



**Kenya National Private Security Workers Union v Brinks Security Services Limited
(Cause 771 of 2019) [2025] KEELRC 1545 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1545 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 771 OF 2019**

B ONGAYA, J

MAY 29, 2025

BETWEEN

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT

AND

BRINKS SECURITY SERVICES LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim dated 14.11.2019 seeking the following prayers against the respondent:
 - i. The respondents be directed to comply with the mandatory provisions of Section 48 of the *Labour Relations Act*, with regard to union dues.
 - ii. The respondent be directed to remit the Government statutory deductions PAYE, NHIF and NSSF.
 - iii. The respondent and or its agents be prohibited from harassing, victimizing, unlawfully declaring redundant, wrongfully dismissing or unfairly terminating the contract of employment of the claimant's members whose names appear in the check-off notices.
 - iv. The respondent be directed to reinstate the Grievants or in the alternative they be paid as follows:
 - Notice
 - Underpayment of wages
 - 12 months compensation for wrongful dismissal
 - Gratuity/ Severance pay
 - NSSF and NHIF arrears



- v. The respondent and or its agents be prohibited from discriminating the unionized employees and forcefully removing them from the union.
 - vi. The respondent be ordered to pay workers the Government stipulated wages per (General) (Amendment) Order, 2018.
 - vii. That the Honourable Court be pleased to grant such orders or relief as it deems fit and just in the circumstances.
 - viii. That the cost be provided for by the respondent.
2. The claimant's case was that there was wrongful dismissal of Francisco Kibaara, Valentine Ambeyi Amalemba, Allan Nangeso, Celestine Chepkemoi, and Rose Akwede Ishepai (hereinafter "the grievants"). They urged as follows:
- a. The respondent employed the grievants on diverse dates and confirmed them in its employment.
 - b. However, from the onset, the respondent has continually harassed and victimized the employees by not allowing them to enjoy their unfettered rights and adequate protection against acts of anti-union discrimination in the following manner:
 - i. On 26.10.2019, the respondent suspended Francis Kibaara, Allan Nangeso and Valentine Ambeyi on allegations that they incited the workers to join the union.
 - ii. On 31.10.2019, the respondent issued show cause notices to Francis Kibaara, Allan Nangeso and Valentine Ambeyi on allegations that they were working as agents of another organization (union) and that they lured the guards to join the union.
 - iii. On 05.11.2019, the respondent issued summary dismissal letters to Francis Kibaara, Allan Nangeso and Valentine Ambeyi on grounds that they failed to represent the company's interest and had been sabotaging its operations by not attending their duties as required and misrepresenting information to its staff by luring them to join their union without engaging the office.
 - iv. On 25.05.2019 and 30.08.2019, respectively, the respondent terminated the services of Celestine Chepkemoi and dismissed Rose Akwede Ishepai for joining the union.
 - c. The respondent has maliciously continued to prejudice the workers because of their union membership and for rightly asking for what belongs to them. The unionisable members were dismissed for joining the union in contravention of Article 41 of the Constitution of Kenya.
 - d. The respondent has declined to deduct union dues from the said employees even after having formal and informal discussions with the union representatives.
 - e. The claimant reported a trade dispute in the Ministry of East African Community, Labour and Social Protection Department of Labour on 31.10.2019.
 - f. On 26.10.2015, the Central Organization of Trade Unions (COTU) (Kenya) wrote to the Federation of Kenya Employers (FKE) in regard to the union and the employers in the sector, on the issue of encouraging dubious labour practices in contravention of the Constitution and ILO Conventions outlining the rights of workers to join and associate with the union.



- a. By consent, on issue of union dues the union dues the respondent the relevant Ministerial Order on deduction of union dues together with the list of duly recruited members in Form per statute and to serve by 13.12.2024 and respondent to start deduction in the pay for January 2025.
 - b. The issue of union dues in dispute is marked determined, accordingly.
8. To answer the 2nd issue the Court returns that the respondent has admitted to have employed the grievants and to have dismissed them as was pleaded in the statement of response.
9. To answer the 3rd issue being whether the dismissal of the grievants was unfair the Court returns as follows:
- a. The respondent substantially complied with section 41 of the *Employment Act*, 2007 on serving of a notice and hearing the grievants with respect to the levelled allegations. The procedure adopted to dismiss cannot be said to have been unfair.
 - b. For Rose Akwede Ishepai, she did not testify at all. The reasons for her termination by summary dismissal letter dated 30.08.2019 are found valid and fair per sections 43 and 45 of the Act. The reasons appear to have been refusal to take up a temporary deployment at Gallaria Shopping Mall. The Court returns that on a balance of probability, her dismissal was not unfair and her terminal dues were paid. In view that Celestine Chepkemoi did not testify, the Court similarly finds that the reasons for her termination must have been valid and fair. In any event the Court considers that there is no material evidence to justify an otherwise finding with respect to the said Celestine Chepkemoi.
 - c. With respect to CW1, CW2, CW3 the evidence is that recruitment of union members was one of the main reasons for their summary dismissal. The respondent has failed to show by evidence that they had used the respondent's property and time, unlawfully so, to recruit the members. Under section 46 (c), (d), (e) and (f) of the *Employment Act*, union membership, participation in union activities, seeking office as a union official, and, refusal to join a union or withdrawal from union membership are each an unlawful reason to dismiss or impose other punishment upon an employee. The respondent is found to have violated the entitlement of CW1, CW2, and CW3 to join and participate in union activities as envisaged in Article 41 of the *Constitution* and as reinforced in relevant provisions of the *Employment Act* and Part II of the *Labour Relations Act*. Such was an aggravating factor under section 49 of the *Employment Act*, 2007. The mitigating factor under the section is that the documents filed for the respondent show that CW1, CW2, and CW3 did not each have a clean record of service and had received warnings about their unsatisfactory conduct and performance. In that consideration and to balance justice for the parties, to each CW1, CW2 and CW3 the Court awards 6 months compensation for the unfair and unlawful termination plus one month pay in lieu of termination notice making 7 months' gross salaries.
 - d. Underpayment as claimed and service or severance pay are not justified at all. Being special or liquidated claims they ought to have been specifically pleaded and proved per trite law but that was not done. They are declined. The Court has considered the continuing industrial relationship between parties, the margins of success, and the consent recorded at the hearing and the respondent to pay the claimant a sum of Kshs.50,000.00 being partial claimant's costs of the suit.
 - e. While making the findings the Court considers that the prayer for reinstatement was abandoned in absence of submissions in that regard and correctly so, as belated and time



barred in view of lapsed three years attached to grant of reinstatement, per section 12 of the *Employment and Labour Relations Court Act*, 2011.

10. In conclusion the suit is hereby determined with orders as follows:
- a. The declaration that the termination of the employment of CW1, CW2 and CW3 by the respondent by way of summary dismissal was unfair and unlawful.
 - b. The respondent by itself, its agents, and employees or officials is hereby prohibited from harassing, victimizing, unlawfully declaring redundancy, wrongfully dismissing or unfairly terminating the contract of employment of the claimant's members whose names appear in the check-offs notices.
 - c. The respondent by itself and by its agents is hereby prohibited from discriminating the unionized employees and forcefully removing them from the union.
 - d. The respondent to pay CW1, CW2 and CW3, each, a sum of seven (7) months' gross salaries less due PAYE and computed as well as included in the extracted final decree and to pay by 01.08.2025 and failing interest to be payable thereon from the date of this judgment till full payment.
 - e. The respondent to pay the claimant a sum of Kshs.50,000.00 being partial claimant's costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025.

**BYRAM ONGAYA
PRINCIPAL JUDGE**

