



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 932 OF 2015

BETWEEN

FRANCIS ODHIAMBO ODONGO CLAIMANT

VERSUS

COBRA SECURITY COMPANY LIMITED RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Munee Katu & Associates, Advocates for the Claimant

Mburu Kariuki & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 16th December 2015. He states he was employed by the Respondent as a Security Guard on 1st October 2010, at a monthly salary of Kshs. 8,000. He was attacked by thugs while on duty, and severely injured. The Respondent subsequently terminated his contract on 22nd June 2015. He does not claim termination was unfair, and has not made a prayer for any of the remedies for unfair termination. It is therefore not necessary to examine the reason or reasons for termination. He however states he was not paid certain benefits which he claims from the Respondent. These are:-

- a) 1 month salary in lieu on notice at Kshs. 12,548.
- b) Wages for the period 1st June 2015 to 22nd June 2015 at Kshs. 8,783.
- c) Underpayment of wages from 1st October 2014 to 30th April 2015 at Kshs. 20,381.
- d) House allowance from 1st October 2014 to 30th April 2015 at Kshs. 11,457.
- e) Overtime pay from 1st October 2014 to 21st June 2015 at 2 hours per day calculated at Kshs. 61,992.

f) Overtime pay from 1st May 2015 to 22nd June 2015 at Kshs.17,191

g) Uniform refund at Kshs. 2,500

Total.... Kshs. 134,854

h) Certificate of Service to issue.

i) Costs and interest.

2. The Respondent filed its Statement of Response on 3rd February 2016. It is admitted the Claimant was employed by the Respondent as a Security Guard. He failed to report back to work after a period of sick leave. He is not entitled to the sum of Kshs. 134,854 as particularized above.

3. The Parties gave evidence, and rested their respective cases on the 16th December 2016. Adongo gave evidence as did Lincoln Endovo Oyigo, Respondent's Head of Marketing Coast Region.

4. The Claimant told the Court he was paid Kshs. 8,000 per month. He worked for 12 hours daily, instead of 8 hours. He was not paid for the excess work. He testified on cross-examination that he did not fill any document on clocking to support his prayer for overtime.

5. Oyigo confirmed the Claimant worked for 12 hours daily. Parties agreed on these hours in the contract of employment. Kshs. 8,000 paid to the Claimant was a gross monthly salary.

The Court Finds:-

6. Although the Respondent in general denied the items claimed in the Statement of Response, it is conceded by the Respondent in its Closing Submissions that the Claimant is entitled to some of the prayers. The simple task of this Court is to reconcile the position of the Claimant, to that expressed by the Respondent in the Closing Submissions.

7. The Respondent submits the Claimant deserted work after he was injured by thugs at the workplace. There was evidence by the Claimant that he was called by the Respondent after the incident and actually went to work. He was paid his salary for the month of May 2015, which would not be the case if he had not gone back to work. The Respondent did not in any event take the Claimant through a disciplinary process for the offence of desertion, or demonstrate to the Court that there were any letters or other communication made, enquiring into the Claimant's whereabouts. The reason or reasons for termination is / are not in issue; termination however was without notice. ***The prayer for notice pay is granted at Kshs. 12,548.***

8. The Respondent concedes the Claimant is entitled to salary for days worked in June 2015. These according to the Respondent, should be 16 days, not 22 days, the Claimant having last worked on 16th June 2015. The Court has accepted the Claimant's evidence that he reported back to work on 22nd June 2015 as instructed by the Respondent. His last day at work was 22nd June 2015 not 16th June 2015. ***He is allowed salary for 22 days worked at Kshs. 8,783.***

9. ***Underpayment of wages from 1st October 2014 to 30th April 2015 is conceded, and granted at Kshs. 20,381.***

10. ***There is admission with regard to the prayer for house allowance, which prayer the Court grants at Kshs. 11,457.***

11. The Respondent objects to the prayer for overtime pay on the ground that excess work was not sanctioned by the Respondent. Oyigo admitted the Claimant worked 12 hours daily. It was provided for under the contract of employment authored by the Respondent that the Claimant would work 12 hours. It

was not necessary to have additional sanction outside the contract. The mode of computation and the figures arrived at by the Claimant are not disputed. ***The Claimant has shown he is entitled to overtime pay which the Court allows at a total of Kshs. 79,183.***

12. ***The prayer for refund of uniform allowance is granted as conceded, as Kshs. 2,500.***

13. ***Certificate of Service to issue.***

14. The Respondent has been quite helpful in settling this dispute, conceding certain prayers, albeit only in the Closing Submissions. Similarly the Claimant must be lauded for not pursuing the question whether termination was valid and fair. Employees hardly leave out a prayer on compensation for unfair termination. Parties have assisted the Court in clarifying issues, and enabled the Court to write this short, crisp, and stress-free Judgment. There shall be no order on the costs and interest.

IN SUM, IT IS ORDERED:-

a) The Respondent shall pay to the Claimant notice pay, wages for days worked in June 2015, underpayment of wages, house allowance, overtime pay, and uniform refund, all totaled at Kshs. 134,852.

b) Certificate of Service to issue.

c) No order on costs and interest.

Dated and delivered at Mombasa this 19th day of June 2017

James Rika

Judge