



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NYERI**  
**INDUSTRIAL CAUSE NO. 134 OF 2013**

ANTONY MAINA KAGWI.....CLAIMANT

**VERSUS**

OTHAYA CONSTITUENCY

DEVELOPMENT FUND.....RESPONDENT

**JUDGMENT**

1. The claimant in this suit avers that he was employed by the respondent from 2009 as a night guard at a salary of Kshs.6,000 per month. He worked until 27th August, 2012 when he claims he was verbally terminated and was never paid his terminal dues. He contends that the dismissal was unlawful and unfair and therefore seeks compensation from this court. The heads of compensation the claimant seeks include:

- (a) ***House allowance.***
- (b) ***Under payment.***
- (c) ***Uniform allowance.***
- (d) ***Off days.***
- (e) ***Annual leave.***
- (f) ***Public holidays.***
- (g) ***3 months salary in lieu of notice.***
- (h) ***Medical allowance.***
- (i) ***Overtime.***
- (ii) ***Compensation for unlawful dismissal.***

2. The respondent neither entered appearance nor filed defence to this claim. Further at the trial the matter proceeded undefended with only the claimant giving evidence.

3. It was his evidence that his termination was as a result of asking for salary review and that upon termination he was not paid his terminal dues. He further testified that he never got any rest days

and that he was never paid any house allowance. By the time of his termination he stated that he had worked for 37 months.

4. Under the Employment Act, an employee is entitled upon termination to notice equivalent to the period next following when his pay is due. That is to say where salary is payable monthly, an employee is entitled to one month's notice of termination. Alternatively such employee may be paid salary commensurate with the notice period. Further it is a requirement of the Act that an employer provides housing or house allowance except in cases where an employee is paid a consolidated salary inclusive of house allowance. The house allowance has in practice been pegged at 1/3 of the basic salary.
5. From the foregoing and in view of the fact that the respondent never appeared to refute the claimant's claim, he is hereby awarded one month's salary in lieu of notice and 1/3 of his salary as house allowance.
6. The Employment Act prohibits unfair termination of employment. The respondent failed to appear before the court to give any reason or justification for terminating the claimant's employment. Where the court is of the opinion that employment has been unfairly terminated, it is empowered by the Act to award up to 12 months wages as compensation for unfair termination of employment. In this particular case and in absence of any justification from the respondent the court awards the claimant 8 months wages as compensation for unfair dismissal.
7. Regarding the question of the correct minimum pay, the applicable wages order at the time of commencement of this suit was the one of 2011 which fixed the wages for a night guard at Kshs.7,846.
8. In conclusion the court awards the claimant as follows:

	<i>Kshs.</i>	
<i>(i) One month's salary in lieu of notice</i>	<i>7,846</i>	
<i>(ii) House allowance for 37 months</i>	<i>96,755</i>	
<i>(iii) 8 months wages for unfair dismissal</i>	<i><u>62,768</u></i>	
		<i>167,369</i>
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9. This award shall be subject to applicable statutory deductions.
10. It is so ordered.

*Dated at Nyeri this 6th day of June, 2014.*

**ABUODHA N. J**

**JUDGE**

*Delivered in open Court in the presence of Claimant in person and in the absence of the Respondent.*

**ABUODHA N. J**

**JUDGE**

