

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1349 OF 2014

KAMBO KAMAU MAHINDA.....CLAIMANT

-VERSUS

CHAIRMAN, SECRETARY A,C,K DIOCESE OF MOUNT KENYA

SOUTH EMMANUEL CHURCH KIERENYE PARISH.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 2nd November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 13.08.2014 in person. The claimant prayed for judgment against the respondent for:

- a) An order that the respondent do issue certificate of Employment to the claimant.
- b) An order that the respondent do pay the claimant Kshs.818, 086.90 (being under payments in salary and house allowance throughout service, 162 days gratuity for 9 years served, and accrued leave for 10 months (30) days.)
- c) Cost of action.
- d) Interest at 12% until the amount is paid in full.

The underpayments as claimed are based on minimum wages under the Regulation of Wages (General) (Amendment) Orders for 2003, 2004, 2005, 2006, 2009, 2010, 2011, 2012, and 2013. Regulation 5 of the Regulation of Wages (Protective Security Services) Order, 1998 provides for 15% of the wage as due house allowance where the employee is not provided housing accommodation. The regulations also provide for rest days, work on public holidays, and, leave travelling allowance and overtime. Regulation 17 (1) thereof provides for gratuity after 2 years' service at 18 days for every completed year of service based on employee's wage at time of termination.

Despite service the respondent did not file a defence and did not attend the hearing. The Claimant testified to support his case. The Court has considered the material on record. The Court returns that the claimant has established that the respondent employed him as a night guard from 01.04.2004. The claimant's case was that he became sick and he served the chairman of the respondent a three months termination notice effective 03.08.2013 which lapsed on 31.10.2013. He claimed terminal dues as prayed for in the memorandum of claim. The Court has considered all the material on record and returns that the claimant has established his claims and is awarded as prayed for.

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

- a) Payment of Kshs.818, 086.90 by 31.12.2018 failing interest at Court rates to be payable thereon from the date of filing of the suit 13.08.2014 till full payment.
- b) The respondent to deliver the claimant's certificate of service by 01.12.2018.
- c) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 2nd November, 2018.

BYRAM ONGAYA

JUDGE