



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1802 OF 2014

(Formerly CC No. 4077 of 2008)

(Before Hon. Justice Hellen S. Wasilwa on 24th July, 2018)

MALALIA NG'ONDUCLAIMANT

VERSUS

SWAMI GUARDS LIMITED.....RESPONDENT

JUDGEMENT

1. The Claimant herein filed his case on 10/7/2008 through the firm of S. K. Mutua and Company Advocates at the PM's Milimani Commercial Courts as CC No. 4477/2008.

2. The Claimant's case was that he served the Respondent as a guard from May 2005 to 15th December 2007 at a salary of 4,500/= per month when he was dismissed from employment without any probable cause.

3. He aver that he is entitled to payment of Kshs.106,408 which he prays for broken down as follows:-

1. 1 month salary in lieu of notice = 4,500/=.

2. Severance pay at 15 days for each year worked = 5,500/=.

3. Leave pay for 2 years – 9,000/=

4. Holidays worked at 360/= per day x 14 days = 5,040/=

5. Overtime worked at 4 hours per day at 33 per hour x 624 days = 82,360/=

TOTAL 106,405/=

4. The Respondents were served with the Plaint and summons to enter appearance and they entered appearance on 8/9/2008 through the firm of Gakoi Maina & Company Advocates.

5. They also filed a Statement of Defence on 16/9/2008 where they admitted the employment relationship but aver that the Claimant absconded duty after the premises he was guarding were broken into and goods stolen pointing to the fact that he cooperated with robbers to gain entry in the premises.

6. On 6/7/2012, this file was ordered transferred from the Magistrate's Court to this Court by Hon. Lady Justice Khaminwa. It was then registered as ELRC case No. 1802/2014.

7. This case was scheduled for hearing on 3/5/2018 before this Court and the Respondent were duly served with a hearing notice. They failed to attend Court. The hearing then proceeded exparte where the Claimant gave evidence reiterating the averments set out in his Plaint.

8. I have considered the Claimant's evidence plus all the documentary evidence produced and submissions filed hereafter. I note that the

Claimant's case was uncontroverted by the Respondents.

9. It is my finding that the Claimant established he had an employment relationship with the Respondent which relationship was determined by the Respondent in December 2007.

10. I therefore find for Claimant and award him as follows:-

1. 1 month salary in lieu of notice = 4,500/=

2. 2 years leave = 9,000/=

3. Holidays worked at Kshs.360 per day x 14 days = 5,040/=

4. Overtime pay at 4 hours per day at 33 per hour for 624 days = 82,360/=

Total = 100,920/=

5. The Respondent will pay costs of this suit plus interest with effect from the date of this judgment.

Dated and delivered in open Court this 24th day of July, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Makori holding brief for Mutua for Claimant – Present

Respondent – Absent