



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 660 OF 2013

BETWEEN

FRANCIS MALAI KINYILI..... CLAIMANT

VERSUS

INTER SECURITY SERVICES RESPONDENT

Rika J

CC. Mr. Edward Kidemi

Claimant Francis Malai Kinyili appearing in Person

No appearance for the Respondent

ISSUE IN DISPUTE: UNFAIR AND ULAWFUL TERMINATION

AWARD

1. The Claimant filed his Statement of Claim on 8th May 2013. The Respondent did not file any papers. The record indicates the Respondent was invited by the Claimant to schedule the dispute for the hearing. The invitation was date stamped and signed on 19th December 2013 by the Respondent, in acknowledgement of receipt. The Respondent did not turn up at the Court Registry to fix the hearing date. The Claimant fixed the date and served the Respondent with the Hearing Notice through a Process-Server. The copy of the Hearing Notice filed with the Affidavit of Service has the signature and stamp of the Respondent. The Hearing Notice was received on 14th February 2014 by Esther Wanja, described in the Affidavit of Service as the Company Secretary. The hearing was scheduled for 8th April 2014. The Respondent did not attend Court, and the Claimant gave evidence *ex parte*.

2. He testified he was employed by the Respondent in March 1997, as a Night Guard cum Loader. He was paid Kshs. 8, 276 per month. He was not issued a letter of employment. He retired in 2012. He claims he was not paid terminal benefits. He claims service pay at the rate of 15 days' salary for every year completed in service, amounting to Kshs. 72,000. He also seeks compensation at 12 months' salary for

what he terms as the refusal by the Respondent to pay him terminal dues.

The Court Finds and Awards:-

3. There is nothing to contradict the Claimant that he was employed by the Respondent as a Night Guard cum Loader in 1997, at a monthly salary of Kshs. 8,276. There is also no evidence to contradict the claim that the Claimant retired from employment in 2012, after 15 years of service.

4. He appears to have left employment voluntarily. There is no good reason shown by him why he should be paid compensation by the Respondent, having left work voluntarily. His contract was not terminated by the Respondent. He left voluntarily, and does not merit compensation under Section 49 of the Employment Act 2007.

5. The Claimant is entitled to service pay for the 15 years worked. There was no evidence given by the Respondent to show the Claimant was a beneficiary under any Social Security Plan. The Court grants him service pay at the rate of 18 days' salary for every year completed in service, as provided for under the Regulation of Wages [Protective Security Services] Order. This is computed as follows: Kshs. 8,276 divided by 26 working days = Kshs. 318 x 18 days = Kshs. 5,729 x 15 years= Kshs. 85,943. In sum:-

- a. ***The Respondent shall pay to the Claimant service pay in the sum of Kshs. 85,943 in full and final settlement of the Claim.***
- b. ***No order on the costs and interest.***

Dated and delivered at Nairobi this 25th day of June 2014

James Rika

Judge