



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1683 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 27th July 2016)

DICKSON MAINA MWANGI CLAIMANT

VERSUS

TARGET GUARDS LTD RESPONDENT

JUDGMENT

1. The Claimant filed his Claim on 22nd August, 2015, seeking damages for constructive dismissal, underpayment and unpaid leave days.
2. He states that he was employed by the Respondent on 15.3.2008 as a night watchman earning a salary of Shs. 8,500/= per month an equivalent of Shs. 7.10 per hour. He states that his work hours started from 6.00 pm to 6.00 am daily without any off days, overtime, public holidays, annual leave and house allowance.
3. He avers that on or about 24.5.2015, he fell sick while on duty and reported the matter on phone to the Operations Manager who sent another guard for replacement in the morning after his shift was over. He alleges that he went to hospital on 25.5.2015, and did not report to work that evening. He was admitted at Mathare North CTU Hospital upto 28.5.2015, thereafter proceeded to his rural home to recuperate and all along the Respondent was well aware of his whereabouts.
4. The Claimant further states that he was called by the Respondent to collect his salary for May, 2015 of Shs. 6,400/= which he signed for less Shs. 2,100/=. He then sought leave as he had not fully recovered which leave was denied forcing him to verbally resign.
5. It is the Claimant's contention that since employment he was never paid any house allowance and/or given annual leave or allowance thereof. He also seeks gratuity for the six years served, twelve months compensation for wrongful and/or unfair termination and balance of underpayments as enumerated in Legal Notices Nos. 94/2004, 70/2009, 98/2010, 64/2011, 71/2012 and 19/2013. The Claimant prays for his claim to be allowed as drawn.
6. The Respondent did not put up a defence and the matter proceeded as undefended.
7. Having considered evidence of the Claimant, the issues to determine are:

1. Whether Claimant resigned or was terminated.

2. If terminated/resigned whether due process was followed.

3. What remedies if any the Claimant is entitled to.

8. On the 1st issue, the Claimant has told Court that he resigned verbally after his attempt to get sick leave was denied. This was on 30/5/2015.

9. The Claimant's insistence that he was terminated is an exaggeration and he is therefore not entitled to damages for unfair termination.

10. Having found that the Claimant resigned I have not found any other evidence to link the Claimant to the Respondent as proof of any employment relation.

11. There is no for instance even an employment identity card or any other evidence to link Claimant to Respondent. Despite the fact that this case proceeded for formal proof, I find that the Claimant has not proved his case and I dismiss it accordingly.

Read in open Court this 27th day of July, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for both parties