



**REPUBLIC OF KENYA**

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

**CAUSE NO 310 OF 2014**

**JOSEPHAT NYAKERIGA ASIAGO.....CLAIMANT**

**VERSUS**

**GUARDEX SECURITY SERVICES LTD.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant's claim brought by Memorandum of Claim dated 3<sup>rd</sup> March 2014 and filed in Court on even date is for payment of hospital bills incurred pursuant to a work related injury.
2. The Respondent filed a Statement of Defence on 18<sup>th</sup> March 2014 to which the Claimant responded on 16<sup>th</sup> April 2014. At the hearing the Claimant testified on his own behalf and Anne Wambura Kimunya testified for the Respondent.

**The Claimant's Case**

3. The Claimant states that he was employed by the Respondent as a Security Guard at a monthly salary of Kshs. 7,800 effective February 2013. He was not issued with a letter of appointment.
4. The Claimant was assigned to work at Varsan Enterprises where he was charged to man the gate. On 3<sup>rd</sup> March 2013 the gate the Claimant was manning was hit by a water tanker thus causing injury to the Claimant. He was admitted at PCEA Kikuyu Hospital where he remained until 12<sup>th</sup> November 2013. He incurred a bill of Kshs. 604,784 which he claims from the Respondent. He also claims salary for eleven (11) months.

**The Respondent's Case**

5. In its Statement of Defence filed in Court on 18<sup>th</sup> March 2014, the Respondent admits having employed the Claimant as a Security Guard from mid February 2013 but denies the salary figure of Kshs. 7,800 pleaded by the Claimant.
6. The Respondent states that the Claimant had worked for less than a month when he was involved in an accident. Regarding the accident, the Respondent avers that the Claimant's claim lies in tort against the owner of the tanker which caused the accident and not against the Respondent.
7. The Respondent avers that its contract with the Claimant did not include an undertaking to pay the Claimant's medical bills. According to the Respondent, the Claimant ceased to be its employee on 3<sup>rd</sup>

March 2013 on health grounds.

8. The Respondent further states that the owner of the water tanker that caused the accident took responsibility for the accident and offered to pay the Claimant's medical bills, an offer that was rejected by the Claimant's family. The Respondent denies owing the Claimant any money in unpaid salaries.

### **Findings and Determination**

9. The Respondent's defence to the Claimant's claim is based on the fact the Claimant was injured by a third party tanker. It is however not in dispute that at the time of the injury the Claimant was on duty on an assignment given by the Respondent. The accident was therefore work related and the Respondent was under a legal duty to refer the Claimant to the Director for Occupational Safety and Health for assessment.

10. In light of the failure by the Respondent to discharge its obligation, the Court must itself refer the Claimant for assessment. The Director for Occupational Safety and Health is directed to file his report in Court within the next sixty (60) days from the date of this judgment.

11. The Court withholds its ruling on the other heads of the claim pending receipt of the report by the Director for Occupational Safety and Health.

12. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER 2016**

**LINNET NDOLO**

**JUDGE**

### **Appearance:**

Mr. Musyoka for the Claimant

Mr. Mwangi for the Respondent