



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 594 OF 2014**

**TITUS CHEPKURUI .....CLAIMANT**

**V**

**CORNER SECURITY SERVICES LTD.... RESPONDENT**

**JUDGMENT**

1. This is an undefended Cause. According to an affidavit of service sworn by one Ferdinand Okira on 29 January 2015, the Respondent's Branch Manager Mr. Munyane was served with Notice of Summons on 3 December 2014.
2. A Response therefore ought to have been filed by 18 December 2014, but none is on record.
3. On 4 February 2015, the Court fixed the hearing for 16 December 2015, and the Claimant was directed to serve a hearing notice.
4. An affidavit of service sworn by Kennedy Wesonga and filed in Court 15 December 2015 attests to service of hearing notice which was duly acknowledged by stamping. Despite the service, the Respondent did not attend the hearing.
5. The Claimant testified and stated that he was employed by the Respondent on 23 January 2005 as a security guard and that he served until 5 January 2012.
6. On the conditions and terms of service, he stated that he was reporting to work at 6.00am and would leave at 6.00pm for day shift, and 6.00pm to 6.00am for night shift; that he worked during public holidays; that he was not paid overtime and that he was paid monthly wages of Kshs 4,500/- throughout the employment without any raise and that this was below the prescribed minimum wages for security guards.
7. The Claimant cited Legal Notices Nos 42 of 2005, 38 of 2006, 70 of 2009, 98 of 2010 and 70 of 2011 in the pleadings.
8. The Claimant's testimony remains unchallenged and uncontroverted and the Court therefore finds that there are no real disputes of facts and that the dismissal was unfair.
9. It was incumbent upon the Respondent to prove the reasons for the dismissal (section 43 of the Employment Act, 2007) and that the reasons were valid and fair (section 45 of the Act). The Respondent did not appear in Court to discharge that burden.

**Appropriate remedies**

10. There being no disputed facts, the Court finds that the Claimant is entitled to the remedies as sought.

**Conclusion and Orders**

11. The Court finds and holds that the dismissal of the Claimant was unfair and awards him and orders the Respondent to pay him

a. 1 month pay in lieu of Notice	Kshs 6,999/-
b. Underpayments	Kshs 171,253/20
c. Normal overtime	Kshs 251,169/22
d. Off duties	Kshs 170,485/63
e. Public holidays	Kshs 51,504/42
f. Leave	Kshs 32,970/30
g. Gratuity	Kshs 16,600/-
h. Compensation	Kshs 96,550/20

TOTAL            **Kshs 797,531/37**

12.No order as to costs.

**Delivered, dated and signed in Nakuru on this 3<sup>rd</sup> day of May 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Ms. Kerubo instructed by Korongo & Co. Advocates

For Respondent did not participate

Court Assistant Mwangi S