



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 34 OF 2015

SYLVANUS AMWAYI MABIA.....CLAIMANT

- VERSUS -

GILLY SECURITY SERVICE &

INVESTIGATIVE LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 3rd May, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 15.01.2015 through Onindo Onindo & Associates.

Despite service of the hearing notice, the respondent failed to attend the hearing. The respondent did not file a response to the memorandum of claim.

The claimant prayed for judgment against the respondent for:

- a) The respondent to pay to the claimant all the terminal dues accrued.
- b) The respondent to pay the claimant all the money due to him when he was underpaid for all the years together with all NSSF and NHIF moneys deducted from his pay and never remitted.
- c) The respondent to pay to the claimant for the 16 days he worked in the month of November 2012.
- d) The respondent to pay the claimant reasonable compensation for the illegal and unlawful termination of employment as the Honourable Court can determine.
- e) The respondent to pay costs of the suit with interest.
- f) Any other order or relief that the Honourable Court may deem just and expedient to grant.

The claimant has pleaded that the respondent employed him on 01.04.2007 and he worked for the respondent until October 2012 as a security guard. The claimant's case is that he was paid Kshs. 5, 500.00 per month whereas the minimum statutory wage was Kshs. 687 per day making Kshs. 20, 610.00 per month.

The claimant's further case was that on 11.10.2012 he was on off duty attending to private matters in Nakuru when his supervisor telephoned him at 1930 hours asking him to attend duty immediately at the duty station at Muthaiga in Nairobi. In the circumstances, it was the claimant's case that he could not practically comply with the directive. The Claimant's further pleading was that thereafter he was not assigned duty and was later told that he had been terminated as his salary was not paid at all. The termination was without notice or warning.

The Court has considered the evidence, the pleadings and the submissions and makes findings as follows.

The claimant's counsel opted to rely on pleadings and documents on record. The claimant filed no documents and filed no witness statement. The statement on record by one Jane Mary Mbugua appears to have been for cause 39 of 2016 and did not support the claimant's suit in any material respect. In such circumstances, the Court finds that the claimant did not establish his case.

In conclusion, the claimant's suit is hereby dismissed with no orders on costs and with liberty of the claimant to apply for review within 30

days from the date of this judgment and as ends of justice may require in the likely event of misfiling of documents in the matter.

Signed, dated and delivered in court at Nairobi this Friday 3rd May, 2019.

BYRAM ONGAYA

JUDGE