



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA

(BIMA TOWERS)

CAUSE NO. 38 OF 2014

GEOFREY MBOLU MWOLOLO.....CLAIMANT

v

NORTHWOOD SECURITY FIRM.....RESPONDENT

JUDGMENT

1. Geoffrey Mbolu Mwololo (Claimant) was employed by Northwood Security Firm (Respondent) around March 2012 as a security guard at a salary of Kshs 4,000/- per month. The Claimant was not issued with a letter of appointment. He was issued with a uniform for which he was deducted Kshs 100/- per month to be refunded when he returned the uniform.
2. According to the Claimant, he served the Respondent for some 16 months after which he resigned due to a medical condition. The Claimant alleges he was underpaid and seeks underpayments, house allowance, service pay, leave for 2012 and refund of uniform deductions.
3. In its Response filed on 23 May 2014 the Respondent denied that the Claimant was its employee or that it unfairly terminated the services of the Claimant. The Respondent also pleaded that the Claimant deserted duty.
4. It is necessary to state at the outset that this is not a complaint for unfair termination and therefore the issue of desertion does not arise. The complaint relates to the terms and conditions of service which applied.
5. Similarly, the plea that the Claimant was not employee of the Respondent is misplaced. The Respondent's witness statement by Edwin Wanyonyi admits the Claimant was an employee of the Respondent assigned to Sisters of Our Lady of Charity.
6. The Court will proceed to look at the individual claims put forward by the Claimant.

Deduction on uniforms

7. The Claimant sought Kshs 1,600/- on account of refunds of money deducted from his wages to ensure he would return his uniform on separation. In the witness statement of Edwin Wanyonyi, it was stated that the Claimant had not gone to collect the refund. The same was mentioned in testimony.
8. The Claimant is entitled to refund of this sum on return of the uniform.

Leave

9. The Claimant, although pleading a claim for leave for 2012 did not lead any evidence at all to lay a basis for the claim.
10. Although the law on paid annual leave is clear, a party cannot just plead and leave it at that and

expect the Court to find in his favour.

11. The Claimant has not met the very low threshold expected of him in regard to the claim for leave.

House allowance

12. According to the Respondent's witness, the Claimant had been provided with a servants quarter by the Sisters of Our Lady of Charity and so was not entitled to house allowance.

13. The Claimant on his part produced some receipts issued to him on account of rent totalling Kshs 13,500/-.

14. The Respondent was under a legal obligation to reduce the Claimant's contract into writing spelling out the terms and conditions of service. If he were provided with housing, it would have been easy to incorporate such a term in the contract.

15. The Court, on the basis of the material placed before it finds that the Respondent did not provide the Claimant with housing and should have paid him reasonable house allowance in lieu of housing. The claim for Kshs 13,500/- is thus merited.

Service pay

16. No evidence was placed before Court that the Claimant was a member of the National Social Security Fund or any other pension scheme. Pursuant to section 35(5) and (6) of the Employment Act, the Claimant is entitled to service pay.

17. Although the rate for calculating service pay has not been fixed by law, customarily it has been calculated at the rate of 15 days pay for each year of service.

18. The Claimant served for about 16 months. He claimed Kshs 2,799/- under this head though no evidence was led as to the formula used.

19. The Respondent did not challenge the same and the Court would award the Claimant the sum.

Underpayments

20. The Claimant initially sought Kshs 36,800/- as underpayments. In evidence he stated that he was entitled to Kshs 7,000/- per month and not the Kshs 4,000/- he was being paid. This was amended before hearing commenced to Kshs 73,680/-.

21. The Claimant was employed in March 2012. At that time, the applicable wages Order was Legal Notice No. 64 of 2011. The monthly minimum wage for a day watchman was set at Kshs 7,586/- exclusive of house allowance.

22. This monthly wage was applicable until 30 April 2012. The Claimant should have earned Kshs 15,172/- but was paid Kshs 8,000/-. For this period he was underpaid by Kshs 7,172/-.

23. From 1 May 2012 the minimum wage for a day watchman exclusive of house allowance was set at Kshs 8,579/80. This was through Legal Notice No. 71 of 2012.

24. The Claimant left around July 2013. He should have earned around Kshs 126,696/-. But because the Claimant was being paid Kshs 4,000/- per month he earned a total of Kshs 60,000/-. He was thus underpaid by Kshs 66,696/-.

25. The Claimant was thus underpaid by a total of Kshs 73,868/- and is entitled to this sum.

Conclusion and Orders

26. From the foregoing, the Court finds and holds that the Respondent underpaid the Claimant, and is obliged to pay his terminal dues and awards the Claimant and orders the Respondent to pay him

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|--------------------|---------------|
| a. Uniform refunds | Kshs 1,600/- |
| b. House allowance | Kshs 13,500/- |
| c. Service pay | Kshs 2,799/- |
| d. Underpayments | Kshs 73,868/- |

TOTAL Kshs 91,767/-

27.The Claimant to have costs of the Cause.

Delivered, dated and signed in open Court in Mombasa on this 27th day of June 2014.

Radido Stephen

Judge

Appearances

For Claimant Ms. Kedeki instructed by Kedeki & Co. Advocates

For Respondent Mr. Mwawasi instructed by Asige Keverenge & Anyanzwa Advocates