



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NYERI**

**INDUSTRIAL CAUSE NO. 85 OF 2013(CONSOLIDATED)**  
**JOHN KARAGO NDIRANGU.....CLAIMANT**

**VERSUS**

**BABS SECURITY SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

1. This claim is consolidated with causes number 89, 90, and 91 since they involve the same respondent and arise out of the same facts.
2. In all the causes, the claimants were allegedly employed by the respondent as security guards.

**(A) Lydia Mumbi Machaira**

She states that she was employed until 22nd June, 2012 at a salary of Kshs.6,000 per month when she was dismissed without notice. She is consequently claiming:

- (i) Kshs.41,220 being unpaid dues.
- (ii) Kshs.108,276 as 12 months wages as compensation for unfair dismissal.
- (iii) Certificate of service.
- (iv) An order for remittance of statutory dues namely NSSF and NHIF.
- (v) Costs of the suit.

**(B) John Karago Ndirangu**

He claims he was employed by the respondent until 31st July, 2012 when he was dismissed without notice. He is consequently claiming:

- (i) Underpayment for 5 months in sum of Kshs.36,276.
- (ii) Weekly rest days Kshs.37,728.
- (iii) Annual leave Kshs.11,004.

- (iv) Unpaid wages Kshs.12,000.
- (v) 12 months salary as compensation for unfair dismissal.
- (vi) Certificate of service.
- (vii) An order for remittance of NSSF and NHIF dues deducted but not remitted.

**(C) James Gichuki Nyamu**

He states that he was employed until 30th June, 2012 when he was dismissed without notice. Consequently he claims:

- (i) Underpayments in the sum of Kshs.15,100.
- (ii) Weekly rest days Kshs. 6,288.
- (iii) Unpaid leave Kshs. 2,096.
- (iv) Unpaid wages Kshs. 5,165.
- (v) Kshs.108,276 as compensation for unfair dismissal.
- (vi) Certificate of service.
- (vii) An order for remittance of statutory dues namely NSSF and NHIF.

**(D) Irungu Githae**

He claims that he was employed as a security guard at a salary of Kshs.6000 until 30th June, 2012 when he was dismissed without notice. He consequently claims:

- (i) Kshs.87,919 as unpaid dues.
- (ii) One year wages as compensation for unfair dismissal.
- (iii) Certificate of service.
- (iv) An order for remittance of Statutory deductions.
- (v) Costs of the suit.

3. In a hybrid defence, the respondent denies the claimants' claims stating first of all that they were never employed by the respondent and if at all they were, which is denied they were casual employees for a period of not exceeding six months hence not entitled to any of the claims made.

4. From the pleadings, apart from John Karago Ndirangu, all the claimants aver that they were terminated in June, 2012. Ndirangu for his part avers that he was terminated on 31st July, 2012.

5. The respondent further avers that it paid the claimants according to law hence the issue of underpayment does not arise.

6. From the record, Counsel for the respondent appeared through Mr. Robert Macharia before me only once. This was on 26th November, 2013 when I made an order for consolidation.

7. When the matter came up for hearing on 26th March, 2014 only Mr. Macharia for the claimants

appeared. I therefore directed that in view of the brevity of the issue involved and show of lack of interest in the matter by counsel for the respondent he should file and serve submissions without receiving oral evidence.

8. Mr. Macharia in his submissions before court submits that the claimants were unlawfully terminated and that during their employment they were paid below minimum wage. Counsel submitted that an attempt was made to resolve the issue through the Labour Office but the respondent failed and or ignored to cooperate.

9. Under Section 43(1) of the Employment Act, the employer has a duty to prove the reasons for termination and where such employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

10. The respondent from its conduct has failed to prove that the termination of the claimants' employment was fair. They neither appeared in court nor filed any submissions. In the circumstances the court is left with no option but to deem the terminations unfair.

11. An employee who has been terminated wrongfully and or unfairly is entitled up to a maximum of 12 months wages as compensation in addition to other statutory awards. The court therefore awards each claimant 6 months salary as compensation for unfair dismissal. Regarding notice, the claimants were paid monthly hence are entitled to one month's salary in lieu of notice. The claim for leave will not be awarded since the claimants never served consistently for more than a year to earn leave.

12. Regarding the operational wage, Counsel for the claimants has brought to the attention of the court "The Regulation of Wages (General) Amendment Order" Legal Notice Number 63 of 2011 which sets the minimum wage at Kshs.7,846. The claimants were further entitled to house allowance which is set at 1/3 of the basic wage.

13. In conclusion, the court awards as follows:

- (i) One month's salary in lieu of notice.**
- (ii) Six months wages as compensation for unfair dismissal.**
- (iii) The difference between the basic minimum wage as per basic wage (L.N 63 OF 2011 ) and actual wages paid to each claim up to a period of 6 months.**
- (iv) The respondent to issue the claimants with certificates of service.**
- (v) Costs of the suit.**

14. Parties to liaise with Registrar of the Court to compute the actual figure due to each claimant in line with heads of compensation set out above.

15. 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 Ms Kahiga h/b for Mr. Waweru Advocate for the Claimants and in the absence of the Respondent.***

**ABUODHA N. J**

**JUDGE**