



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1414 OF 2014**

**MUKALO RUEBEN IMBUSI.....CLAIMANT**

**- VERSUS -**

**G4S SECURITY SERVICES LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 8<sup>th</sup> June, 2018)

**JUDGMENT**

The claimant filed the memorandum of claim on 21.08.2014 through Osoro Chege Kibathi & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Leave days Kshs.51, 800.00.
- b) House allowance Kshs.133, 200.00.
- c) Gratuity allowance at 25% on the basic salary for 60 months.
- d) Interest on a – c above at court rates.
- e) Costs of the suit.
- f) Any other relief the Honourable Court deems fit to grant.

The claimant was employed by the respondent as a security guard effective 21.10.2009 until 17.07.2014. On 17.07.2014 the claimant handed in his resignation letter. The claimant's case is that the respondent accepted the resignation by the letter dated 30.07.2014 but failed or refused to pay the claimant's terminal dues. His last salary was Kshs.14, 800.00 per month.

The statement of response was filed on 07.10.2014 through Hamilton Harrison & Mathews Advocates. The respondent prayed that the suit be dismissed with costs.

The parties' witnesses gave evidence and filed final submissions.

The only issue for determination is whether the claimant is entitled to terminal dues as prayed for. The court makes findings as follows:

- a) The evidence is that the claimant's consolidated pay of Kshs.14, 800.00 per month was way above the basic pay and the house allowance prescribed in the relevant wage order. Accordingly, the prayer for house allowance will fail.
- b) Respondent's witness (RW) confirmed that the claimant did not go on leave. RW suggested that it was the claimant's option not to go on leave but there was no evidence to show exercise of such option. The Court returns that the respondent denied the claimant's entitlement to leave as provided under section 28 of the Employment Act, 2007 and the claimant is awarded **Kshs.51, 800.00** being pay in lieu of annual leave for the period served.
- c) The claimant prayed for 25% gratuity of basic salary for 60 months. The claimant did not establish justification for the prayer. The claimant confirmed he was a member of the NSSF. Under section 35(6) of the Act he would not be entitled to service pay. The prayer will fail.
- d) As the claimant has partially succeeded in his claim, the respondent will pay partial costs of the suit now fixed at **Kshs.**

**25,000.00.**

In conclusion judgment is hereby entered for the claimant against the respondent for the respondent to pay the claimant **Kshs.76, 800.00** by 01.08.2018 failing interest at court rates to be payable thereon from the date of the suit till full payment.

**Signed, dated and delivered in court at Nairobi this Friday 8<sup>th</sup> June, 2018.**

**BYRAM ONGAYA**

**JUDGE**