



**REPUBLIC OF KENYA**

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

**CAUSE NO. 107 OF 2013**

**KENYA NATIONAL PRIVATE SECURITY WORKERS'  
UNION.....CLAIMANT**

**-VERSUS-**

**KAMALIZA SECURITY GUARDS LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 19<sup>th</sup> July, 2013)

**JUDGMENT**

The claimant filed the memorandum of claim on 30.04.2013 on behalf of its member Christopher Banda Mukhwana. Despite service of summons and the memorandum of claim, the respondent did not enter appearance and did not file the memorandum of response. The hearing was fixed for 11.06.2013 and the respondent was served a hearing notice but did not attend court. The claimant decided to rely on the documents on record and prayed for judgment against the respondent as prayed for in the memorandum of claim.

It is alleged that the respondent employed the grievant as a guard in 1987. It appears that he was diligent and honest in his service and was promoted to various ranks and earned certificates of good service. The grievant, it is alleged, served for 24 years and it is his case he was terminated from employment in 2011 without any reason and without any notice and hearing. The details of the alleged termination were not pleaded or told to the court. A trade dispute was reported to the Ministry of Labour but the respondent declined or refused to attend conciliation proceedings culminating into the certificate of disagreement date 3.08.2011 being exhibit 12 on the memorandum of claim.

The grievant prayed that his termination be treated as normal termination and to be paid leave for the period he was in employment, overtime, off duties, public holidays, gravity, underpayment of wages, certificate of service and 12 months wages as compensation for wrongful termination.

The court has considered the material on record and finds that the claimant has failed to establish by evidence any of the claims and prayers made in this case. It is notable that the court had a problem with the prayer for the strange remedy to pay gravity. If that meant gratuity, then such errors demonstrate the laxity and informal attitude with which the claimant approached the court. It is not surprising that despite the case being allocated 30 minutes for hearing, the claimant peculiarly opted not to bring any evidence and not to make any submissions to support the case.

It was indeed such a dismal performance and gamble to waste the time of the court and the court cautions the claimant that persistence in such direction in future cases may serve as an impetus towards the court's finding that the claimant is a vexatious or frivolous litigant. The claimant being a trade union will be expected to file and prosecute suits with due diligence and care that all substantive and procedural aspects of a high-quality and professional litigation are adhered to in all cases and instances.

Accordingly, all the prayers shall fail for want of evidence. As the respondent did not file any papers to oppose the case or enter appearance, the memorandum of claim shall be dismissed with no orders on costs.

In conclusion, the memorandum of claim is dismissed with no orders on costs.

**Signed, dated and delivered** in court at **Nakuru** this **Friday, 19<sup>th</sup> July, 2013.**

**BYRAM ONGAYA**

**JUDGE**