



Kenya National Private Security Workers' Union v Bob Morgan Security Services Limited (Cause 1027 of 2018) [2025] KEELRC 308 (KLR) (29 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 308 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1027 OF 2018
DKN MARETE, J
JANUARY 29, 2025**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS' UNION APPLICANT
AND
BOB MORGAN SECURITY SERVICES LIMITED RESPONDENT**

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated 20th June, 20th June, 2018. The issue in dispute is herein cited as;

“Wrongful dismissal of Philip Mbura Arigga”.
2. The Respondent in an Amended Reply to Memorandum of Claim amended on 31st January 2024 denies the claim and prays that it be dismissed with costs.
3. The Claimant’s case is that she is duly registered under Section 19 of the *Labour Relations Act*, 2007 and is the sole labour organization representing the interests of workers in the private security industry.
4. The Claimant’s further case is that the grievant in this case was at all material times to this suit an employee of the Respondent. He was employed on or about November, 2008 as a security guard at an initial salary of Kshs.18,000 per month.
5. The grievant avers that he performed his duties diligently and satisfactorily to the Respondent until he was unfairly dismissed. He was issued with a dismissal letter on 22nd March 2016 but this was dated 31st March instant.
6. The Claimant’s other case is that;The grievant was dismissed on grounds that he did not report on duty on 17th March, 2016.His problem with the Respondent started when he was diagnosed with pneumonia.The Respondent was aware and in possession of documents from Machokos level 5



Hospital indicating that he was sick and had severally attended the Respondent clinic on the same. That the Respondent's clinic doctor carried out an X-ray and advised the grievant to look for treatment at another facility. That the Respondent supervisor and the Branch Manager were all along aware of the grievant illness. The Respondent unfairly dismissed the grievant well aware that he was entitled to full pay for 45 days and also half pay for the same period. Dispute report and conciliation process undertaken to no avail.

7. It is the Claimant's contention and case that the Respondent's action flouted *the Constitution* of Kenya, 2010, the provisions of the *Employment Act*, 2007, the tenets of good labour practices and the principles of natural justice in that;
 - i. The Grievant was denied an opportunity to be heard and to be represented as the law requires.
 - ii. The Respondent acted in a rush and extremely inconsiderate manner.
 - iii. All the requirements of the law were thrown in out in haste to terminate the Grievant.
8. The action of the Respondent in terminating the employment of the Claimant in toto amounted to unfair labour practices and was unlawful and unsatisfiable.

She prays thus;

 - i. A declaration that the Respondent's action of dismissing the Grievant from employment was illegal, unlawful, unfair and inhumane.
 - ii. One month salary in lieu of notice = 18,000/=
 - iii. Severance pay/Gratuity $18,000 \times 18 \times 8 / 26 = 99,692 /$.
 - iv. 12 months compensation for loss of employment, $18,000 \times 12 = 216,000 / =$
 - v. Uniform refund 3,500/=
 - vi. Days worked up to 22nd March 2016 = $18,000 / 30 = 563 \times 14 \text{ days} = 13,200$.
 - vii. Certificate of service.
 - viii. An order for the Respondent to pay the Claimant's costs of this claim plus interest thereon.
9. The Respondent's case is a denial of the claim. It is her case that paragraphs 4 – 21 of the claims are untrue and misleading.
10. The Respondent's further case is that she was unable to ascertain the cause of grievant's inability to report work. This situation inconvenienced the Respondent's client where the grievant was assigned to guard and the Respondent was forced to hire a replacement guard to stand in for the grievant.
11. The Respondent's other case is that the grievant immediate supervisor confirmed the grievant made no effort to contact or inform him about the cause of the deserting his work place and did not have a sick sheet or a doctor's recommendation for sick off during this absence.
12. It is the Respondent's further case and averments that the grievant was invited to appear at a disciplinary hearing on 24th March, 2016 and notified of his right to attend this with a colleague of his choice. At this hearing, the grievant admitted failing to report to work from 17th March, 2016 and also failure to report this to his supervisors or the office.



