



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

**CAUSE NO. 143 OF 2013**

**(Originally Nairobi Cause No. 7 of 2012)**

**DAVID OGEKA MOREBU**

**CLAIMANT**

**v**

**EAST AFRICAN SECURITY GUARDS LTD**

**RESPONDENT**

**JUDGMENT**

1. David Ogeka Morebu (Claimant) was employed by East African Security Guards Ltd (Respondent) in 1994. Around 8 March 2011, the Respondent terminated his services.
2. On 6 January 2012 the Claimant instituted legal proceedings against the Respondent stating the issue in dispute as unlawful withholding of dues, due upon termination of employment contract. On 3 July 2013 the Claimant filed an Amended Memorandum of Claim.
3. The Respondent filed a Response on 10 September 2013 and the Cause was heard on 16 October 2014.

**Claimant's case**

4. The Claimant's case is that he was employed by the Respondent in 1994 as a watchman at a salary of Kshs 3,200/- but was not issued with a written contract.
5. Sometime in March 2011, he received a call from his wife that his child was sick and he sought permission from his supervisor to go and attend to the child. He also sought and received Kshs 1,000/- from the Respondent's director.
6. On returning to work the next day, the Director told him his services were no longer needed. The director did not give any reasons but paid him Kshs 1,200/-.
7. Consequently, he made a complaint to the Department of Labour but the Respondent did not pay him dues of Kshs 161,275/- as directed by the Labour officer.
8. The Claimant stated that during the course of employment he worked during public holidays without pay and was not granted annual leave.
9. In cross examination, the Claimant stated that he worked from 6.00 am to 6.00 pm Monday to Monday and that on dismissal, he was issued with a certificate of service.

**Respondent's case**

10. The Respondent opted not to call any witnesses.
11. In the Response, the Claimant's assertions were denied and he was put to strict proof. The Respondent also pleaded that it was incorporated in 2006 and it annexed a Certificate of

Incorporation to the Response.

12. The Respondent's assertions in the Response remain just mere assertions because no evidence/witnesses were presented.

### **Evaluation**

13. The cause relates to a complaint of unfair termination. Sections 35, 41, 43, 45 and 47 of the Employment Act, 2007 are therefore implicated directly.

14. The Claimant's testimony as to the manner of his dismissal is uncontroverted. He stated that when he returned to work after attending to his sick child, the Respondent's director informed him his services were no longer required and paid him Kshs 1,200/-. He was not given any notice.

15. An employee is entitled to written notice of termination pursuant to section 35 of the Employment Act, 2007.

16. By dint of section 41 of the Act, the employee should be given reasons for termination and afforded an opportunity to make representations.

17. The Respondent did not demonstrate that it gave the Claimant written notice or granted him a hearing. The termination of services was therefore procedurally unfair.

### **Appropriate relief**

#### ***3 months pay in lieu of notice***

18. No contractual basis was given for 3 months pay in lieu of notice. The default statutory 1 month pay in lieu of notice is therefore applicable. The statutory minimum wage at the time of dismissal was Kshs 6,974/- and the Court awards this sum in lieu of notice.

#### ***Prayers itemized at paragraph 23(b)(ii)-(viii)***

19. The Claimant did not give specifics of these heads of claim. The Labour Officer's report annexed to the Memorandum of Claim had a total of Kshs 161,275/- under these heads.

20. The Court would award the Claimant Kshs 161,275/-.

### **Compensation**

21. Pursuant to section 49(1)(c) of the Employment Act, 2007, the equivalent of not more than twelve months gross wages is one of the primary remedies for unfair termination. The remedy is discretionary.

22. The Claimant's case was conducted in such a dilatory and casual manner that the Court declines to exercise its discretion to award compensation.

### **Conclusion and Orders**

23. The Court finds and holds that the termination of the services of the Claimant was unfair and awards him and orders the Respondent to pay him

- |                                     |                |
|-------------------------------------|----------------|
| a. One month wage in lieu of Notice | Kshs 6,974/-   |
| b. Contractual entitlements         | Kshs 161,275/- |

TOTAL	<b>Kshs 168,249/-</b>
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24. Each party to bear own costs.

**Delivered, dated and signed in open Court in Nakuru on this 5<sup>th</sup> day of December 2014.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Wambeyi Makomere & Co. Advocates

For Respondent Rodi Orege & Co. Advocates