

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 165 OF 2018

ISAAC NYANGATE KOMBO.....CLAIMANT

VERSUS

BRINKS SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant was employed as a security guard by the Respondent in February 2014, earning Kshs. 9,800/- as at 30th May 2017 when he was dismissed by Mr. Mwangangi the Respondent's manager. His dismissal was verbal and he was not issued with a notice to show cause nor was he served with a reasonable notice prior to his dismissal. He sought compensation for the unlawful dismissal, pension dues for the years worked, leave for 2016 and one month's salary in lieu of notice. He also sought costs of the suit.

2. Despite service of the suit, the Respondent did not enter appearance nor file a defence. The matter proceeded as an undefended cause. Formal proof was conducted and the Claimant testified on the same lines as his pleadings. He filed written submissions in which he cited the case of **Samuel Thuo Waiganjo t/a Waiganjo & Associates v Samuel Njoroge Kariuki [2018] eKLR**. He submitted that he had established on a balance of probabilities from the evidence he had adduced that he was entitled to the prayers sought. He produced payslips which indicated his basic pay as 9,800/- a month. He was undoubtedly an employee of the Respondent. No negation of his testimony on dismissal was presented. It can be seen from the payslips that his pay fluctuated at times though the basic was stated to be 9,800/- a month. He caused a demand to be issued and there was no response thereto and it is clear the Respondent did not have an answer to the claim. The Claimant's dismissal in the absence of notification or show cause was therefore unlawful. He is entitled to recover the sums due on his claim as follows:-

- a. One month's salary in lieu of notice Kshs. 9,800/-
- b. Salary in lieu of leave not taken Kshs. 9,800/-
- c. 6 month's salary compensation Kshs. 58,800/-
- d. Costs of the suit
- e. Certificate of service
- f. All the sums in a), b) and c) above will be subject to statutory deductions in terms of Section 49 of the Employment Act.
- g. Interest at Court rates in a), b), c) and d) from date of Judgment till payment in full.

It is so ordered.

Dated and delivered at Nyeri this 31st day of October 2018

Nzioki wa Makau

JUDGE