



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**  
**(BIMA TOWERS)**  
**CAUSE NO. 12 OF 2014**

**JOHN BARASA WASIKE**

**CLAIMANT**

**v**

**LINDA SECURITY COMPANY LTD**

**RESPONDENT**

**JUDGMENT**

1. John Barasa Wasike (Claimant) filed a Statement of Claim against Linda Security Co. Ltd (Respondent) on 27 January 2014 seeking unpaid salaries, underpayments, offs, overtime and costs.
2. According to an affidavit of service sworn by one James Mwendwa on 5 March 2014 and filed in Court on 7 March 2014, the Respondent was served with Notice of Summons 28 January 2014.
3. Subsequently, the Cause was mentioned on 10 March 2014. The Respondent was not represented and it had not filed a Response. The Court being satisfied with the service of Notice of Summons fixed a hearing for 17 April 2014 with an order to the Claimant to serve the Respondent with a hearing notice. The hearing did not proceed on the fixed date.
4. The Cause was mentioned on 22 May 2014 and the Court fixed a new hearing for 12 June 2014 and directed the Claimant to serve the Respondent with a hearing notice.
5. After the Court had given the directions, a Mr. Ali Saidi Awadh who stated he was the Operations Manager of the Respondent stood up and addressed the Court. He stated that the Respondent had not been furnished with the pleadings and the Court directed the registry to give him copies.
6. On 12 June 2014, the Cause was called up for hearing and the Claimant was present while the said Mr. Ali Saidi appeared on behalf of the Respondent.
7. The Respondent had not filed any Response when the hearing commenced.

**Claimant's case**

8. Claimant's case is that he was employed by the Respondent on 18 May 2013 as a night security guard and assigned to a godown owned by a Mr. Azimu. He was working 12 hour shifts, 7 days a week. He annexed to the Statement of Claim attendance records stamped by Respondent for May and July 2013.
9. The Claimant stated that he was not told how much his wages was and that he followed up with the Respondent's proprietor a Mr. Francis who told him the client (Mr. Azimu) had not been remitting any money. He further stated that he was paid a total of Kshs 8,400/- only for the 6 months worked. A petty cash voucher for Kshs 3,500/- for September 2013 was annexed.
10. The Claimant further stated that in December 2013 he wrote to the client seeking a meeting with the Respondent but the client threw him out and so he resigned that month.
11. The Claimant stated he was seeking 6 months' salary arrears and underpayments, overtime and

offs not taken.

12. In cross examination by the Respondent's Operations Manager, the Claimant stated that he was introduced to the Respondent's proprietor by a Mr. Kimani and worked for 6 months and that he used to go to the office to follow up on his wages. He further stated he did not abscond.
13. He confirmed that the Operations Manager was his Supervisor.
14. The Court granted the Respondent a chance to lead its case despite not filing a Response. In this regard an adjournment was granted to 13 June 2014.
15. Mr. Saidi, Respondent's Operations Manager opted to make oral submissions. He submitted that the Claimant was employed at a monthly wage of Kshs 3,500/- and worked for only 3 months and that he absconded in April 2013 without any notice to the Respondent.

### **Evaluation**

16. The facts as presented by the Claimant are uncontroverted. The Court finds that the Claimant was employed by the Respondent as a night guard at a monthly wage of Kshs 3,500/- with effect from 18 May 2014 and that he served until December 2013 when he resigned due to non-payment of wages.
17. The Court also finds that the Claimant was being underpaid because the minimum wage for a night guard for the material time was fixed at Kshs 10,911/- (exclusive of house allowance).
18. The Court also accepts as a fact that during the period of service, the Respondent paid the Claimant only Kshs 8,400/-.

### **Appropriate relief**

#### ***Unpaid salaries for 5 months and 14 days***

19. Pursuant to Legal Notice No. 197 of 2013, a night watchman was entitled to a basic salary of Kshs 10,911/-. When 15% house allowance is factored, a night guard was entitled to Kshs 12,547/-. For the 6 months, the Claimant should have earned a total of Kshs 75,285/- but was paid only Kshs 8,400/-.
20. Based on the minimum wage, the Court would award the Claimant the sum of Kshs 66,885/- after deducting the Kshs 8,400/- he acknowledged receiving.

#### ***Underpayments***

21. On the basis that the award on salary arrears has been assessed on the prescribed minimum wage, this head of relief is inapplicable and is denied.

#### ***Offs***

22. The Claimant testified that he never went on off during the 6 months served. An employee is entitled to one rest day per week. Each month has an average of 4 rest days. For the 6 months the Claimant should have been granted about 24 rests or off days.
23. The Claimant was entitled to payment of overtime for working during his rest days and the Court will take this into account while addressing the overtime claim in the following paragraphs.

#### ***Overtime***

24. The Claimant also sought overtime. His evidence was that he used to work 12 hour shifts every day every week. Guards are supposed to work 8 hours per day. The Claimant was working 4 hours overtime every day or 28 hours per week. For the 6 months the overtime hours comes to about 672 hours.
25. Pursuant to regulation 6 of the Regulation of Wages (General) Order and regulation 7 of the Regulation of Wages (Protective Security Services) Order, 1998 and the formula provided therein (basic pay multiplied with 1.5, divided by 225, multiplied by number of overtime hours), and based on the prescribed minimum wage for night guards at the material time, the Claimant was

entitled to be paid Kshs 48,881/- as overtime on the lower side (without factoring in double rate overtime for work on public holidays and rest days).

### **Conclusion and Orders**

26.The Court finds and holds that the Respondent underpaid and did not fully pay the Claimant his wages for period May to December 2013 and awards him and orders the Respondent to pay him

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|----------------------------|---------------|
| a. 6 months salary arrears | Kshs 66,885/- |
| b. Overtime                | Kshs 48,881/- |

TOTAL	<b>Kshs 115,766/-</b>
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27.Each party to bear their own costs.

**Delivered, dated and signed in open Court in Mombasa on this 18<sup>th</sup> day of July 2014.**

**Radido Stephen**

**Judge**

**Appearances**

Claimant in person

Respondent did not file Response but Operations Manager submitted