



**REPUBLIC OF KENYA**

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

**CAUSE NO. 112 OF 2016**

*(Before D. K. N. Marete)*

**ERICK ONONO NYANGWACHI.....CLAIMANT**

**VERSUS**

**ESGRAY COMPANY LIMITED.....RESPONDENT**

**JUDGEMENT**

This matter was originated by way of a Statement of Claim dated 25th January, 2016. It does not disclose any issue on its face.

The matter is not defended or at all.

The claimant's case is that at all material times relevant to this suit the respondent was operating various businesses including but not limited to a gymnasium.

The claimant's further case is that on or about November, 2009, he was employed by the respondent vide an oral contract as an attendant at his gymnasium at a gross salary of 6,000.00 per month.

The claimant's other case is that he diligently discharged his duties until 17th November, 2014 when the respondent without any lawful cause or explanation and in breach of the contract of employment proceeded to terminate his services. This was for demanding payment of his dues for overtime done at the respondent's behest and instance between 14th October, 2014 and 30th October, 2014 when his colleague and counterpart was suspended from employment. He has even since prevailed upon the respondent to claim his dues to no avail.

He claims as follows;

- |                                                                                                |                        |
|------------------------------------------------------------------------------------------------|------------------------|
| <i>a. Underpayment of wages November 2009 to 30<sup>th</sup> April 2010</i>                    | <i>Kshs.780.00/</i>    |
| <i>b. Underpayment of wages 1<sup>st</sup> May 2010 to 31<sup>st</sup> December 2010</i>       | <i>Kshs.5,944.00/</i>  |
| <i>c. Underpayment of wages 1<sup>st</sup> May 2011 to 31<sup>st</sup> December 2011</i>       | <i>Kshs.4,688.00/</i>  |
| <i>d. Underpayment of wages 1<sup>st</sup> May 2012 To 31<sup>st</sup> December 2012</i>       | <i>Kshs.4,638.40/</i>  |
| <i>e. Underpayment of wages 1<sup>st</sup> May 2013 to 30<sup>th</sup> April 2014</i>          | <i>Kshs.9,371.40/</i>  |
| <i>f. Underpayment of wages 1<sup>st</sup> May 2014 to 30<sup>th</sup> November 2014</i>       | <i>Kshs.6,247.60/</i>  |
| <i>g. Unpaid house allowance 1<sup>st</sup> November 2009 to 31<sup>st</sup> December 2010</i> | <i>Kshs.919.50/</i>    |
| <i>h. Unpaid house allowance 1<sup>st</sup> May 2011 to 30<sup>th</sup> April 2011</i>         | <i>Kshs.4200.00/</i>   |
| <i>i. Unpaid house allowance 1<sup>st</sup> May 2011 to 31<sup>st</sup> December 2011</i>      | <i>Kshs.12,137.40/</i> |
| <i>j. Unpaid house allowance 1<sup>st</sup> January 2012 to 30<sup>th</sup> April 2012</i>     | <i>Kshs.13,654.80/</i> |

