



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 567 OF 2016**

**BETWEEN**

**BARET BURUDI BOYO.....CLAIMANT**

**VERSUS**

**OWL ALARMS [K] LTD.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*C. A. Odhiang' & Company Advocates for the Claimant*

*No appearance for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim, on the 28<sup>th</sup> July 2016. He states he was employed by the Respondent as a Security Guard, in December 2005. He was dismissed from employment on 10<sup>th</sup> March 2015. He earned Kshs. 6,000 per month, as of the date of dismissal. He avers termination was without notice, and no valid reason, or reasons were given to him by the Respondent to justify termination. He prays the Court to find termination was unlawful and unfair, and give the following orders:-

- a) A declaration that termination was unlawful and unfair.
- b) A declaration that by subjecting the Claimant to casual employment from December 2005 to March 2015, without confirming him as a permanent Employee, the Respondent's conduct was discriminatory, illegal, unconstitutional, null and void.
- c) A declaration that the Claimant ought to have been confirmed in employment as a permanent Employee.
- d) An order that the Claimant's dismissal was unfair and unlawful, and should be set aside.
- e) The Claimant is paid house allowance and all other benefits due to a permanent Employee, from December 2005 to March 2015, together with interest thereon.
- f) Reinstatement without loss of benefits.
- g) Overtime pay.
- h) Terminal benefits amounting to Kshs. 276,795.
- i) Damages and aggravated damages.
- j) Costs and interest.

2. There are Affidavits of service filed by the Claimant, indicating the Respondent was served with, and received, Notice of Summons, Statement of Claim, Witnesses List, Documents and Mention Notice. The Respondent did not attend Court on any occasion. The Claimant was heard on formal proof, on 11<sup>th</sup> December 2017.

3. He restated the contents of his Pleadings and Witness Statement in his evidence. He was employed as a Day Guard, in 2005. He was paid Kshs. 200 per day, throughout employment. He was on assignment at Kizingo area, Mombasa. Operations Manager told him not to report to work. The Claimant considered his contract to have been terminated. He lodged a complaint with the Labour Office. The Labour Office gave him 2 letters to deliver to the Respondent, requiring the Respondent to return the Claimant to work. The Respondent declined. The Claimant urges the Court to allow his Claim.

***The Court Finds:-***

4. Some prayers in the Claim are repetitious and unnecessary. Prayer (a) and (d) above, seek to have termination declared unlawful and unfair. Prayer (d) and (f) are both about reinstatement. Prayer (g) and (h) include overtime pay. The prayers are repetitious, and inordinately wordy.

5. There is evidence that the Claimant worked for about 10 years as a Security Guard. He was treated as a Casual employee, and paid Kshs. 200 daily throughout. The Court agrees with him that he ought to have been converted into regular employment, under Section 37 of the Employment Act. ***It is declared under Section 37(4) of the Employment Act 2007, that the Claimant was entitled to regular employment, and should have been treated at a Regular Employee by the Respondent.***

6. The Respondent has not given evidence justifying termination. Termination was without notice. It did not meet the standards of fairness under Section 41, 43 and 45 of the Employment Act 2007. ***It is declared termination was unfair.***

7. Other declaratory orders sought are unnecessary, and add no value to the Judgment. There are no grievances shown, warranting resort to declaratory orders under the Constitution of Kenya. The grievances raised have adequate remedies under the Employment Act 2007. Other declaratory orders are declined.

8. ***The Respondent shall, pay to the Claimant 6 months salary in compensation for unfair termination, at Kshs. 36,000.***

9. ***The Respondent shall pay to the Claimant 1 month salary in lieu of notice at Kshs. 6,000.***

10. The order for reinstatement, which has also been pleaded as 'setting aside of dismissal,' has no merit, is not reasonable or appropriate, and is declined.

11. The prayer for damages and aggravated damages is similarly without merit, and is declined.

12. The Claimant prays for annual leave pay of 30 days over a period of 10 years, at Kshs. 60,000. He did not establish that he was entitled to 30 days of annual leave. The Court shall grant him a minimum of 21 days of annual leave under Section 28 of the Employment Act, translated to annual leave pay by Kshs. 46,461.

13. The prayer for overtime pay has not been established. It is based on a salary of Kshs. 35,359. Elsewhere, the Claimant states, and the Court agreed with this, that Claimant's salary was Kshs. 6,000 monthly. He adopts the wrong rate of monthly salary, and rather than calculate overtime pay based on hourly rate, calculates overtime based on the presumed rate of monthly salary. He has presented nothing to show he actually performed any excess work, and that this work, was necessary and authorized by the Employer. The prayer is rejected.

14. ***Costs to the Claimant.***

15. ***Interest allowed at 14% per annum from the date of Judgment, till payment is made in full.***

In sum, the Court allows the following prayers:-

***a) It is declared under Section 37(4) of the Employment Act 2007, that the Claimant was entitled to regular employment, and should have been treated as a regular Employee by the Respondent.***

***b) It is declared termination was unfair.***

***c) The Respondent shall pay to the Claimant equivalent of 6 months' salary in compensation for unfair termination at Kshs. 36,000; 1 month salary in lieu of notice at Kshs. 6,000; and annual leave pay, at Kshs. 48,461 – total Kshs. 90,461.***

***d) Costs to the Claimant.***

***e) Interest allowed at 14% per annum, from the date of Judgment till payment is made in full.***

**Dated and delivered at Mombasa this 9<sup>th</sup> day of March 2018.**

**James Rika**

**Judge**