



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 142 OF 2014

PETER NDUNGU KABOGO..... CLAIMANT

VERSUS

**JOHN MCTOUGH T/A SECURITE SECURITY INTERNATIONAL.....
RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 30th October, 2015)

JUDGMENT

The claimant filed the statement of claim on 30.10.2014 through J.N Mbuthia & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. One month salary in lieu of termination notice Kshs. 7,846.00.
- b. Accrued annual leave for 11 years Kshs. 60, 414.20.
- c. Overtime worked not paid for 2520 hrs Kshs. 131, 812.80.
- d. Rest days worked not paid Kshs. 21, 968.80.
- e. Public holidays for 70 days Kshs. 18, 307.30.
- f. Severance pay for 7 years Kshs. 27, 461.10.
- g. Underpayment of wages for 84 months Kshs. 407, 064.00.
- h. Compensation for lost employment 12 months' salaries Kshs. 94, 152.00.
- i. 2 set of uniforms at Kshs. 2, 000.00 x 11 years Kshs. 22, 000.00.
- j. ½ bar soap p.m at Kshs. 20 each x12months x 11 years Kshs. 2, 640.00.
- k. TotalKshs. 793, 666.20.
- l. Certificate of service.

The respondent filed on 23.02.2015 the response to the claim through Okemwa & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The suit was fixed for hearing on 13.10.2015 as per directions given by the court on 24.06.2015 in presence of counsel for the claimant and absence of counsel for the respondent and the respondent. The claimant served the hearing notice on 30.06.2015 way before 3.07.2015 as ordered by the court. Despite the service the respondent and respondent's advocate failed to attend court at the time and date scheduled for the hearing. The hearing of the claimant's case proceeded ex-parte.

In the opening remarks at the hearing, counsel for the claimant dropped the prayer for 12 months' compensation because the claimant resigned from employment. The claimant also dropped the prayer for 2 sets of uniform and ½ bar soaps because there was no relevant evidence. The claimant testified to support his case as follows:

1. The respondent took him for employment on 3.07.2001 to serve as a night guard and deployed him at the Kenya Credit Traders Shop at Murang'a town.
2. The claimant resigned in writing sometimes in October 2012 and he resigned because he was underpaid. The respondent had denied the claimant an increment despite discussing the issue of underpayment. Also the area covered was big and the respondent refused to employ a second guard to assist the claimant and so the claimant decided to resign from that employment.
3. Throughout service the claimant was not accorded off duty or rest days, annual leaves and was not given any terminal dues upon the resignation.
4. The employment was oral as no letter of appointment was issued.
5. The dispute was reported to Labour Officer at Murang'a and the letter issued by the Labour Officer setting out the claims is dated 10.05.2012.

The court has considered the pleadings and the claimant's evidence. The claimant says he resigned sometimes in October 2012. The suit was filed on 30.10.2014. Under section 90 of the Employment Act, 2007 where the claim is a continuing injury or damage the suit must be filed within 12 months next after the cessation thereof. The claimant is claiming for unpaid annual leave, off or rest days, underpayment and overtime throughout his service. The court finds that the claims were continuing injuries or damage so that the claimant ought to have moved the court promptly within 12 months upon cessation of the same upon his resignation sometimes in October 2012. Accordingly, the court finds that the suit was time barred under section 90 of the Act. As the respondent and his advocate did not attend the hearing, the court finds that each party shall bear own costs of the suit.

In conclusion, the claimant's suit is dismissed and each party to bear own costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 30th October, 2015.

BYRAM ONGAYA

JUDGE