



**REPUBLIC OF KENYA**  
**IN THE EMPLOYEMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 858 OF 2015**

BETWEEN

ABDI ALI OMAR.....CLAIMANT

VERSUS

PENMAIN COMPANY LIMITED....RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

*Oyugi Kitoo & Company Advocates for the Claimant*

*Asige Keverenge & Anyanzwa Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 12<sup>th</sup> May 2015. He states he was employed by the Respondent Company as a Watchman in May 2010. He was assigned duty at Two Fishes Hotel in Ukunda. He worked until March 2014 when he resigned. He earned a monthly salary of Kshs. 6,500. He states he was not paid for excess hours worked at Kshs. 652,735; underpayment at Kshs. 96,187; house allowance Kshs. 60,000; and gratuity at Kshs. 12,000- total Kshs. 820,923.

2. The Respondent filed its Statement of Response on 17<sup>th</sup> December 2015. It is conceded the Claimant was employed by the Respondent in the position and for the period indicated in the Claim. The Claimant's rate of monthly salary and the fact of his resignation are not contested. The Respondent states the Claimant resigned after the Respondent offered to assign him work at a different Company. His Claim has no foundation. The Respondent urges the Court to dismiss the Claim with costs to the Respondent.

3. Parties consented to have the dispute considered and determined on the strength of the record. The Claimant filed his Submissions on 20<sup>th</sup> September 2017. The Respondent appears not to have filed Closing Submissions.

**The Court Finds:-**

4. The Claimant was employed by the Respondent as a Watchman at Ukunda, earning a salary of Kshs. 6,500 per month. He worked from May 2010, up till March 2014 when he resigned.

5. He has not shown the Court that he worked excess hours, to justify his claim for Kshs. 652,735. There is no legal notice availed to the Court, showing underpayment. Similarly he has not supplied evidence or any other material to support the prayers for house allowance and gratuity. In all, the Court is not persuaded that any aspect of his prayers has support in evidence. ***The Claim is dismissed, with no order on the costs.***

Dated and delivered at Mombasa this 10<sup>th</sup> day of November 2017.

James Rika

Judge