

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NO 1799 OF 2013

PATRICK OPONDO.....CLAIMANT

VERSUS

INTER SECURITY SERVICE LTD.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was employed by the respondent as a guard in 2005 and worked as such until 2005 when he resigned. By the time he resigned he had no case of discipline with the respondent.
2. The respondent has however refused and or ignored to pay the claimant his terminal dues which he computed at Kshs 83,100/ =. The respondent on its part pleaded that the claimant voluntarily resigned in February, 2012 and that upon resignation his terminal dues were computed and paid to him in full and final settlement.
3. In his oral evidence, the claimant farther stated that he left employment in March, 2012 because he could not go on leave. His claim was therefore for service and leave. In cross- examination he stated that he resigned due to working conditions.
4. The respondent's witness Mr Isaac Okwiri stated that the claimant left work voluntarily in 2012 and was paid his terminal dues.
5. It is cardinal rule of evidence that whoever alleges something must prove it to the threshold set by law in order for a court to make a finding in his or her favour.
6. The claimant herein alleged the respondent did not pay him his terminal dues which included service pay, accrued leave and public holidays. The respondent in refuting the claim attached the claimant's last payslip for February 2012. The payslip itemizes payment for overtime and NSSF.
7. The claimant did not deny or refute the authenticity of the payslip. The claimant being a contributor to NSSF was not entitled to service pay unless it was expressly agreed in the contract or CBA. No such contracts or CBA was produced to support the claim.
8. In the circumstances the court finds this claim not proved as required by Law. The same is therefore dismissed with costs.
9. It is so ordered.

Dated at Nairobi this 20th day of September, 2019

Abuodha J. N.

Judge

Delivered this 20th day of September, 2019

Abuodha J. N.

Judge