



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 790 OF 2018

BENJAMIN OCHIENG ANGAGA.....CLAIMANT

VERSUS

GEORGE OMBEGO.....RESPONDENT

JUDGMENT

1. The Claimant brought this suit on 23.5.2018 seeking Kshs. 711417.18 made up of terminal dues plus compensation for wrongful and unfair termination of his employment by the respondent. The salient facts of the case are that the respondent employed the claimant as a security guard on or about 5.9.2010 for a salary of Kshs. 4000 per month. The claimant worked as such until 20.12.2017 when the respondent dismissed him and failed to pay his terminal dues. The respondent never served the claimant with prior notice or accorded him any hearing before the termination. Accordingly the claimant avers that the termination of his contract of service was unfair.
2. The respondent did not enter appearance after being served with summons. He therefore did not deny the averments made by the claimant.
3. The claimant gave his evidence on 21.11.2019 and called one witness. The Claimant's testimony was basically a reproduction of the facts pleaded in his Memorandum of Claim. He therefore prayed for the reliefs set out in paragraph 5 of his claim plus costs and interest.
4. His witness, Mr. Andrew Ogilo Awiti stated that he knew the claimant from 2007. He further confirmed that the claimant was employed by the respondent but later he informed him that the respondent terminated his employment without any notice and failed to pay his dues.
5. The issues for determination are:
 - (a) Whether the respondent terminated the claimant's employment wrongfully or unfairly.
 - (b) Whether the claimant is entitled to the reliefs sought.

Unfair and wrongful termination

6. Under section 45 (2) of the Employment Act, termination of employee's employment is unfair if the employer fails to prove that the termination was grounded on valid and fair reason related to the employee's conduct, capacity or compatibility or based on the employer's operational requirement; and that a fair procedure was followed.
7. In this case the respondent never filed defence and as such she never tendered any evidence to discharge the foregoing burden of proof. I therefore, find and hold that the respondent terminated the claimant's employment wrongfully and unfairly.

Reliefs

8. Under section 49 (1) of the Employment act, I award the claimant one month salary in lieu of notice plus 6 months salary compensation for unfair termination. The said award is made considering the claimant's long service of over 7 years without disciplinary issues and because the claimant never contributed to the termination through misconduct.
9. The claim for leave has not been contested and as such I award the same as prayed being Kshs. $10954 \times 21/20 \times 7 =$ Kshs. 53674.60
10. I further award the claim for service pay at the rate of half pay per year of service. Hence Kshs. $10954 \times 15/30 \times 7 =$ Kshs. 38339.
11. The claim for underpayment for 2010 – April 2017 has not been proved. However, the underpayments for May to December 2017 is

obvious under the General Wage Order published in May 2017.

Hence Kshs. $(10954 - 4000) \times 8$ months = Kshs. 41724.

12. In conclusion I enter judgment for the claimant against the respondent in the following terms based on the minimum salary under the General Wage Order applicable from May 2017:-

- (a) NoticeKsh. 10954
- (b) CompensationKsh.65724
- (c) UnderpaymentKsh.41724
- (d) Service payKsh.38339
- (e) LeaveKsh.53674

- TOTALKsh.210415**

The said sum is subject to statutory deductions but in addition to costs and interest at court rates from the date of the judgment.

Dated, signed and delivered in open court at Nairobi this 31st day of January, 2020.

ONESMUS M. MAKAU

JUDGE