



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 724 OF 2016**

**PAUL SAVAYI.....CLAIMANT**

**VERSUS**

**BEATMAN & SEER SECURITY.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday 31<sup>st</sup> July, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 30.04.2015 in person. The amended statement of claim was filed on 16.11.2016 in person. On 29.05.2018 the claimant appointed COL Advocates to act in the matter. The claimant prays for unpaid extra hours of work, rest days, unpaid public holidays and house allowance at 15% for 15 months worked. The claimant pleads that he worked for the respondent from 02.01.2013 to 09.04.2014. The suit having been filed on 30.04.2015, the Court finds that the enumerated prayers were in respect of continuing injuries which ceased on the date of termination on 09.04.2014 so that 12 months of limitation under section 90 of the Employment Act, 2007 had lapsed when the suit was filed and the claims were time barred especially that some were as well introduced in the amended statement of claims filed on 16.11.2016.

The residual claims are for:

- a) Certificate of service.
- b) Salary in lieu of notice Kshs. 10, 911.70.
- c) Service pay for 1 year Kshs. 5, 455.80.
- d) Compensation for unfair termination 12 months x Kshs.10, 911.70 Kshs.130, 940.40.
- e) 9 days worked in April 2014 Kshs.4, 712.40.
- f) Uniform deduction Kshs.8, 000.00.
- g) Costs of the suit.
- h) Interest.
- i) Any other relief as the Court may deem just.

The respondent filed the memorandum of reply on 10.06.2015 through D.B. Wati & Company Advocates. The respondent denied the entire claimant's claims and allegations and prayed that the suit be dismissed with costs.

The claimant's case is that the respondent employed him about 02.01.2013 at Kshs.7, 000.00 per month and the contract was oral. He further alleges that he was dismissed by the respondent on 09.04.2014. On 19.11.2015 the claimant filed a reply to the memorandum of reply and stated that it was the duty of the respondent to keep records of the contract of employment as per section 74 of the Employment Act, 2007 and that the claimant's case should be upheld.

The claimant testified that he was employed in 2013 and he worked until he was terminated and, the contract of service was verbal. His evidence was that the minimum statutory monthly pay per wage order was Kshs.11, 900.70 but he was paid Kshs.7, 000.00 per month.

The claimant testified that on 09.04.2014 he was summoned at the office. It was pay day. He was paid Kshs.7, 000.00 and told to go away until he'd be recalled. He was never recalled and hence the suit.

The respondent's witness (RW1) Peter Bodo Okal confirmed that he employed the claimant as a security guard. His case was that he was contracted to provide security services to residents. The claimant was deployed to the residential estate and paid Kshs.7, 000.00 per month as the available pay based on the residents' contributions.

**First**, the Court returns that the parties were in a contract of service.

**Second**, despite the limited contributions by the residents the respondent was bound to pay the minimum statutory pay because the claimant did not share in the respondent's losses and profits. He was an employee. Thus the claimant's last due pay was **Kshs.11, 900.70** per minimum wage order.

**Third**, the claimant was terminated abruptly. There is no reason to doubt the claimant's account of the circumstances of the termination. He is awarded **Kshs.11, 900.70** as per section 35 of the Employment Act, 2007 being pay in lieu of termination notice. The termination was unfair for want of due process. The respondent alleged that the claimant had absconded but no disciplinary process was initiated in that regard. The Court finds that the termination was abrupt when the claimant was told to go away to be recalled later. He had worked for 15 months and considering the circumstances of the employment as given by the respondent to the effect that the employment was based upon the residents' payments that were insufficient, the Court considers that one month pay for the unfair termination making **Kshs.11, 900.70** will meet the ends of justice. Service pay for one year **Kshs.5, 455.80** is awarded under section 35 of the Act as a reasonable pay in absence of alternative pension arrangement. The claimant is also entitled to 9 days worked in April 2014 **Kshs.4, 712.40** as prayed for together with a certificate of service. The claimant testified that he was deducted for uniform and the Court returns that he is entitled to **Kshs.8, 000.00** as prayed for. While making that finding the Court returns that the respondent failed to issue itemised breakdown of the wage as required in the Act and failed to keep records as per section 74 of the Act so that the claimant's account in that regard will prevail.

The claimant has succeeded and the respondent will pay costs of the suit.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) Payment of **Kshs.41, 969.60** by 15.09.2019 failing interest to be payable thereon at Court rates from the date of filing the suit till full payment.
- b) The respondent to deliver the certificate of service by 15.09.2019.
- c) The respondent to pay costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Wednesday 31<sup>st</sup> July, 2019.**

**BYRAM ONGAYA**

**JUDGE**