



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 911 OF 2016
BETWEEN
ALFRED IMBWAGA MUSUNGU.....CLAIMANT
VERSUS
PROTECTIVE CUSTODY LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Asige Keverenge & Anyanzwa Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 30th November 2016. He avers he was employed by the Respondent as a Security Guard, at Mombasa. He resigned through a letter dated 13th June 2016, addressed to the Respondent.
2. He states his salary was increased to Kshs. 4,000 per month from a previous rate of Kshs. 3,500. In April 2008, it was increased to Kshs. 5,000 instead of Kshs. 10,000 per month, as provided for under the Employment Act 2007, he states.
3. His Claim against the respondent is for payment of the following:-
 - a) Arrears of salary from 15th August 2006 to 15th September 2016, (for 10 years at Kshs. 5,000 per month) amounting to Kshs. 600,000.
 - b) Gratuity at 15 days' salary for every year completed in service at Kshs. 50,000.
 - c) Leave over a period of 10 years at Kshs. 200,000.
 - d) Accumulated off-duties from August 2007 to July 2016 at Kshs. 299,700.

Total Kshs. 1,149,700

4. The Claimant also prays for interest at 14% per annum from the date of resignation till payment is made in full; costs; and any other suitable relief.
5. The Respondent did not file any Response to the Claim, or attend Court when required to do so. There are Affidavits of Service on record, indicating service upon the Respondent was effected on different dates.
6. The Claimant gave evidence *ex-parte*, on 29.3.2017. The Respondent subsequently took mention dates, but failed to attend Court. Proceedings were marked as closed, and matter scheduled for delivery of Judgment.
7. The Claimant told the Court he worked as a Night Guard. He was employed in 2006, earning a salary of Kshs. 3,500 per month. His last salary was Kshs. 5,000 per month, paid through Equity Bank. He was ailing, and advised by his Doctor to retire. He did so, but was not paid all his dues. He was advised by the Labour Office he was underpaid, and ought to have been paid Kshs. 10,000 per month.

The Court Finds:-

8. The evidence by the Claimant is unchallenged. His rate of monthly pay, at Kshs. 5,000 was below the minimum payable to Night Guards. The relevant instrument justifying this position would be the General Wage Order, made under the Labour Institutions Act 2007, not the Employment Act 2007 as averred in the Statement of Claim.
9. Gratuity is justifiable under the Wage Order applicable to Private Security Services Industry, as is the claim for rest days.
10. In the absence of the Respondent from the Court, and the absence of any evidence countering Claimant's overall position, the Court sees no reason to interfere with the figures tabulated by the Claimant, or to decline any part of the Claim.

IT IS ORDERED:-

- a) The Claim is allowed in the total sum of Kshs. 1,149,700.***
- b) Costs to the Claimant.***
- c) Interest allowed at 14% per annum from the date of resignation, 14th September 2016, till payment is made in full.***

Dated and delivered at Mombasa this 24th day of October 2017.

James Rika

Judge