



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO 688 OF 2017**

**STANLEY S. MWASAGHU.....CLAIMANT**

**VERSUS**

**DELFY SECURITY LIMITED.....RESPONDENT**

**JUDGMENT**

**INTRODUCTION**

1. This is an employment dispute between Stanley S. Mwasaghu and Delfy Security Limited. The Claimant’s case is documented by a Memorandum of Claim dated 24<sup>th</sup> August 2017 and filed in court on even date.
2. The Respondent filed a Response on 15<sup>th</sup> November 2017 but did not call any witness. The Claimant testified on his own behalf.

**The Claimant’s Case**

3. The Claimant states that he was employed by the Respondent on 3<sup>rd</sup> February 2011 in the position of Assistant Operations In-Charge. He earned a monthly salary of Kshs. 15,000.
4. On 13<sup>th</sup> December 2016, the Claimant was issued with a termination notice running until 31<sup>st</sup> December 2016. The Claimant states that the termination of his employment was unlawful and unfair in that there was no valid reason for it and he was not afforded an opportunity to defend himself.
5. The Claimant’s claim against the Respondent is as follows:

- a) One month’s salary in lieu of notice.....Kshs. 15,000
- b) Leave pay for 6 years.....72,692
- c) Service pay @ 15 days’ pay per year.....51,923
- d) 12 months’ salary in compensation.....180,000
- e) Public holidays.....27,692
- f) Certificate of service
- g) Costs plus interest

**The Respondent’s Case**

6. In its Response dated 14<sup>th</sup> November 2017 and filed in court on 15<sup>th</sup> November 2017, the Respondent admits having employed the Claimant at an initial basic salary of Kshs. 12,000.

7. The Respondent however denies the Claimant's claim for unlawful and unfair termination of employment. The Respondent avers that it is the Claimant who deserted his duties and thus abandoned employment on his own volition.

**Findings and Determination**

8. In his Memorandum of Claim and in his written witness statement, the Claimant makes a claim for unlawful termination of employment. However, in his testimony before the Court, the Claimant told the Court that he himself gave a resignation notice on 1<sup>st</sup> December 2016. He therefore abandoned the claims for compensation and notice pay.

9. The only surviving claims are therefore for leave pay, service pay and public holidays. On the claim for leave pay, I have this to say; under Sections 10 and 74 of the Employment Act, the Respondent was under an obligation to maintain records of the Claimant's leave entitlement and utilisation. In the absence of any such records, the claim for leave pay succeeds and is allowed. Similarly, in the absence of any evidence that the Claimant was a contributing member of the National Social Security Fund (NSSF), the claim for service pay succeeds.

10. The claim for public holidays was not proved and is dismissed.

11. I therefore enter judgment in favour of the Claimant as follows:

a) Leave pay for 5 years (15,000/30x21x5).....Kshs.	52,500
b) Prorata leave for 10 months (15,000/30x1.75x10).....	8,750
c) Service pay for 5 complete years (15,000/30x15x5).....	<u>37,500</u>
<b>Total.....</b>	<b>98,750</b>

12. This amount will attract interest at court rates from the date of judgment until payment in full.

13. The Claimant is also entitled to a certificate of service plus costs of the case.

14. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 25<sup>TH</sup> DAY OF APRIL 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ngonze for the Claimant

No appearance for the Respondent