



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE 1108 OF 2018**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENNETH OTIENO SIRO.....CLAIMANT**

**VERSUS**

**FLORENCE MANEA MUYUNDO T/A RAY OF HEALTH**

**CENTRE AND COMMUNITY CENTRE.....RESPONDENT**

**JUDGMENT**

The Claimant herein, acting in person, filed a Memorandum of Claim on 2<sup>nd</sup> July 2018. He avers that he was employed by the Respondent as a security guard in 2004 and worked until his resignation on 5<sup>th</sup> December 2016. It is his averment that the Respondent has failed to pay his terminal dues despite having agreed to pay him Kshs. 48,000 during a mediation session conducted by the Kenya Human Rights Commission.

He seeks the following reliefs:

- (i) The sum of Kshs.288,000.00 as particularised in the claim.
- (ii) Costs of this suit.
- (iii) Interest in (i) and (ii) above.
- (iv) Any other relief as the Court may deem just.

The Respondent did not enter appearance in the suit or file a defence thus the Claim proceeded as an undefended claim with the Claimant testifying on his own behalf.

The Claimant testified that he was employed by the Respondent in 2004 earning a salary of Kshs.8,000. That he was not registered with NSSF and NHIF. He testified that on 5<sup>th</sup> December 2016 he wrote to the Respondent informing her of his resignation and was later stopped from working on 14<sup>th</sup> January 2017. He testified that despite discussions with the Respondent on the payment of Kshs.48,000 as his terminal dues, he was not paid the said amount. He urged the Court to award the reliefs sought.

**Determination**

The uncontested facts of this case are that the Claimant was employed by the Respondent vide the employment contract dated 8<sup>th</sup> May 2004 on fixed term contract which commenced on 8<sup>th</sup> May 2006 to 8<sup>th</sup> August 2006. The contract was thereafter renewed severally. The Claimant resigned from employment on 5<sup>th</sup> December 2016.

The Respondent neither entered appearance nor filed a defence thus the Claimant's evidence was uncontroverted.

The issue for determination is whether the Claimant is entitled to terminal dues in the sum of Kshs.288,000 being service pay at Kshs.48,000, leave pay Kshs.67,200 and house allowance at Kshs.172,800.

## **Service Pay**

The Claimant is entitled to service pay for the period of employment being 10 years from 2004 to 2016 by virtue of Section 35(5) as he was not a member of NSSF or any other retirement or gratuity scheme calculated at  $\text{Kshs.}8,000/26 \times 15 \text{ days} \times 12 \text{ years} = \text{Kshs.}55,384.60$ .

## **Leave Pay**

The letter from the respondent dated 17<sup>th</sup> January 2011 states that the Claimant was entitled to 7 days off starting the year 2011 and compensation for holidays worked. The letter did not make any reference to leave days. Therefore the Claimant's claim for leave pay is valid. However, this is to be calculated for the period between 8<sup>th</sup> May 2004 when he commenced employment to the date when he left employment being 14<sup>th</sup> January 2017 at 21 days per year as follows  $\text{Kshs.}8,000/26 \times 252 \text{ days} = \text{Kshs.}77,538.50$ .

## **House Allowance**

The Claimant prayed for house allowance of Kshs.172,800. However

the Contracts of employment dated 8<sup>th</sup> May 2004 and 1<sup>st</sup> October 2006 provide that his salary was consolidated and all-inclusive.

Although the salary was expressed to be all inclusive, the amount paid was below the minimum rate which was as follows –

2004 –  $4,335 + 15\% \text{ House allowance} = 4,985.25$

2005 –  $4,638 + 15\% \text{ House allowance} = 5,333.70$

2006 –  $5,195 + 15\% \text{ House allowance} = 5,974.25$

2007 –  $5,195 + 15\% \text{ House allowance} = 5,974.25$

2008 –  $5,195 + 15\% \text{ House allowance} = 5,974.25$

2009 –  $6,130 + 15\% \text{ House allowance} = 7,049.50$

2010 –  $6,743 + 15\% \text{ House allowance} = 7,754.45$

2011 –  $7,586 + 15\% \text{ House allowance} = 8,723.90$

2012 –  $8,579.80 + 15\% \text{ House allowance} = 9,866.80$

2013 –  $9,780.95 + 15\% \text{ House allowance} = 11,247.00$

2014 –  $9,780.95 + 15\% \text{ House allowance} = 11,247.00$

2015 –  $10,954.70 + 15\% \text{ House allowance} = 12,597.90$

From the foregoing the claimant was underpaid from 2011 when the minimum gazetted consolidated salary was as follows –

### **2011**

$(8,723.90 \text{ less paid shs.}7,500) \times 12 = \text{Kshs.}14,686.80$

### **2012**

$(9,866.80 \text{ less paid shs.}8,000) \times 12 = \text{Kshs.}22,401.60$

### **2013 and 2014**

$(11,247 \text{ less paid shs.}8,000) \times 24 = \text{Kshs.}77,928$

### **2015 and 2016**

$(12,597.80 \text{ less paid shs.}8,000) \times 24 = \text{Kshs.}110,349.60$

Total underpayments  $\text{Kshs.}225,366.60/=$ .

**Conclusion**

Judgment is entered for the claimant as follows –

1. Service pay for 12 years Kshs.55,384.60
2. Leave pay Kshs.77,538.50
3. House allowance underpayments (calculated as underpayments of consolidated salary)from 2011 – 2016 Kshs.225,366.60

**Total Award Kshs.358,290.00**

The Claimant is awarded costs of the suit and interest at court rates from date of judgment till payment in full.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2019**

**MAUREEN ONYANGO**

**JUDGE**