



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**ELRC CAUSE NO. 1321 OF 2017**

**(Before Hon. Justice Hellen S. Wasilwa on 14<sup>th</sup> March, 2019)**

**ANDREW KASILI OUNDO.....CLAIMANT**

**VERSUS**

**YELLOWLINE SECURITY LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant, Andrew Kasili Oundo, filed this claim vide a Memorandum of Claim dated 13/07/2017 for wrongful and unfair termination of his services and seeking payment of his terminal benefits against the Respondent, Yellowline Security Limited.

2. He avers that he was employed as a Security Guard by the Respondent on or about 02/11/2014 on a monthly salary of Kshs. 6,000/= but was not given an appointment letter as required by law. That he served the Respondent with loyalty and diligence until 18/02/2016 when the Respondent unlawfully and wrongfully terminated his services and failed to pay him his terminal dues tabulated as follows:-

- a) Salary in lieu of notice.....Kshs. 12,221.10**
- b) Annual Leave for 2015 (12221.10/30 x 1).....Kshs. 8,550.00**
- c) Underpayments: Nov 2014-April 2015**  
**(10,911.70 - 6000= 4,912 x .6).....Kshs. 29,472.00**  
**May 2015-Feb 2016 (12221.10-6000=6221x9).....Kshs. 55,989.00**
- d) House Allowance @15% (12221.10 x 15% x 16 months).....Kshs. 29,328.00**
- e) Service for 1 year (12221.10/30 x 15 x 1).....Kshs.6,111.00**
- f) Unpaid 13 public holidays (4x13x12221x 1/225x2)....Kshs.5,649.00**
- g) Compensation for unfair termination (12221x12)....Kshs. 146,652.00**
- TOTAL.....Kshs.293,977.10**

3. He avers that he has no documentary evidence to support his claim but will call witnesses to support his claim. That during his employment period with the Respondent, he was not given the terminal benefits tabulated above and that since he does not belong to any registered pension or provident fund scheme under the Retirement Benefits Act nor is he a member of NSSF, he is entitled to service pay as per **Section 35(6 b & d) of the Employment Act**.

4. He further avers that the Respondent contravened **Section 41 of the Act** by not explaining to him the reason for termination, hear and consider his representations if any, on misconduct or poor performance he would want to make and that his dismissal was therefore unprocedural and unfair.

5. He prays that this Honourable Court award as follows:

*i. The sum of Kshs. 293,977.10 as particularised in paragraph 5 of the Claim.*

*ii. Cost of the suit.*

*iii. Interest in (i) and (ii) above.*

*iv. Certificate of Service.*

*v. Any other relief as the court may deem just*

6. The Claimant tried to serve the Respondent Notice of Summons but failed to locate them and this Honourable Court then gave ex-parte orders issued on 18/06/2018 for substituted service by registered post and extended the validity of the summons. An Affidavit of Service dated 23/08/2018 sworn by a process server, one Boniface Muinde, was then filed on 19/09/2018 confirming that he sent the notice of summons by registered post. Despite a further Mention Notice being sent to the Respondents by registered post as sworn by the same process server in his Affidavit of Service dated 24/01/2019, the Respondent has failed to enter appearance and the Court directed that the matter proceed undefended.

#### **Evidence**

7. The Claimant testified in Court on 14/02/2019 that he used to be paid cash mostly and that he had a payslip to show he was being paid by the Respondent (App 1). That the Respondent was summoned by the Human Rights Commission and they came and agreed to resolve the matter out of Court but that they did not resolve the issue.

8. I have examined all evidence on record from the Claimant. The Claimant had indicated that he was employed by the Respondent but was never given any appointment letter. He had in his Pleadings indicated that he was going to call a witness who was going to testify on his behalf. This, he never did. He produced Appendix 1 – a payslip which he sought to rely on as proof that he was an employee of the Respondent. The document produced in Court however has no relation with the Respondent.

9. The Claimant in my view failed to prove he had an employment relationship with the Respondent and therefore the prayers sought are not tenable. I dismiss this claim accordingly.

**Dated and delivered in open Court this 14<sup>th</sup> day of March, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Parties