13. The Respondent's case is that while the grievant was assigned duties at Proposition Suvidor – Mlolongo he failed to report to duty from 17th March, 2016 to 20th March, 2016 without communication or any lawful cause. He was unable to ascertain the cause of the inability to report.
14. The Respondent ultimately dismissed the grievant from the employment on 31st March, 2016 in view of the finding at the disciplinary hearing. He was informed of this decision and also of his right to appeal against the decision. The reasons for termination were also explained to him.
15. The Respondent in penultimate avers that during the course of the grievant's employment, with the Respondent he was involved in various indiscipline cases as outlined hereunder;
 - a. The Grievant was absent on duty on 12h January 2016 without any lawful cause while assigned security duties by the Respondent at Kenya Power Mlolongo.
 - b. On 27th February 2016, the Grievant refused to follow his supervisor's directives to work instead, he insisted that he has to proceed for off duty despite not working for 6 days.
 - c. On 27th February 2016 the Grievant threatened to stab his supervisor with a knife and warned his supervisor never to leave Nairobi.
 - d. On 2nd November, 2014 while assigned duties at Bett Company the Grievant absented himself without any lawful cause.
 - e. On 27th June 2013 while assigned duty at Subida Ltd, the Grievant switched off assignment lights for unknown reasons.
 - f. On 18th May 2013, the Grievant while assigned duties at Suvinda failed to report to duty without any lawful cause.
16. The issues for determination therefore are;
 1. Whether the termination of the employment of the grievant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Claimant is entitled to the relief sought
 3. Who bears the costs of this cause.
17. The 1st issue for determination is whether the termination of the employment of the grievant by the Respondent was wrongful, unfair and unlawful. The Claimant in her written submission dated 26th March, 2024 comes out to reiterate her case of unlawful termination of employment.
18. It is the Claimant's case that in these proceedings, the Respondent filed the application to amend their response after the failed court mediation process. The amendments incorporated into the defence were based on issues raised during mediation. These were; The issue of a show cause letter the grievant and asked the Respondent to produce at mediation. The issue of the minutes of the alleged disciplinary meeting which were requested for by the grievant but were never availed during mediation. The other issue arising is one of the dates of absence from duty for grievant which was initially indicated to be 22nd March, 2016 but is now 17th March in the amended response. This is an issue the Respondent was not certain of but now brings out on learning about it at mediation.
19. The Claimant further raised issues with the conduct of these proceedings. This is a Claim of 2018 and the Respondent had confirmed that she was ready for hearing. It is the court which suggested mediation as a way out for dissolving the dispute. So, why did the Respondent take four years to amend



their response and realise that they had not filed a show cause letter and minutes of the disciplinary committee until after mediation.

20. It is the Claimant's ardent submission that the documents filed with the amended response are a forgery and intended to deceive and mislead this court.
21. The Claimant further seeks to rely on inter alia the celebrated authorities of Mary Chemweno Kiptui vs Kenya Pipeline Company limited (2014) eKLR and Walter Ogal Anuro vs Teachers Service Commission (2013) eKLR where this court reiterated the necessity of both substantive justification and procedural fairness as requirement for fair and lawful termination of employment.
22. The Respondent in their written submissions dated 28th April, 2024 also reiterate her case and submits a case of lawful termination of the employment of the grievant.
23. It is their case and submission that the summary dismissal was procedurally fair and based on the conduct of the grievant. She relies on the materials questioned by the Claimant in furthering her defence. These are contained in the Respondent's Further List of Documents and come out as follows;
 1. Notice to show cause letter dated 22nd March 2016.
 2. Minutes for the disciplinary hearing
 3. Occurrence reports.
 4. NSSF statements
 5. Payslips
 6. ...
24. A scrutiny of the respective cases of the parties tilts out this matter in favour of the Claimant. She has the more probable of the two cases. Agreeably, the Claimant's submission that the Respondent's case is far-fetched, a lie and an afterthought takes the day. This is as clear as day light when one looks at the demeanour conduct and circumstances of the two cases.
25. The Claimant's case takes sway on a balance of probabilities. I therefore find a case of unlawful termination of the employment of the grievant by the Respondent and hold as such. This answers the 1st issue for determination.?
26. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.
27. I am therefore inclined to allow the claim and order relief as follows;
 - i. A declaration be and hereby issued that the Respondent's action in dismissing the grievant from the employment was illegal, unlawful, unfair and inhuman.
 - ii. One (1) month salary in lieu of noticeKshs.18,000.00.
 - iii. Severance pay/Gratuity $18,000.00 \times 18 \times 8/26$Kshs.99,692.00
 - iv. Ten (10) months compensation for unlawful termination of employment
.....Kshs.108,000.00
 - v. Pay for days worked up to 22nd March 2016 ...Kshs.13,200.00Total of claim.....Kshs.238,892.00



- vi. The Respondent be and is hereby ordered to issue a certificate of service to the Claimant in thirty (30) days.
- vii. The costs of the claim shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 29TH DAY OF JANUARY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Miss Wanyama for the Claimant Union.
2. Mr. Njuguna instructed by Wainaina Ireri Advocates LLP for the Respondent.

