

REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1888 OF 2014

PATRICK MAKOKHA MAINA.....CLAIMANT

VERSUS

GARDA SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant sued his erstwhile employer and sought payment of his terminal dues. In his suit filed on 27th October 2014, the Claimant averred that he was employed by the Respondent as a security guard on 4th February 2008 and was later on 1st May 2008 promoted to supervisor. He earned Kshs. 7,000/- a month after deductions. He averred that he was dismissed after he requested his leave days. He thus sought payment of one month notice Kshs. 7,000/-, leave pay Kshs. 30,624.99, house allowance Kshs. 78,750/- and compensation for unfair termination Kshs. 84,000/-.
2. The Respondent was duly served with the suit papers and failed to enter appearance or file a defence. The case therefore proceeded as an undefended cause.
3. The Claimant testified on 29th July 2015. He stated that he was employed as a guard by the Respondent and that the proprietor was Patrick Ooko and that his wife Judy Aende was the manager at the time. He testified that he had worked for 6 years and sought to go on leave but was denied the opportunity. He was summoned to the office on 2nd February 2014 and told that because he had been demanding to go on leave he could do so and return on 2nd May 2014. He sought his leave allowance and was advised to see the manager. She told him to proceed on leave and that he would be paid his leave allowance alongside his monthly salary. He received Kshs. 8,000/- on 7th April 2014 and sought to know from the office if this was the leave allowance or his salary. He was told to go for the rest of his leave and return so that they could talk. He resumed duty at 8.00am on 2nd May 2014 as advised and found Mr. Patrick Ooko the proprietor of the Respondent. The Claimant was advised to wait for Mr. Ooko as the proprietor was going to City Cabanas and would be back. He waited till 3.00pm and Mr. Ooko did not return. Judy Aende came and asked if the Claimant and Mr. Ooko had met and he told her that they had met. She called and spoke to her husband in Luo and was told that the proprietor advised the Claimant through her that the Claimant's services had been terminated on 2nd February 2014. She asked him to return on 6th May 2014 to collect his leave allowance. On 6th May he returned and did not find any of the two and on 7th May returned to the Respondent's offices and found Mr. Patrick Ooko who did not speak to him but extracted cash from the desk and paid him Kshs. 4,000/-. He was told that his employment was over and he was not to be seen at the offices again. He sought the payment of the dues he was entitled to as the amounts on the letter of employment were not paid and a sum of Kshs. 3,800/- was deducted each month. His salary was agreed at 10,800/- a month and there was Kshs. 3,800/- deducted for uniform each month. He testified that the employment letter was signed by employee in acceptance but retained by the Respondent. The Claimant asked for a letter of dismissal but was told to go and come for the letter on another day. He sought to know how this would be done as he had already been told not to return to the offices. He returned on 14th May and did not get the letter sought and was told he could not even wait for the proprietor as there

were firm instructions not to allow him into the offices. He thus sought legal advice from Kituo Cha Sheria who wrote a demand letter. The Respondent's counsel M/s Kanyiri responded to this letter and advised that their client had adhered to the law in the termination. In the letter annexed to the Claimant's memorandum of claim, the Respondent's lawyers offered to negotiate the matter with a view to settling it out of Court. Nothing came out of this offer and the suit inevitably progressed to formal proof as it was undefended in spite of notice. The lawyer was served with the notices for hearing and there was no representation at all.

4. The Claimant earned Kshs. 10,800/- a month and out of this sum some Kshs. 3,800/- was deducted as uniform each month. That was manifestly illegal as there is no basis for the deduction. What uniform costs 3,800/- each month? He was not given notice and neither was he paid his leave pay of Kshs. 30,624.99. He sought house allowance of Kshs. 78,750/-. Section 35 of the Employment Act provides that house allowance should at minimum be 15% of the basic pay. He is entitled to Kshs. 136,080/- as house allowance for the duration of his employ. The deduction of Kshs. 319,200/- over his employment was unfair but he made no claim on this. The dismissal was manifestly unfair. Granted the conduct of the Respondent and applying the provisions of Section 49(4) as read with Section 50 of the Employment Act to this scenario, the Claimant would be entitled to fair compensation which I assess to be 12 months Kshs. 129,600/-.
5. In the final analysis I enter judgment for the Claimant against the Respondent for:-
 - a. Payment in lieu of notice Kshs. 10,800/-
 - b. Leave pay Kshs. 30,624.99
 - c. House allowance Kshs. 136,080/-
 - d. 12 months compensation Kshs. 129,600/-
 - e. Certificate of service.
 - f. Costs of the suit assessed at Kshs. 15,000/-

Orders accordingly.

Dated and delivered at Nairobi this 31st day of July 2015

Nzioki wa Makau

JUDGE