



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 182 OF 2016

JOHN KARAGO NDIRANGU..... CLAIMANT

VERSUS

COBRA SECURITY COMPANY LIMITED RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 3rd November, 2017)

JUDGMENT

The statement of claim was filed on 01.09.2016 through Waweru Macharia & Company Advocates. The claim is for judgment against the respondent for:

- a) Underpayment Kshs. 57, 624.00.
- b) Annual leave 21 days Kshs. 7, 081.00.
- c) Off duty for 8 months making 32 days Kshs. 10, 790.00.
- d) House allowance for 14 months Kshs.21, 000.00.
- e) Total Kshs.96, 495.00.
- f) Certificate of service.
- g) Costs of the suit.
- h) Any other or further relief as the court may deem fit to grant.

The memorandum of response was filed on 03.10.2016 through Muchiri Wa Gathoni & Company Advocates. The respondent prayed that the statement of claim be dismissed with costs.

It is not in dispute that the respondent employed the claimant as a security guard through the respondent's Nyeri branch at a monthly salary of Kshs. 6,000.00 until 26.08.2015 when the claimant resigned from employment.

The only issue for determination is whether the claimant is entitled to the prayers as made. The court makes findings as follows:

- a) As submitted for the respondent the claim for underpayment was based on the Regulation of

Wages (General) Amendment Order, 2015 which became effective on 01.05.2015 and the claimant is awarded **Kshs. 20, 609.00** for underpayment as submitted for the respondent being for 3 months and 25 days of underpayment. Similarly and as submitted for the respondent, he is awarded **Kshs.6, 514.75** for house allowance under the same Order.

b) The claimant's evidence was that he was never given annual leave for the 14 months of service. He was entitled to leave as per section 28 of the Employment Act, 2007 and is awarded **Kshs. 7, 081.00** as prayed for.

c) The claimant is entitled to a certificate of service.

d) The claimant prayed for pay for off days due but not taken. He testified he was not given offs and there is no reason to doubt the same. He is awarded **Kshs. 10, 790.00** as prayed for.

e) Finally, the court returns that the discharge signed by the claimant on 02.04.2016 did not operate to bar the claimant from making claims of minimum statutory protections and the court follows **Simon Muguku Gichigi –Versus- Taifa Sacco Society Limited [2012]eKLR** where **Ndolo J** held that parties are expected to act within the law and an employer cannot circumvent his obligations to an employee by producing a form of discharge executed by the employee, thus, **“If the law is not followed, no form of discharge can cure the irregularity.”**

In conclusion judgment is hereby entered for the claimant against the respondent for:

a) The respondent to pay the claimant **Kshs.44, 994.75** by 15.12.2017 failing interest at court rates to run thereon from the date of resignation till full payment.

b) The respondent to deliver the certificate of service by 15.12.2017.

c) The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 3rd November, 2017.**

BYRAM ONGAYA

JUDGE