



REPUBLIC OF KENYA



KENYA LAW
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**Opetu v Benforce Security Services Limited (Cause 405 of 2018)
[2025] KEELRC 390 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 390 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 405 OF 2018
CN BAARI, J
FEBRUARY 14, 2025**

BETWEEN

WILLIAM LAURENCE OPETU CLAIMANT

AND

BENFORCE SECURITY SERVICES LIMITED RESPONDENT

JUDGMENT

Introduction

1. In a Memorandum of Claim dated 7th March, 2018, and filed on 21st March, 2018, the Claimant seeks the following reliefs as against the Respondent: -
 - a. 12 months salary as compensation for unfair termination at Kshs.14,054 per month
 - b. One month's salary in lieu of notice
 - c. Underpayment from July, 2015 to November, 2017 at Kshs.151,412.20
 - d. House allowance from July, 2015 to November, 2017 at Kshs.53,161.50
 - e. Leave from July 2015 to November, 2017 at Kshs.29,982.47
 - f. Overtime at Kshs.232,470
 - g. Rest days at Kshs.184,500
 - h. Working holidays dues at Kshs.36,000
 - i. Interests for the sums above
 - j. Aggravated damages
 - k. Loss of employment



- l. Issuance of a certificate of service
- m. Costs of the suit and interest thereon
2. The Respondent did not file a response to the claim and the case was certified ready to proceed undefended on 29th November, 2023. The case proceeded for formal proof on 30th October, 2024 when the Claimant testified in support of his case, adopted his witness statement dated 7th March, 2018 and produced a bundle of documents as exhibits in the matter.
3. Thereafter, the Claimant filed written submissions dated 16th December, 2024.

The Claimant's Case

4. It is the Claimant's case that he was an employee of the Respondent from July, 2015 to November, 2017 when he was unlawfully terminated.
5. It is his case that his monthly salary was KShs.7,000 and that he did not at any point get a pay rise in the course of his employment. He states further that he was underpaid as the minimum salary for a night guard per the Regulations of Wages Order of 2015 was Kshs.12,221.10/-.
6. It is his case that he was a night guard stationed at Uganda House and that he worked for 7 days a week from 6.00pm to 6.00am.
7. It is the Claimant's case that the Respondent sent him a text message on 28th November, 2017 informing him not to report to work and gave no reasons for the termination. He avers that he was never summoned by the Respondent's disciplinary committee nor was he informed of the circumstances leading to his dismissal, and was further not accorded a hearing.
8. It is his case that his dismissal was illegal, wrongful and unlawful to the extent that it was based on no reasons at all and that the termination contravened the Constitution, the Employment Act and the regulations on his employment.
9. The Claimant states that he wrote a demand letter to the Respondent through his lawyer, and that the Respondent agreed to an amicable settlement. He states further that he severally visited the Respondent's offices but that the Respondent reneged on its promise of a settlement.
10. He states that further demand notices to the Respondent elicited no response.
11. It is his prayer that his claim be allowed.

The Claimant's Submissions

12. The Claimant cited Section 45 (1) & (2) of Employment Act 2007 to urge that his termination was unfair as the Respondent did not give him any reasons for his termination.
13. It is the Claimant's submission that having played his part in filing his claim, keenly following up on the same, and testifying that his employment with the Respondent was unfairly terminated, shifted the burden to the Respondent, as his employer, to validate his summary dismissal.
14. The Claimant submits that the Respondent has failed to demonstrate rectitude in this suit by failing to respond and defend the Claimant's claim. He submits that his termination is unfair and unlawful.