k. Unpaid house allowance 1 <sup>st</sup> May 2012 to 31 <sup>st</sup> December 2012	Kshs.9,103.20/
l. Unpaid house allowance 1 <sup>st</sup> January 2013 to 30 <sup>th</sup> April 2013	Kshs.4,800.00/
m. Unpaid house allowance 1 <sup>st</sup> May 2013 to 31 <sup>st</sup> December 2013	Kshs.11,737.20/
n. Unpaid house allowance 1 <sup>st</sup> January 2014 to 30 <sup>th</sup> April 2014	Kshs.5,868.60/
o. Unpaid house allowance 1 <sup>st</sup> May 2014 to 30 <sup>th</sup> November 2014	Kshs.11,737.20/
p. Unremitted deductions to NSSF November 2009 to 31 <sup>st</sup> December 2009	Kshs.800.00/
q. . Unremitted deductions to NSSF January 2010 to 30 <sup>th</sup> April 2010	Kshs.1,600.00/
r. Unremitted deductions to NSSF In February 2011	Kshs.400.00/
s. Unremitted deductions to NSSF May 2014 to November 2014	Kshs.2,800.00/
t. Unremitted deductions to NHIF November 2009 to 31 <sup>st</sup> December 2009	Kshs.320.00/
u. Unremitted deductions to NHIF in October 2010	Kshs.160.00/
v. Unremitted deductions to NHIF April 2013 to May 2013	Kshs.320.00/
w. Unremitted deductions to NHIF July 2013 to December 2013	Kshs.960.00/
x. Unremitted deductions to NHIF April 2013 to May 2013	Kshs.320.00/
y. Unremitted deductions to NHIF July 2013 to December 2013	Kshs.960.00/
z. Unremitted deductions to NHIF January 2014 to June 2014	Kshs.960.00/
aa. Unremitted deductions to NHIF August 2014 to September 2009	Kshs.320.00/
bb. Unremitted deductions to NHIF In November 2014	Kshs.160.00/
cc. One month pay in lieu of notice	Kshs.9,780.95
dd. Unpaid leave allowance	Kshs.17,515.00
ee. 6 accrued leave days between 1 <sup>st</sup> November 2009 and 31 <sup>st</sup> October 2010	Kshs.1,231.20/
ff. 8 accrued leave days between 1 <sup>st</sup> November 2010 and 31 <sup>st</sup> October 2011	Kshs.2,064.80/
gg. 6 accrued leave days between 1 <sup>st</sup> November 2011 and 31 <sup>st</sup> October 2012	Kshs.1,827.60/
hh. 6 accrued leave days between 1 <sup>st</sup> November 2012 and 31 <sup>st</sup> October 2013	Kshs.2,823.60/
ii. 14 accrued leave days between 1 <sup>st</sup> November 2013 and 31 <sup>st</sup> October 2014	Kshs.6,588.40/
jj. 8 hours overtime for 15 days period worked Double shift between 14 <sup>th</sup> October 2014 And 30 <sup>th</sup> October 2014	Kshs.10,488.00/
<b>Total</b>	<b><u>Kshs.168,226.85</u></b>

He prays as follows;

- a. The principle sum of Kshs.168,226.85/;

- b. Compensation for wrongful dismissal to a maximum of 12 months wages amounting to Kshs.118,710/;
- c. Interest on (a) and (b) above at the prevailing commercial bank rates from the due date until payment in full;
- d. Costs of the suit;
- e. Any other relief that this Honourable Court may deem just and fit to grant.

This matter came to court variously until the 19th October, 2018 when the claimant, in the absence of the respondent submitted on an adoption of his witness statement and list of documents as his evidence in support of the claim. He also urged the court to make a determination on the basis of the pleadings on the record of court.

As aforesaid, this matter is not defended or at all. This is despite service to the respondent.

The issues for determination therefore are

1. Whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful?
2. Whether the claimant is entitled to the relief sought?
3. Who bears the costs of this claim?

The 1st issue for determination is whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful. The claimant sought to rely on his list of documents and witness statement in support of his claim. These are determinate of a valid claim for unlawful termination of the employment of the claimant by the respondent. In the absence of a defence and any evidence controverting the claim, it remains standing. I therefore find a case of unlawful termination and hold as such.

The 2nd issue for determination is whether claimant is entitled to the relief sought. He is. Having won on a case of unlawful termination of employment, he becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- i. One (1) months salary in lieu of notice.....Kshs.6,000.00
- ii. Twelve (12) months salary as compensation for unlawful termination  
of employment Kshs.6,000.00 x 12=.....Kshs.72,000.00
- iii. 8 hours overtime for 15 days period worked on double  
shift between 15th October, 2014 to 30th October, 2014.....Kshs.10,488.00
- Total of claim.....Kshs.88,488.00**

iv. The respondent be and is hereby ordered to issue a certificate of service to the claimant within fourteen (14) days of this judgement of court.

v. The costs of this claim shall be borne by the respondent

**Dated and signed this 29<sup>th</sup> day of November 2018.**

**D.K. Njagi Marete**

**JUDGE**

**Delivered and signed this 3<sup>rd</sup> day of December 2018.**

**Maureen Onyango**

**PRINCIPAL JUDGE**

Appearances

1. Miss Oginda holding brief for Mundia instructed by P. W. Mundia & Company Advocates for the claimant.

2. No appearance for the respondent.