



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

**AT NAIROBI**

**CAUSE NO. 1069 OF 2013**

**LUCY OJIAMBO..... CLAIMANT**

**VERSUS**

**GOODMARK SECURITY**

**AGENCY LIMITED.....RESPONDENT**

Mr. Namada for Claimant

**JUDGMENT**

1. The Claimant filed a Memorandum of claim dated 12<sup>th</sup> July 2013, seeking payment of terminal benefits set out under paragraph 7 of the Memorandum of Claim in the sum of Kshs.590,358.00.

2. **Facts of the case**

The Claimant was employed by the Respondent in the position of a Security Guard in the year 2006. He worked continuously until the month of March 2013.

3. The employment relationship came to an end following resignation by the Claimant. The letter of resignation is annexed to the statement of claim and marked 'I'.

4. In terms of the letter, the Claimant gave *'three (3) months notice to retire'*. He intended to stop working in the month of March, 2013.

5. The Claimant had served the Respondent for seven (7) years. The Respondent has failed and/or neglected to pay his terminal benefits inspite of service of a letter of demand by the Claimant's advocate dated 22<sup>nd</sup> March 2013 and annexed to the statement of claim and marked "II".

6. **Response**

The Respondent filed a statement of Response dated 14<sup>th</sup> August 2013 on 15<sup>th</sup> August 2013 in which the Respondent denies that it owes the Claimant the terminal benefits set out in the Memorandum of claim.

7. The Respondent further submits that the Claimant was employed by a Client of the Respondent on 1<sup>st</sup> March 2013, immediately upon his resignation.

8. The Respondent attached to the Response a letter of appointment which shows that the Claimant was employed on 11<sup>th</sup> September, 2005. He was placed on three (3) months probation. The Claimant's starting salary was Kshs.3,000.00 per month.

It is not in dispute that the Claimant earned Kshs.5,500,00 per month at the time of his resignation.

9. The Respondent did not place any other documentary evidence on record to refute the claims set out by the Claimant.

10. **Testimony**

The Respondent did not attend the hearing of the case inspite that the matter had been set down for hearing on 7<sup>th</sup> July 2014, by consent of the parties. The matter was listed for the day in the Court's cause list. The matter therefore proceeded ex-parte.

11. The Claimant testified under oath in support of the particulars of claim. He said he had served the Respondent for a period of seven (7) years. That he had voluntarily resigned from employment and only sought payment of his terminal benefits that included:

1. Service gratuity calculated at eighteen (18) days salary for each completed year of service in terms of the collective agreement for the sector in the sum of Kshs.23,100.00. He added that he had not been registered with the National Social Security Fund (NSSF).
2. He withdrew the claim for payment in lieu of leave, stating that he had taken all his leave days.
3. He stated that he was paid a basic salary without house allowance and therefore claimed house allowance calculated at 15% of his basic salary for the seven (7) years in the sum of Kshs.5,100.00.
4. With respect to the claim for overtime, he told the Court that he worked seven (7) days a week from 6pm in the evening until 7am in the morning and therefore he claimed four (4) hours overtime for seven (7) years in the sum of Kshs.276,279.00.
5. He also claimed payment in respect of eleven (11) public Holidays worked each year for seven (7) years in the sum of Kshs.28,182.00
6. With respect to the claim for underpayment, he told the Court that at the time he left work, he earned Kshs.5,500.00 per month but the minimum wage was Kshs.7,500.00. He therefore claims Kshs.2,000.00 per month for seven (7) years in the sum of Kshs. 165,000.00. He produced the General Wage Order for the period 2006 - 2013 in support of this claim.

The Claimant acknowledged that he had erroneously underclaimed under this head but the Court should award as claimed.

12. **Determination**

The Claimant provided oral and documentary evidence to support the claims set out in the Memorandum of claim. The Respondent did not offer any oral or documentary evidence to refute the claims by the Claimant.

13. The Court finds that the Claimant has proved on a balance of probabilities all the claims set out in the Memorandum of claim.

The Court also finds that the Respondent was well aware of the hearing date but failed and/or neglected to attend the hearing. The date was taken on 6<sup>th</sup> December 2013, by the Respondent and the Festus for the Claimant.

The Court accordingly, awards the Claimant terminal benefits set out in the Memorandum of Claim in the sum of Kshs.590,358.00.

The award is to be paid with interest at Court rates from the date of this judgment until payment in

full. The Respondent is also to pay the costs of the suit.

*Dated and Delivered at Nairobi this 5<sup>th</sup> day of December, 2014*

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**