



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 649 OF 2014**

**JOHN NYANGENA.....CLAIMANT**

**VERSUS**

**OKOTH JAMALI T/A ALFA BRIDGE SECURITY SERVICES...RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed this suit on 22.4.2014 alleging that the respondent had unlawfully terminated his employment without prior notice or payment of salary in lieu of notice. He therefore prayed for payment of his terminal dues plus compensation for unlawful termination of his employment.
2. The Respondent filed no defence and the suit proceeded by Formal Proof on 12.2.2018. The claimant testified as Cw1 and thereafter his counsel filed written submission.

**Claimant's Case**

3. Cw1 testified that he was employed as a Night Watchman by the respondent in August 2012 and worked until January 2014. His salary was Kshs.7,000 per month but he was never issued with any payslip. The only evidence to prove the said employment relationship was a certified copy of Daily Attendance Register from the respondent during his service he never went for any annual leave and the employer never paid any NSSF contributions in his favour.
4. Cw1 testified that in January 2014 he requested for his annual leave and in response, the respondent unlawfully terminated his employment. He therefore prayed for the reliefs sought by his suit.

**Analysis and Determination**

5. The issues for determination arising from the pleadings evidence and submissions are:

- (a) Whether the termination of claimant's employment contract was lawful
- (b) Whether the reliefs sought should be granted.

**Unlawful termination**

6. The claimant's pleadings and evidence are uncontested. The Court therefore makes a finding of fact that the claimant was employed by the respondent in August 2012 as a Night Watchman earning Ksh.7,000 per month and he was terminated in January 2014 without any prior notice or payment of salary in lieu of notice for the reason that the claimant requested for his annual leave.
7. Under section 45(1) of the Employment Act, bars employers from terminating their employees' contract of service unfairly. Under subsection (2) termination of employees' contract of service is unfair if the employer fails to prove that it was grounded on a valid and fair reason and that it was done after following a fair procedure. In this case, there is no dispute that the reason for termination was unfair within the meaning of section 46 of the Act. The said section provides:

*"46. The following do not constitute a fair reason for dismissal or imposition of a disciplinary penalty –*

*(b) the going on leave of an employee, or the proposal of an employee to take any leave to which he was entitled under the law or a contract.”*

8. In view of the foregoing matters, I am satisfied that the claimant has discharged his burden of proof under section 47(5) of the Act of proving on a balance of probability that he was unfairly and unlawfully dismissed from employment.

**Reliefs**

9. Under section 49 of the Act I award the claimant Kshs.7,000 being one month salary in lieu of notice plus Kshs.42,000 being 6 months salary compensation for unlawful and unfair termination. In granting the above award, I have considered not only the fact that the claimant had served for less than 2 years but also the fact that he did not contribute to his termination through misconduct and that he was not paid any gratuity after the termination.

10. He will also get Kshs.3,500 being service pay for the one complete year served at the conventional rate of 15 days salary per year. However, the claim for leave is dismissed for lack of particulars and evidence.

**Disposition**

11. I enter Judgment for the claimant in the sum of Kshs.52,500 plus costs and interest from the date hereof till payment in full. The said award will be subject to the relevant statutory deductions.

**Dated, Signed and Delivered in Open Court at Nairobi this 10th day of May, 2018**

**ONESMUS MAKAU**

**JUDGE**