



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

**CAUSE NUMBER 160 OF 2018**

**BETWEEN**

**EDWARD MWAIVU MLACHA.....CLAIMANT**

**VERSUS**

**BOB MORGAN SECURITY SERVICES LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

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*M/S Nyakoni Ratemo & Company Advocates for the Claimant*

*Njeru & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 22<sup>nd</sup> March 2018. He avers to have been employed by the Respondent Private Security Company as a Security Guard. He was employed on 3<sup>rd</sup> October 2008. He worked until 22<sup>nd</sup> March 2017, when he avers, the Respondent terminated his contract unfairly. He was alleged to have taken leave without authorization from the Respondent. He was not heard on the allegation, and did not receive notice of termination. His last salary was Kshs. 19,526 monthly. He prays for Judgment against the Respondent in the following terms:-

- a) 1 month salary in lieu of notice at Kshs. 19,526.
- b) Annual leave over a period of 9 years served at Kshs. 141,939.
- c) Unpaid public holidays worked for 9 years at Kshs. 135,180.
- d) 12 months' salary in compensation for unfair termination at Kshs. 234,312.

Total....Kshs. 530,957.

- e) Declaration that termination was unfair and unlawful.
- f) Costs.
- g) Interest.
- h) Certificate of Service to issue.

i) Any other suitable relief.

2. The Respondent filed a Notice of Appointment of Advocates on 19<sup>th</sup> July 2018. No Statement of Response was filed.

3. On 4<sup>th</sup> March 2019, the Claim came up for hearing by way of formal proof. The Respondent's Advocates sought adjournment on the ground that they had filed an Application on 4<sup>th</sup> March 2019, to cease acting for the Respondent.

4. Adjournment was declined as time-wasteful, with the Court observing that the Respondent and its Advocates could be heard on their Application at a later stage. The Claimant proceeded to testify.

5. He restated in his oral evidence, the contents of his Statements of Claim and Witness. He was employed in 2008 and confirmed in 2009. He asked for 5 days of leave on 16<sup>th</sup> May 2016. Leave was approved. He returned on 21<sup>st</sup> May 2016. It was alleged by the Branch Manager Mombasa, that he had taken leave without permission. He was directed to the Head Office at Nairobi. He reported there on 25<sup>th</sup> May 2016. He was advised by the Human Resource Manager, that he had taken leave without permission. He was suspended. He stayed on suspension for a period of 9 months. On 22<sup>nd</sup> March 2017, he visited Respondent's Branch Office at Nyali, in Mombasa. He enquired about his fate, having spent 9 months out, without communication from the Respondent. It was then that the Respondent informed the Claimant that his contract had been terminated. This was done by word of mouth. The Claimant did not go on annual leave. He did not consider the period he was away for 9 months to comprise annual leave. He worked on public holidays, which he specified in his evidence, without compensation. He was not heard before termination, and did not receive notice. The Claimant adopts his Pleadings, Witness Statement and 6 documents contained in a list filed on 22<sup>nd</sup> March 2018.

**The Court Finds:-**

6. The Claim is undefended.

7. The Claimant has through his evidence, shown he was employed by the Respondent as a Security Guard. He earned a monthly salary of Kshs. 19,526, shown in his pay slips on record.

8. He was suspended by word of mouth by the Respondent, on 25<sup>th</sup> May 2016. He stayed out without further communication from the Respondent, until 9 months later on 22<sup>nd</sup> March 2017, when upon enquiry from Respondent's Nyali Office; he was informed that his contract had been terminated with effect from 22<sup>nd</sup> March 2017. He was alleged to have taken leave of 5 days, without the approval of the Respondent.

9. The Respondent has not given any evidence in response, to justify its decision. There is no challenge to the evidence given by the Claimant. The Court does not have any reason to disagree with the Claimant that his contract was unfairly and unlawfully terminated.

10. ***His prayer for 1 month salary in lieu of notice is allowed at Kshs. 19,526.***

11. The Claimant was out of work for a period of 9 months. He does not claim any salary arrears for this period, which would suggest that he was paid salary for 9 months without working. The period of 9 months is sufficient to offset the period he claims in annual leave. The prayer for annual leave pay is rejected.

12. He testified that he worked on public holidays. He was specific in his evidence which these public holidays were. The formula he adopts in computation of public pay is consistent with the formula given under the Wage Orders. There is no evidence to dispute that the Claimant worked on public holidays, or dispute, the mode of computing holiday pay. ***The prayer is allowed at Kshs. 135,180 as prayed.***

13. The Claimant seeks maximum compensation equivalent of 12 months' salary, for unfair termination. He had worked for 9 years. His employment record was not tainted. His identity card shows he was born in 1982. He was about 35 years old, at the time of termination. He had a good number of productive years ahead. There was no valid ground shown to justify termination. There were no disciplinary proceedings. The Claimant was suspended indefinitely. He was told of termination only upon his enquiry, 9 months after he was suspended. All communication to him was by word of mouth. ***He merits compensation equivalent of 12 months' salary, which the Court grants at Kshs. 234,312.***

14. ***Certificate of Service to issue.***

15. ***Costs to the Claimant.***

16. ***Interest is 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 pay at Kshs. 19,256; public holidays at Kshs. 135,180; and equivalent of 12 months' salary in compensation for unfair termination at Kshs. 234,312- total Kshs. 388,748.***

*c) Certificate of Service to issue.*

*d) Costs to the Claimant.*

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

**Dated and delivered at Mombasa this 20<sup>th</sup> day of June, 2019.**

**James Rika**

**Judge**