Analysis and Determination

15. I have considered the pleadings, the witness' oral testimony and the Claimant's submissions. The issues that present for my determination are:-
- i. Whether the Claimant was unfairly terminated
 - ii. Whether the Claimant is entitled to the reliefs sought

Whether the Claimant was unfairly terminated

16. The Claimant herein, argues that his termination was unfair, illegal and unlawful for reason that he was neither issued notice of termination nor given reasons that informed his termination. He argues further that he was sent a text message by his employer and told not to report to work without any reason for the decision.
17. Whether or not a termination/dismissal is fair, is dependent on the employer's adherence to the tenets of fair procedure and the substantive justification test stipulated under Sections 41, 43, 45 and 47 of the *Employment Act*, 2007.
18. Section 41 of the *Employment Act*, 2007 demands that before terminating an employment contract on the grounds of misconduct, performance or physical incapacity, the employer shall grant the employee an opportunity to make representations, either in the presence of a colleague or representative of a trade union if he is a union member.
19. In the circumstances of this case, there is no indication that the Respondent made an attempt at adhering to the provisions of Section 41 of the *Employment Act*. The Claimant's testimony is that he was sent a text message telling him not to report to work, and that no prior notice of termination was issued nor did the message state reasons informing his sudden termination from the service of the Respondent.
20. The Bank statements indicating that the Claimant received monthly salaries from the Respondent, together with the copies of the attendance register produced in evidence, are prove that the Claimant was indeed an employee of the Respondent.
21. The Respondent did not deem it necessary to defend the claim, which leaves the court with only the Claimant's evidence. In the circumstances, and in the absence of contrary evidence, I find and hold that the Claimant's termination was devoid of any legal basis. The termination failed both the procedural fairness test and the substantive justification test espoused in Sections 41, 43, 45 and 47 of the *Employment Act*, 2007.
22. The termination is unlawful and unfair.

Whether the Claimant is entitled to the reliefs sought Overtime, Rest days, Working holidays dues, Loss of employment and Aggravated damages

23. The Claimant did not lead any evidence to prove that he worked overtime, on his rest days and on public holidays. He similarly did not justify the claim for aggravated damages. These claims are dismissed.

Salary in lieu of notice

24. The Claimant sought one months' salary in lieu of notice. There is not indication that the Claimant was given notice prior to the termination, which entitles him to pay in lieu of notice.



25. The claim thus succeeds and the Claimant is awarded one month salary in lieu of notice.

Underpayment from July, 2015 to November, 2017

26. The Bank statements produced in evidence are prove that the Claimant's net salary was Kshs.6,390/-. The Regulation of Wages (General) (Amendment) Order, 2015, provides the minimum consolidated salary payable to a watchman in the period as Kshs.6,278. It is therefore not true that the Claimant was underpaid in the year 2015 and 2016.
27. The Regulation of Wages (General) (Amendment) Order, 2017 provided the minimum wages for the Claimant's cadre as Kshs.12,926.55. The Claimant told court that he did not get a salary rise for the entire period he worked for the Respondent, and which claim remains uncontroverted.
28. This therefore means that in the 11 months he worked in 2017, he was underpaid by Kshs.5,926 per month and Kshs.65,192/- being the total of the under payment.

House allowance

29. A consolidated salary includes house allowance and hence the Claimant is not entitled to this claim and it fails.

Compensation for unfair termination

30. The Claimant sought 12 months' salary as compensation for the unfair termination. He did not tell the court how long his contract was for, and what the balance of his contract was at termination.
31. I further note that the kind of job that the Claimant did is one he can easily find alternative comparable employment, and in the circumstances, I deem an award of 5 months' salary sufficient compensation for the unfair termination and which is hereby awarded.

Certificate of service

32. This is a statutory requirement under Section 51 of the *Employment Act*. Accordingly, the Respondent is directed to issue a certificate of service to the Claimant within 14 days of this judgment.
33. In the final analysis, the claim succeeds in terms of the following orders: -
- a. A declaration that the Claimant was unfairly terminated.
 - b. One month's salary in lieu of notice at Kshs.12,926.55
 - c. 5 months' salary as compensation for the unfair termination Kshs.64,632.75/-
 - d. Underpayment at Kshs.65,192/-
 - e. Issuance of a certificate of service within 14 days of this judgment.
 - f. Costs of the suit and interest until payment in full.

34. Judgment accordingly.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 14TH DAY OF FEBRUARY, 2025.

C. N. BAARI
JUDGE



Appearance:

Mr. Omari h/b for Mr. Namada for the Claimant

N/A for the Respondent

Ms. Esther S-C/A

