



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NUMBER 834 OF 2017

BETWEEN

MARO ABDALLAHI JILLOH.....CLAIMANT

VERSUS

NINE ONE ONE KENYA LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Odindiko & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 2nd November 2017. He states he was employed by the Respondent Private Security Company as Security Guard/ Rider, in the year 2005. His contract was constructively terminated by the Respondent, in the year 2017. His last salary was Kshs. 20,000 monthly. He prays for Judgment against the Respondent in the following terms:-

- a) 1 month salary in lieu of notice at Kshs. 20,000.
- b) Annual leave of 13 years at Kshs 210,000.
- c) Gratuity at 18 days' salary for every complete year of service at Kshs. 149.955.
- d) Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 260,000.

Total...Kshs. 819,901.

- e) Declaration that termination was unfair.
- f) Costs, Interest and any other suitable remedy.

2. There is nothing filed by the Respondent to contest the Claim. There is an Affidavit of Service sworn by a Court Process-Server, indicating the Respondent was served with all the requisite processes. The Claim was heard by way of formal proof, on 11th February 2019.

3. The Claimant confirmed that he was employed by the Respondent as a Security Guard / Rider. He restated his terms, conditions, details and history of employment, in his oral evidence. He adopted his Witness Statement and Documents on record. He became Supervisor and later, a Controller based at Makupa, in Mombasa. He was on annual leave on 26th May 2017, when he was advised to report to Respondent's Head Office at Nairobi on 1st June 2017. At Nairobi he was instructed to go home as he was not willing to be transferred. On 9th May 2017,

he was shown a letter of transfer. On 12th June 2017, he was told there was no more work. He was paid nothing. He never went on annual leave, except in 2017.

The Court Finds: -

4. The Claim is undefended.

5. The Claimant has shown that he was employed by the Respondent as Security Guard/Rider in January 2005. He supervised other Guards, earning a monthly salary of Kshs. 20,000 as of 12th June 2017, when the Respondent advised the Claimant there was no more work for him.

6. The Respondent has not given evidence to justify why there was no more work for the Claimant. It has not been shown that there was valid reason to justify termination. Fair procedure was not adhered to.

7. The Claimant merits and is granted 1 month salary in lieu of notice at Kshs. 20,000.

8. Termination was unfair both on account of substance and procedure. The Claimant had served for 12 creditable years. His record as far as the Court can read, was clean. He had worked his way up through the ranks, to a supervisory position. He expected to go on working until retirement. He was paid nothing on termination. **He merits maximum compensation for unfair termination, which the Court grants at Kshs. 240,000, not Kshs. 260,000 as claimed.**

9. There is no leave record supplied by the Respondent, to contradict Claimant's evidence that he never went on annual leave, save for the year 2017.

10. He worked for 12 years, 6 months. Less the annual leave taken in 2017, he is entitled to annual leave, over period of 11 years, which the Court allows, based on a minimum of 21 days annually, amounting to 231 days. On a daily rate of Kshs. 769, **the Claimant is allowed the prayer for annual leave pay at Kshs. 177,692.**

11. The Claimant's contract incorporated the terms and conditions of service prescribed under The Regulation of Wages [Protective Security Services] Order 1998. Clause 17 avails to Security Guards with over 5 years of service, gratuity at 18 days' salary for every completed year of service, based on the last rate of pay. The Claimant had 12 complete years of service and merits gratuity under this clause. **He is granted gratuity at 18 days' salary for 12 complete years of service, computed at Kshs. 166,153.**

12. **Costs to the Claimant.**

13. **Interest allowed at 14% per annum from the date of Judgment till payment is made in full.**

IN SUM, IT IS ORDERED: -

a) It is declared that termination was unfair.

b) The Respondent shall pay to the Claimant: notice at Kshs. 20,000; equivalent of 12 months' salary in compensation for unfair termination at Kshs. 240,000; annual leave at Kshs. 177,692; and gratuity at Kshs. 166,153- total Kshs. 603,845.

c) Costs to the Claimant.

d) Interest allowed at 14% per annum from the date of Judgment till payment is made in full

Dated and delivered at Mombasa this 21st day of June, 2019.

James Rika

Judge