



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 11 OF 2016**

**GEORGE ALEX OTIENO .....CLAIMANT**

**VERSUS**

**TEXAS ALARMS SECURITY [K] LTD .....RESPONDENT**

**J U D G M E N T**

1. The claimant was employed by the respondent as a guard from 21/5/2010 earning ksh.13200 basic salary plus ksh.1400 house allowance per month. In September 2013, he was shot with bullets by thugs while on duty but after treatment he resumed work. By the letter dated 31/10/14, the respondent promoted him to a permanent guard with entitlement to annual leave and other benefits due to all other guards.

2. On 15/10/15 he wrote a resignation letter citing medical reasons. He also demanded for his terminal due but he was not paid the same. He has now brought this suit seeking terminal dues amounting to ksh.162,840 made up of salary from October 2015 to date, two months' salary in lieu of notice, house allowance and gazetted public holidays.

3. The respondent admits that the claimant was her employee from 22/5/2010 until 15/11/2015 when he voluntarily resigned citing medical reasons. She admitted that the claimant was attacked while on duty but averred that he was treated and healed well and all his medical bills were paid by her. She further averred that after the resignation she calculated his rightful terminal dues but he refused to collect the same.

4. The suit was disposed of by written submission on the basis of the pleadings and documents filed. The only issue for determination is whether the claimant is entitled to the reliefs sought or any part thereof.

**ANALYSIS AND DETERMINATION**

**SALARY ARREARS**

5. The claimant prays for full salary from October 2015 to date totaling to ksh.58400. The respondent admits that she calculated the dues payable to the claimant but he refused. She has however, not demonstrated how much dues are payable. She has also not proved that she paid the claimant his salary for October and November 2015. I will therefore award to the claimant salary for October 2015 plus 15 days worked in November 2015. His salary was ksh.14600 per month and as such he will get 21900. He is however not entitled to salary after 15/11/2015 because that is when he stopped working.

### **SALARY IN LIEU OF NOTICE**

6. The claimant prays for two months' salary in lieu of notice. I however agree with the defence that the said relief is not available to the claimant because he is the one who voluntarily resigned. I therefore dismiss that prayer.

### **HOUSE ALLOWANCE**

7. The claimant prays for ksh.11880 as the unpaid house allowance. He has however not given any basis for such relief and as such I dismiss it.

### **PUBLIC HOLIDAYS**

8. The claimant prays for ksh. 63360 for the gazetted public holidays per year. The particulars of the said gazetted holidays has not been pleaded and no evidence given to prove that the claimant worked during the said unspecified gazetted public holidays. Consequently I dismiss that prayer.

### **DISPOSITION**

9. For the reasons that the respondent has failed to prove that she paid the salary for October and November 2015, I enter judgment for the claimant for ksh.21900 plus half costs and interest from the date of filing suit.

Dated, signed and delivered this 31<sup>st</sup> March 2017

**O.N. Makau**

**Judge**