



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**CAUSE NO. 41 OF 2013.**

**FRANCIS OKARIDI OJUMA.....CLAIMANT**

**VERSUS**

**PATRIOTIC GUARDS LIMITED.....RESPONDENT**

Claimant in Person

**JUDGEMENT**

1. By a memorandum of claim dated 27<sup>th</sup> November, 2012 the Claimant seeks compensation for wrongful dismissal and payment of terminal benefits to wit;
  - a. Unpaid salary for 7 months at Kshs 6,640 per month in the sum of Kshs 46,480;
  - b. 11 days worked in October 2011 in the sum of Kshs 2,434,
  - c. Balance of salary for December 2009 in the sum of Kshs 2,140,
  - d. Balance of salary for April 2011 in the sum of Kshs 1,640;
  - e. Service payment for 9 years calculated at 15 days salary for each completed year of service in the sum of Kshs 29,880; and
  - f. Unpaid NSSF dues in the sum of Kshs 23,600

**Facts of the Case**

2. From the averments in the memorandum of claim and oral testimony by the Claimant, the Claimant resigned from employment by a letter dated 13<sup>th</sup> October, 2011 and he stopped working.
3. The Respondent did not file a statement of defence to the memorandum of claim. An affidavit of service sworn to by Charles Mutua Mwanzi, a process server of the High Court of Kenya was filed on 19<sup>th</sup> March, 2013.
4. In the Affidavit it is stated that the process server on 30<sup>th</sup> January 2013, accompanied by the Claimant served the memorandum of claim and notice of summons on the Respondent at their offices located along Mwingi Road direct opposite Gatundu Close, Lavington.
5. The documents were served on a Mr Kigen, the Managing Director of the Respondent who was well known to the Claimant. Mr Kigen acknowledged receipt by appending his signature on a copy thereof.
6. An amended statement of claim was also served on the Respondent by the Claimant in person on

29<sup>th</sup> August, 2014 on one Mr Benson Kiprotich at the offices of the Respondent on Kilimani Road. Mr Kiprotich acknowledged receipt by signing and dating the Claimant's copy which was returned duly served.

7. M/s Ndirangu Kamau Advocates entered appearance on behalf of the Respondent but the advocate did not file any statement of defence nor attend the hearing of the case.
8. The Advocates were served with a mention notice on 6<sup>th</sup> February, 2013 to attend court on 26<sup>th</sup> February, 2015 but the Advocates failed to attend court when the court gave the matter a date for formal proof on 7<sup>th</sup> May, 2015.
9. The court is satisfied that proper service was effected on the Respondent and the Advocates on record and the Respondent was in default of filing a defence and attending the hearing of the matter without any justification.
10. The court is also satisfied that the Claimant has proved on a balance of probabilities that he worked for the Respondent as claimed and was not paid terminal benefits due to him upon his resignation from employment on 13<sup>th</sup> October, 2011 set out in the amended statement of claim dated 30<sup>th</sup> July, 2013.
11. The claim for compensation for wrongful dismissal has no basis whatsoever and the same is dismissed with costs.
12. The court awards the Claimant as follows;
  - a. Arrears salary for 7 months in the sum of Kshs 46,480
  - b. Unpaid salary for 11 days in October, 2011 in the sum of Kshs 2,434
  - c. Balance of salary for December 2009 in the sum of Kshs 2,140
  - d. Balance of salary for April 2011 in the sum of Ksh 1,640 and;
  - e. Service gratuity for the 9 years worked by the Claimant in the sum of Kshs 29,880; and
  - f. Refund of unremitted NSSF deductions in the sum of Kshs 23,600 for the months stated in the amended statement of Claim
13. Total award is Ksh 106,174/=. The award is payable with interest at court rates from date of this judgement till payment in full.
14. The Respondent is to pay costs of the suit.

**Dated and Delivered at Nairobi this 31<sup>st</sup> day of July, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**