



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 349 OF 2013**

**BETWEEN**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT**

**VERSUS**

**HATARI SECURITY LIMITED.....RESPONDENT**

**Rika J**

**Court Assistant: Lawrence Osotsi**

**Miss Onyancha Advocate for the Claimant**

**Githinji Mwangi & Associates, Advocates for the Respondent**

---

**JUDGMENT**

1. The Claimant Union brings this Claim on behalf of its Member, Patrick Shilaho Dimiano. Through the Statement of Claim filed on 15<sup>th</sup> March 2013, the Claimant avers that Shilaho [Grievant], was employed by the Respondent as a Security Guard-In-Charge, on 1<sup>st</sup> October 2010. He initially earned Kshs. 2,500 monthly. His contract was terminated by the Respondent without notice and valid reason, on 22<sup>nd</sup> May 2010. His last salary was Kshs. 5,200. The dispute was reported to the Minister for Labour on 9<sup>th</sup> August 2011. Conciliation process was frustrated by the Respondent, who declined to attend meetings. Certificate of unresolved dispute issued under Section 69 of the Labour Relations Act No. 14 of 2007, on 23<sup>rd</sup> July 2012. The Claimant prays the Court to grant the following orders in favour of the Grievant:-

- a. 1 month salary in lieu of notice.
- b. Uniform refund.
- c. Salary for days worked in May 2010.
- d. Underpayment of wages and house allowance.
- e. Unpaid leave of 6.5 years.
- f. Unpaid overtime.
- g. Unpaid public holidays.
- h. Gratuity for 6.5 years.
- i. Certificate of service.

j. Any other suitable relief.

k. Costs.

2. The Respondent filed its Statement of Response on 8<sup>th</sup> May 2013. It is denied that the Claimant was ever employed by the Respondent. Consequently there is no merit in the Claim. The Respondent prays that the Claim is dismissed with costs.

3. The Respondent's Advocates were invited to take a hearing date by the Claimant Union, in a letter dated 21<sup>st</sup> January 2019. They did not avail themselves for fixing of the hearing date, and an ex parte date issued for hearing on 1<sup>st</sup> April 2019, during the Court's Service Week at Nairobi. A hearing notice was served upon Githinji Mwangi & Co Advocates on 5<sup>th</sup> February 2019. Serviced was acknowledged through stamping. The Respondent and its Advocates did not however attend Court on the date of hearing.

4. The Grievant gave a rerun of his Pleadings in his oral evidence before the Court. He adopted the documents exhibited on his behalf by his Union. He relies also on the Closing Submissions filed on 25<sup>th</sup> April 2019.

**The Court Finds:-**

5. The Statement of Response filed by the Respondent is a general denial. There is no evidence at all presented by the Respondent, to contradict the Grievant.

6. The Claimant however, lists 11 prayers and did not support all of them, through the evidence given by the Grievant. The prayers, as seen above, do not have the figures. When Parties plead bare items, without stating the figures, how is the Court expected to deliver an effective and binding Judgment, capable of execution? When Parties are left with the task of filing in the figures after Judgment, this results in secondary disputes, which is not the objective of adjudication.

7. It would be expected that the Claimant attempts filling the gaps at the very least, in its Submissions. There was only a partial filling of the gaps, through Submissions.

8. On underpayment of wages, the Claimant submits that "*the Government Wage Orders requires Security Guard to be paid certain wages which were not complied with by the Respondent.*" The Grievant was initially paid Kshs. 2,500 per month and Kshs. 5,200 upon termination. It would seem he was underpaid, but how does the Court redress this with the kind of Pleadings and Submissions on record? The prayer is declined.

**9. House allowance is stated in the Submissions at 15% of Kshs. 5,200 for 84 months, which enables the Court to allow the prayer at Kshs. 56,160.**

10. The prayer for annual leave is not clear. In the Submissions, the figure is given as Kshs. 5,000 x 7 years. What does the figure Kshs. 5,000 represent? How many days of annual leave was the Grievant entitled to? Where is the evidence? The item is declined.

11. Gratuity is computed at Kshs. 23,400 in the Submissions. It is clearly supported by the Protective Security Wages Order, and is based on 18 days' salary for every complete year of service. **Gratuity is granted at Kshs. 23,400.**

**12. Notice pay is allowed at Kshs. 5,200.**

13. The Respondent has not given any evidence to justify termination. The Court does not think that the Respondent was in any way truthful in its Statement of Response, in denying that the Grievant was its Employee. The matter went for conciliation and there are letters written to the Respondent, as an Employer. There is no letter emanating from the Respondent at conciliation, refuting the Claimant's assertion that the Grievant was an Employee of the Respondent. The Respondent employed the Grievant, and had an obligation to justify termination under the Employment Act. **The prayer for compensation for unfair termination is allowed, equivalent of 12 months' salary, computed at Kshs. 62,400.**

14. Nothing is said of the other prayers in the Closing Submissions of the Claimant. As stated elsewhere, the Grievant did not give evidence to establish these other prayers. Judgment is entered in favour of the Grievant for:-

**House allowance at Kshs. 56,160; notice at Kshs. 5,200; and compensation for unfair termination at Kshs. 62,400 – total Kshs. 123,760.**

**Dated and signed at Mombasa this 3<sup>rd</sup> day of June 2019.**

**James Rika**

**Judge**

**Dated, signed and delivered at Nairobi this 14<sup>th</sup> day of June 2019.**

**Byram Ongaya**

**Judge**