



**REPUBLIC OF KENYA**

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

**CAUSE NO. 149 OF 2017**

**EBRAHIM MUTHEE MUROGO ..... CLAIMANT**

**v**

**ULTIMATE SECURITY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Ebrahim Muthee Murogo (Claimant) instituted legal proceedings through the law firm of Wageni & Co. Advocates against Ultimate Security Ltd (Respondent) and he stated the Issue in Dispute as *non-payment of terminal and contractual benefits*.
2. The Respondent filed a Memorandum of Response, documents and witness statement on 1 May 2017.
3. On 9 January 2018, the Claimant filed in Court a medical report indicating that he was in poor health, and on that basis the Cause was placed before me on 1 February 2018, and I directed that the Cause be heard on 6 February 2018.
4. On 10 January 2018, the Claimant filed a *Notice to Act in Person* (he informed the Court that he had lost faith in advocates and even suggested that the witness statement drawn by his then Advocates on record and filed in Court was not correct).
5. The Claimant testified on his own behalf while the Respondent called its Head of Finance, Mr. Soud Abdallah.
6. The Court has given due consideration to all the material placed before.
7. As would be expected in a case where a party is acting in person, it was not easy for the Claimant to logically, concisely and clearly state what his complaints were.
8. The Court will therefore examine the Claimant's case under the heads of claim outlined in the Memorandum of Claim.
9. From the pleadings and evidence (including the testimony), it appears that the Claimant's grouse are,
  - (i) that he was not paid terminal benefits (service gratuity) for the period 1987 to 1999 (it is not disputed that the Respondent put in place a pension scheme in 1999 and the Claimant joined the scheme and was paid Kshs 1,409,869/- pension for the years 1999 to 2016 when he retired);
  - (ii) that he was not terminal benefits for the period 2012 to 2015 and

(iii) that he was not paid overtime for 12 days he worked while he should have been on off duty.

#### *Service gratuity 1987 to 1999*

10. The Respondent's witness testified that the Claimant was paid service gratuity of Kshs 84,286/- in 2014 for the period 1987 to 1999, and a bank statement was produced to demonstrate the payment.

11. The Claimant admitted receiving the payment but according to him, the payment was in respect of a special bonus.

12. When asked by the Court to corroborate the assertion that the payment was in respect of a special bonus and not service gratuity, the Claimant responded that he had none.

13. On the basis of the documentation produced in Court and the corroborative evidence of the Respondent's Head of Finance, the Court finds that the Claimant was paid terminal benefits in the form of service gratuity for the period he served (1987 to 1999) before joining the pension scheme.

#### *Terminal benefits 2012 to 2015*

14. During this period, the Claimant was a member of the pension scheme in place and without producing any evidential, contractual or other legal basis for terminal benefits during this period, the Court finds that this head of claim not only lacked merit but was not proved.

#### *Overtime for 12 days*

15. On account of this head of claim, the Claimant did not give particulars/details of the 12 days he worked during his off days for which he was not paid.

16. The general assertions by the Claimant that he worked over the weekends including sleeping in the Respondent's vehicle were in the view of the Court too generalised.

17. The Court finds that the Claimant did not lay an evidential basis for the head of claim.

#### **Conclusion and Orders**

18. The upshot of the foregoing is that the Court finds no merit in the cause(s) of action presented by the Claimant and orders that the Memorandum of Claim filed in Court on 30 January 2017 be dismissed with no order as to costs.

**Delivered, dated and signed in Nairobi on this 2<sup>nd</sup> day of March 2018.**

**Radido Stephen**

**Judge**

#### **Appearances**

For Claimant In person

For Respondent Mr. Nyasimi instructed by Nchogu, Omwanza & Nyasimi, Advocates

Court Assistant Lindsey