



**Onsongo v Securex Agencies (K) Limited (Cause E691 of 2020)
[2024] KEELRC 83 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 83 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E691 OF 2020**

**J RIKA, J
JANUARY 31, 2024**

BETWEEN

JAMES VICTOR ONSONGO CLAIMANT

AND

SECUREX AGENCIES [K] LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 5th November 2020.
2. He states that he was employed by the Respondent from 23rd October 2017 to 13th March 2020, as an Investigations Officer. He was later promoted to the position of Zone Manager.
3. He was issued a letter to show cause dated 19th February 2020, by the Respondent. He replied satisfactorily to all the allegations. The Respondent however went on to terminate the Claimant's contract without conducting independent investigations on the allegations.
4. He was dismissed on 13th March 2020. He was victimized, for raising leadership and integrity issues within the Respondent. Termination offended the Constitution of Kenya and the Employment Act.
5. His last salary was Kshs. 105,000 monthly.
6. He prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Compensation for unfair termination equivalent of 12 months' salary at Kshs. 1,260,000.
 - c. Costs and Interest.



7. The Respondent filed a Statement of Response dated 3rd March 2021. It is conceded that the Claimant was employed by the Respondent as pleaded. His last salary was Kshs. 105,000 monthly. He was summarily dismissed by the Respondent for just cause. He was paid his terminal benefits.
8. He was issued a letter to show cause in December 2019. He replied on 19th February 2020. He was invited for disciplinary hearing on 9th March 2020.
9. He was heard, in the presence of a trade union representative of his choice, and it was determined that the Claimant was negligent in performance of his duties, and failed to follow instructions of his supervisor. Termination was in accordance with fair procedure and was grounded on valid reason.
10. He was paid 1-month salary in lieu of notice; salary for days worked in March 2020; accrued leave; and issued a certificate of service. The Respondent prays the Court to dismiss the Claim with costs.
11. The Claimant gave evidence, and rested his case, on 3rd October 2023. The record indicates that the Respondent was served with a hearing notice, and mention notices preceding the hearing on procedural directions, but did not attend Court on any one occasion. Hearing proceeded ex parte. The Respondent's case was closed on 3rd October 2023. The Claimant confirmed filing of his closing submissions, at the last appearance before the Court, on 15th November 2023.
12. The Claimant restated the contents of his Statement of Claim in his evidence-in-chief. He relied on his Verifying Affidavit, Witness Statement and 6 Documents on record. He confirmed that he was issued a letter to show cause and invited to disciplinary hearing. He was heard. The allegations against him were not established.
13. The issues are whether termination was procedurally and substantively fair, and remedies merited.

The Court Finds

14. For reasons unknown to the Court, the Respondent religiously failed to attend Court, and was not in attendance, when the Claimant gave his evidence unchallenged.
15. It is not contested through evidence that the Claimant was employed by the Respondent for 2 years and 5 months, between 23rd October 2017 and 13th March 2020. He was employed as an Investigations Officer and last held the position of Zone Manager, earning a monthly salary of Kshs. 105,000.
16. It is not contested that the Respondent terminated the Claimant's contract, through a letter dated 13th March 2020. There were 3 grounds stated in the letter, to justify termination: -
 - a. You have negative attitude to those placed in authority over you, and insubordinate to any instructions that they issue. That has a trickle-down effect on clients whose issues are seldom resolved as expected nor within the required timelines.
 - b. You have a very casual approach in your handling of duties resulting in negligent consequences and numerous complaints both internally from your colleagues and externally from clients.
 - c. Your casualness to work, negative attitude, negligence of duty and insubordination of those placed in authority over you has jeopardized client relations, leading clients to question our chain of command, our ability to deliver, and our professionalism. Internally precious man hours are lost in attempt to salvage client issues that you left either unattended or otherwise pending resolution.



17. The Claimant concedes, he was issued a letter to show cause. He replied and was invited to disciplinary hearing. He was heard in the presence of a shop floor trade union representative. The decision to terminate his contract was communicated to him. Reasons as outlined above, were given.
18. Procedure was in conformity with the minimum statutory standards of fairness prescribed under Sections 41 and 45 of the *Employment Act*.
19. In the absence of evidence from the Respondent, and in light of the Claimant's denial of the allegations made against him by the Respondent, the Court is not able to find that the Respondent had valid reasons to justify termination.
20. There were generalized allegations of insubordination, incompatibility, poor workplace and client relations, and negligence made against the Claimant. The allegations were not fleshed out. They remained as worthless as a glass hammer. They were not validated by the Respondent. They did not meet the minimum statutory standards of substantive justification, under Sections 43 and 47[5] of the *Employment Act*.
21. Termination was procedurally fair, but unfair on account of substantive justification.
22. The Claimant does not pray for terminal benefits and it can fairly be presumed, that he was paid terminal benefits as pleaded in the Statement of Response. His main prayer in on compensation for unfair termination.
23. He worked 2 years and 5 months. There is no evidence that he was the cause, or contributory to the events leading to termination of his contract. He did not inform the court how long he expected to go on working, or whether he secured alternative employment, in mitigation of his loss of employment. He was paid terminal benefits.
24. He is granted compensation for unfair termination, equivalent of 2 ½ months' salary at Kshs. 262,500.
25. Costs to the Claimant.
26. Interest allowed at court rate, from the date of Judgment till payment is made in full.
27. In Sum, It Is Ordered
 - a. It is declared that termination was unfair.
 - b. The Respondent shall pay to the Claimant compensation for unfair termination, equivalent of 2½ months' salary at Kshs. 262,500.
 - c. Costs to the Claimant.
 - d. Interest allowed at court rate, from the date of Judgment till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 31ST DAY OF JANUARY 2024.

JAMES RIKA

JUDGE

