egunza & Associates, Advocates for the Respondent

JUDGMENT

1. This Claim highlights the need for a Small Claims Court.
2. It was filed on 11th October 2017.
3. The Claimant states, he was employed by the Respondent as a Security Guard on 1st November 2013. He earned Kshs. 8,500 monthly. He had annual leave balance of 130 days. He applied for, and was granted 130 days of annual leave, beginning 13th April 2016, to end on 23rd August 2016.
4. The Respondent ceased communication with the Claimant. The Claimant states that he resigned effective 23rd June August 2016. He was not paid terminal dues. He claims: -
 - a. Balance of August 2016 salary at Kshs. 8,500.
 - b. Uniform refund at Kshs. 5,400.
 - c. Public holiday pay, at Kshs. 7,519.
 - d. Service pay at Kshs. 6,538.

Total...Kshs. 27,957.

 - e. Certificate of Service to issue.
 - f. Costs.
 - g. Interest.

h. Any other relief.

5. The Respondent was served with the Statement of Claim and Summons on 30th October 2017. There was default in entering Appearance and filing Statement of Response. On 23rd January 2018, the Claimant requested for a date for formal proof.

6. On 1st February 2019, more than a year after receiving the Summons, the Respondent filed a Memorandum of Appearance through the Law Firm of George Egunza & Associates.

7. The Claim was scheduled for hearing on 12th November 2019. The Claimant and his Advocate attended Court. The Respondent and its Advocates did not. Instead, the Respondent filed a Statement of Response in the morning of the hearing date, without the leave of the Court, and did not even attend Court to seek any orders of the Court, pursuant to the irregular and late filing of the Statement of Response. The Court expunged the Statement of Response from the record, and proceeded to record the evidence of the Claimant.

8. He adopted the contents of his Statement of Claim, as summarized at the outset in this Judgment.

The Court Finds: -

9. As observed above, this is a matter that is suitable to be dealt with in a Small Claims Court, not in a Court designated by the Constitution of Kenya, as a Superior Court of Record.

10. The Claim is uncontested. It has a value of Kshs. 27,957. The Respondent does not appear, by its conduct, to have been in serious opposition to the Claim. Should such a Claim be filed in a Superior Court of Record, and take 3 years to be finalized? This is a Claim that should have been resolved at the Parties' own level; at the Labour Office; or, going forward, should be dealt with in a Small Claims Court.

11. It is allowed, as follows: -

a. Kshs. 27,957 to be paid by the Respondent to the Claimant.

b. Certificate of Service to issue.

c. Costs to the Claimant.

d. Interest allowed at the rate of 16% per annum from the date of Judgment till payment is made in full.

Dated, signed and released to the Parties electronically at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 15th day of December 2020.

James Rika

Judge