

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1617 OF 2011

GREGORY KIVUVO MWANIA.....CLAIMANT

VERSUS

SPUR SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed the suit on 23rd September 2011. He averred that he was an employee of the Respondent as a watchman from 12th June 2006 to 22nd August 2009. He averred that on reporting to work on 22nd August 2009 he was asked to leave by Mr. Peter Wasike the personnel manager of the Respondent. He sought a declaration that the dismissal was wrongful and consequently he was entitled to damages for the unlawful termination, pay in lieu of leave not taken, severance pay and of days not taken, overtime pay, public holidays, underpayment of wages, house allowance, accumulated rights and certificate of service. He also sought costs of the suit.

2. In spite of service of summons the Respondent neither entered appearance nor filed a defence to the claim. The Court therefore entered interlocutory judgment on 1st July 2014 in default of appearance or defence. The Claimant testified that he was employed by the Respondent and worked from 12th June 2006 till his dismissal in August 2009. He testified that he earned Kshs. 3,650/- at the time. He thus sought the sums on his claim.

3. The Claimant was not terminated in accordance with procedure and as such the dismissal was unfair within the meaning of Section 45 of the Employment Act. He was not advised of the cause for the intended termination nor was he accorded an opportunity to have the safeguards under Section 41 applied to him. In the claim before the Court the Claimant annexed a document which showed that NSSF dues and NHIF dues were not paid. There was suggestion that there was underpayment but this was not backed by evidence or testimony. The Claimant testified that he was paid Kshs. 3,650/- at the time of his hire but made no indication of the sum he was earning at the time of dismissal. There was no evidence adduced on the overtime, leave days, public holidays and off days not taken. In the premises the claims in that regard would fail.

4. He applied a salary of Kshs. 6,839/- as pay per month in the claim. He would be entitled to

i. one months notice Kshs. 6,839/-

ii. severance pay for years worked – Kshs. 10,258.50

iii. 6 months salary as compensation for the unlawful termination Kshs. 41,034/-

iv. Certificate of service

v. Costs of the suit at the lower scale.

Orders accordingly.

Dated and delivered at Nairobi this 16th day of July 2014

Nzioki wa Makau

JUDGE