

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

SUIT NO. 1676 OF 2014

LAZARO W. WANYONYI.....CLAIMANT

VERSUS

NIGHT ARMOUR SECURITY SERVICES.....RESPONDENT

JUDGMENT

1. The Claimant filed his suit on 25th September 2014 and averred in the plaint that he was engaged as a security guard earning Kshs. 7,000/- which was below the gazetted minimum of Kshs. 12,548.45. He averred that he performed his duties between 6.00am and 6.00pm daily including Sundays and public holidays. He averred that he was dismissed on 23rd April 2014 without any notice and that in his service, he was not given any leave or receive any leave allowance. He averred the dismissal was contrary to the provisions of the rules of natural justice and Section 41 of the Employment Act. He claimed salary for April 2014, one month salary in lieu of notice, annual leave, severance pay, 12 months salary compensation, underpayment, house allowance, overtime and public holidays and a certificate of service. The Claimant also sought costs of the suit and interest.

2. The suit was not defended and the case proceeded to hearing without any defence on record. The Claimant testified that he was employed as a guard in January 2013 and was paid Kshs. 7,000/- a month and that the assignment was in Lavington. He stated that he did not have any off days and worked on weekends and public holidays. He testified that he did not have a residential house provided and was not paid any house allowance. He was dismissed on 23rd April 2014 without notice and was not paid his dues. He testified that he was entitled to receive 12,000/- a month and not the 7,000/- he received as per the wages regulations.

3. In the claim before me, the Claimant asserts that he worked every day including Sundays and public holidays. This is difficult to imagine and therefore stretching the bounds of the indomitable human spirit. There is no way the Claimant worked from January 2013 till April 2014 without a break. The claim on work during Sundays and public holidays is dismissed. The Claimant earned Kshs. 7,000/- which he asserts is below the wage prescribed for a day watchman under the Regulation of Wages (Protective Security Services) Order. He has not provided the rates for a watchman/guard to show that he is entitled to more than the Kshs. 7,000/- he earned a month. In the final analysis the Claimant's claim is dismissed as he did not prove the claim on a balance of probabilities. There is no order on costs.

It is so ordered.

Dated at Nairobi this 20th day of December 2017

NZIOKI WA MAKAU

JUDGE

Delivered at Nairobi this 17th day of January 2018

RADIDO STEPHEN

JUDGE