



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

**CAUSE NO. 1507 OF 2013**

*(Before D.K.N. Marete)*

**SAMUEL O. GAWO.....CLAIMANT**

Versus

**ALIBE SECURITY SERVICES.....RESPONDENT**

**JUDGEMENT**

This matter is in court vide a Memorandum of Claim dated the 17th September, 2013. The issue in dispute is therein cited as;

‘Wrongful and unfair termination of the Claimant’s services and failure by the Respondent to pay terminal benefits to the claimant’

The matter is not defended, or at all. The respondent is however served with the claim and other notices for hearing in accordance with practice and procedure.

The claimant’s case is that on the 1st May, 2005, he was employed by the respondent as a Security Supervisor at a salary of Kshs.8,000.00. He served diligently until he was wrongfully and unlawfully terminated from employment by the respondent. He therefore claims as follows;-

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|--|---------|
| 1. <i>One month in Lieu of Notice</i>          | 8,000   |
| 2. <i>Leave(8000/30x21x7 years)</i>            | 39,200  |
| 3. <i>Severance Pay(8000/30x15x7 years)</i>    | 28,000  |
| 4. <i>House Allowance(15/100x8000x7 years)</i> | 8,700   |
| 5. <i>Rest Days(8000x15x7 years)</i>           | 840,000 |
| 6. <i>Two months leave without pay</i>         | 16,000  |

<b>Total</b>	<b>939,900</b>
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and prays as follows;

- i. *The sum of Kshs.939,900 as particularized in paragraph 5 of the claim*
- ii. *Cost of the suit*
- iii. *Interest in (1) above*
- iv. *Any other relief as the Court may deem just.*

When the matter came for hearing on 11th June, 2014, the claimant submitted that the respondents were absent despite service. He further submitted that the respondents had refused to accept and acknowledge receipt despite service.

At the hearing, the claimant testified that he was employed on 1st May, 2005 and his services terminated on 8th January, 2013. On 1st August, 2013, he was sent on leave and when he reported back he was told that there was no work. He was not paid at all and therefore prayed for compensation as outlined in the claim. The claimant further testified that on termination, he approached the respondents director, one George Onyango Omollo, who fixed a meeting at Ambassador Hotel. The director called his brother for the negotiation meeting but they were not able to agree. He further testified that the respondent's manager is a police officer working at the Traffic Police, Gatundu Police Station. When the manager was approached by the claimant, he stated that he was awaiting this court's judgment so as to act on the same.

The issues for determination are therefore as follows;

1. Was there an employment of the claimant?
2. Whether there was termination of employment of the claimant by the respondent?
3. Whether the termination of the claimant's employment was wrongful, unfair and unlawful?
4. Whether the claimant is entitled to the relief sought
5. Who bears the costs of this claim?

The 1st issue for determination is whether indeed here was an employment relationship between the claimant and respondent. The claimant in his pleadings and evidence states that he was employed as a Security Supervisor by the respondent on 1st May, 2005 at Ksh.8,000.00. He does not indicate his date of termination in his pleadings.

The claimant adduces evidence of the events after his termination comprising of a reconciliatory meeting between him, the respondent's Director and the Director's brother at the Ambassador Hotel, which meeting bore no fruits and hence the institution of this suit.

The claimant's claim and testimony of employment is not supported by any documentary evidence with the exception of the letter of demand to the respondent. He does not call or adduce any further evidence of employment, or at all. It would therefore be difficult to infer an employment relationship in the absence of proof of the same.

I am warned of the provisions of section 9 of the Employment Act, 2007 which lays down the general provisions of a contract of service. It further provides that an employer who is party to a written contract of service shall be responsible for causing the same to be drawn up *et al* thereby imposing the duty to provide contractual documentation to the employer.

S.9 (1) *A contract of service –*

*(a) for a period of or number of working day which amount in the aggregate to the equivalent, of three months or more; or*

*(b) which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months;*

*shall be in writing.*

*(2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with sub-section (3)*

*(3) For the purpose of signifying his consent to a written contract of service an employee may*

*(a) sign his name thereof, of*

*(b) imprint thereon an impression of his thumb or one of his fingers in the presence of person other than his employer.*

*(4) Where an employee is illiterate or cannot understand the language in which the contract is written or the provisions of the contract of service, the employer shall have the contract explained to the employee in a language that the employee understands.*

Section 10 of the said Employment Act provides for employment particulars that should be incorporated into the employment contract as stipulated under section 9 above.

*10. (1) A written contract of service specified in section 9 shall state particulars of employment which may, subject to subsection (3) be given in instalments and shall be given not later than two months after the beginning of the employment.*

*(2) A written contract of service shall state-*

- a. the name, age, permanent address and sex of the employee;*
- b. the name of the employer*
- c. the job description of the employment;*
- d. the date of commencement of the employment;*
- e. the form and duration of the contract*
- f. the place of work;*
- g. the hours of work;*
- h. the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits;*
- i. the intervals at which remuneration is paid; and*
- j. the date on which the employee's period of continuous employment began, taking into account any employment with a previous employer which counts towards that period; and*
- k. any other prescribed matter.*

3.....

Whereas it is the onus of the employer to provide employment particulars relating to an employment contract, the employee is duty bound to, in circumstances like in the instant case adduce evidence in support of employment and the employment contract. We cannot wholesomely rely on section 10 of the Employment Act aforesaid to allow every situation and allegation of claim of employment by a party. It is also a cardinal principle of civil law that he who alleges must prove.

This being the position, I am inclined to dismiss this claim with no order as to costs. The other issues for

determination become spent by this virtue.

The claim is therefore dismissed with no order as to costs.

**Delivered, dated and signed the 25th day of July 2014.**

**D.K. Njagi Marete**

**JUDGE**

Appearances:

1.Claimant in person.

2.No appearance for the respondent.