



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 1365 OF 2014**

**PETERSON MAKORI.....CLAIMANT**

**VERSUS**

**HESBON ONYANGO.....RESPONDENT**

**JUDGMENT**

1. The claimant averred that he was employed by the respondent as a security guard from October, 2001 at a salary of Kshs.7,500/= per month. He worked until 30<sup>th</sup> June, 2013 when he claims his services were unfairly terminated. He demanded his dues from the respondent but was never paid. He therefore sought judgment against the respondent for Kshs.250,392.05 plus twelve month's salary as compensation for unfair dismissal.
2. The respondent denied the claimants claim stating in the main that the claimant was never his employee and if at all he was he was a casual worker and all his dues were fully paid when he left employment.
3. In his brief evidence in Court, the claimant stated the respondents moved to Lavington and gave the Mountain View house to an agent to let out. The new tenant when moved in did not need his services so he left employment.
4. The respondent on his part stated that he knew the claimant from around 2011. It was his evidence that he and his wife used to work out of the country and when both of them were away the claimant could be called as an additional security to their house at Mountain View. In March, 2013 they moved out to Lavington and the claimant was called to watch over the house but continued to do so when a new tenant moved in and without their knowledge.
5. He stated that the claimant could guard for a week, a weekend and never a month. His pay according to the respondent was Kshs.150/= per day increased to Kshs.250/= per day by the time he left.
6. The evidence by both the claimant and the respondent was scanty but what is discernible is that the claimant and the respondent were in an employer-employee relationship even if intermittently the aggregate of which exceeded one month. The cessation of the relationship is therefore governed by section 37 of the Employment Act.
7. In terminating the claimant's services, he was entitled to one month's notice and service pay for each

complete year of service. The claimant worked for the respondent from 2001 to 2013 June. This was a period approximately twelve years.

8. The Court therefore awards him his dues as follows:-

	<u>Kshs.</u>
a. One month's salary in lieu of notice .....	7,500.00
b. Service pay at the rate of 15 days wages for each complete year of service (11 years).....	41,250.00
c. Four months pay for unfair termination.....	<u>30,000.00</u>
	<u>78,750.00</u>

4. Costs of the suit

9. It is so ordered.

Dated at Nairobi this 26<sup>th</sup> day of February 2016

Abuodha J. N.

Judge

Delivered this 18<sup>th</sup> day of March 2016

**In the presence of:-**

.....for the Claimant and  
.....for the Respondent.

Abuodha J. N.

Judge