



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 183 OF 2013

MESHACK BARAZA IPARACLAIMANT

VERSUS

INTER SECURITY SERVICES LIMITEDRESPONDENT

M/S S. M. Kitonga for Claimant

JUDGMENT

1. This claim which is undefended was brought by a memorandum of claim dated 31st January 2013 on 8th February 2013.

The Claimant prays for payment:

- i. of overtime in the sum of Kshs. 675, 155;
- ii. in lieu of leave in the sum of Kshs. 44,100;
- iii. for unpaid 389 weekly offs in the sum of Kshs. 116,700 ;
- iv. service charge of Kshs. 31,500;
- v. interest on the award and costs of the suit.

2. **Facts of the claim:**

The claimant was employed by the Respondent as a security guard on 20th January 2005 and worked continuously until the 31st July, 2012.

He earned monthly salary of Kshs. 9,000 per month paid via account number 0240190665532 held at Equity Bank.

3. That the Claimant was not issued with an appointment letter but he worked on night shifts from 6 p.m. to 6 a.m. every day without any day off. He has annexed to the claim a certificate of service dated 7/9/2012 confirming the period he served the Respondent and a letter of resignation

dated 22/9/2012.

The resignation was actuated by three night robberies at his station of work in which he barely escaped with his life.

4. The Claimant was entitled to 21 days leave per year but was not allowed to take leave for seven years. He was not paid in lieu of 1 off day per week which he was not allowed to take and was not paid severance pay for every completed year of service at the rate of 15 days salary per year.

5. That inspite of working in excess of 8 hours a night he was not paid overtime. He has attached as Appendix 3 the overtime schedule running from page 9 to page 72.

6. The claims are not controverted due to the default by the Respondent inspite of service of the memorandum of claim by Mr. Isaac O. Oichoe, a duly authorized Court Process Server on 15 February 2013 at the Respondent's office along Masaba road off Bunyala road and next to NIC Bank at about 1 p.m.

The documents were received by one **Elizabeth Wanjiru** on behalf of the Respondent who acknowledged receipt by affixing her signature on the reverse of the Principal copy. She also stamped and signed the bottom of the notice of summons returned and duly served.

7. Affidavit of serve dated 18/2/2013 was filed on 4th June 2013.

8. A hearing notice dated 16th April 2013, setting the matter for hearing on 4th November 2013 was duly served on the Respondent on 29th October 2013 and an Affidavit of service was filed by one **Justus Nunda Mose** a Court clerk with Kitonga & Co. Advocates.

9. The Respondent did not enter appearance, file a response, nor attend the hearing of the matter.

10. The matter proceeded *ex parte* on 4th November 2013 and the Court is satisfied that the Claimant has established the claims made against the Respondent on a balance of probabilities.

11. Accordingly, judgment is entered in favour of the Claimant as follows:

1. Kshs. 175,155/= being payment of unpaid overtime;
2. Kshs. 44,100/= being payment in lieu of untaken leave;
3. Kshs. 116,700/=being payment in lieu of weekly leave days not taken;
4. Kshs. 31,500/= being severance pay 15 days salary for each completed year of service.

Total award is Kshs. 870,080/=.

12. The Respondent is to pay the total sum of Kshs. 870,080/= with interest at Court rates from the date of this judgment till payment in full.

The claimant is also awarded the costs of the suit.

Dated and delivered at Nairobi this 26th day March, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE