



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1158 OF 2013**

**ISAAC LICHUMA OKHAKO.....CLAIMANT**

**- VERSUS -**

**HATARI SECURITY LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Thursday 12<sup>th</sup> July, 2018)

**JUDGMENT**

The claimant filed the statement of claim on 23.02.2013 through Owaga & Associates and prayed for judgment against the respondent for:

- a) Payment of Kshs.108, 525.00 being pay in lieu of notice Kshs.7, 500.00; pay for October 2012 Kshs.7, 500.00; severance pay Kshs.3, 750.00; accrued leave for 1 years 10 months Kshs.9, 625.00; holidays pay Kshs.3,750.00; overtime pay Kshs.72, 000.00; and uniform fees Kshs.4, 400.00.
- b) General damages for loss, pain and suffering.
- c) Costs of the suit plus interest.
- d) Any other relief that the Court may deem fit to grant.

The claimant pleaded that he was employed by the respondent from January 2011 to October 2012 when his employment was unlawfully terminated while he was on sick leave. It was the claimant's case that the termination was without notice and a hearing.

Githinji Mwangi & Associates entered appearance for the respondent on 16.12.2014 but filed no defence. The Court finds that the suit was not opposed.

The claimant testified that on 26.10.2012 he fell sick. As was the respondent's practice on permission, he notified the control room and was given a few days off. He was on sick leave for 4 days. Upon resuming duty, he was dismissed. His salary had been unilaterally reduced by the respondent from Kshs.12, 000.00 to Kshs.7, 500.00 per month despite promotion from a Rider Supervisor to Commander. He had served throughout without leave and without offs including working on public holidays.

As submitted for the claimant, under section 30(1) of the Employment Act, 2007 the claimant was entitled to pay during sick leave up to 7 days of sick leave. Further there was no valid reason advanced for the termination as per section 43 and 45 (2) of the Act. The Court finds that the termination was unfair.

For the remedies prayed for the Court makes findings as follows:

- a) The claimant is entitled to pay in lieu of notice **Kshs.7, 500.00** per section 35 of the Act.
- b) The claimant is awarded pay for October 2012 **Kshs.7, 500.00**.
- c) The claimant is awarded severance pay **Kshs.3, 750.00** as he was told there was no job but he would be recalled which amounted to redundancy. He is awarded per section 40 of the Act.
- d) He is entitled to accrued leave for 1 year 10 months **Kshs.9, 625.00** as prayed for under section 28 of the Act.
- e) His testimony was that he worked on holidays without holidays' pay but no evidence and computation of the claim was provided

and the prayer is declined.

f) There was no evidence and basis for overtime pay Kshs.72, 000.00 and the prayer is declined as unjustified.

g) The claimant is entitled to recover uniform fees **Kshs.4, 400.00**.

In conclusion judgment is entered for the claimant against the respondent for:

a) The respondent to pay the claimant a sum of **Kshs.25, 275.00** by 01.09.2018 failing interest to be payable thereon from the date of the judgment till full payment.

b) The respondent to pay costs of the suit.

**Signed, dated and delivered in court at Nairobi this Thursday 12<sup>th</sup> July, 2018.**

**BYRAM ONGAYA**

**JUDGE**