



REPUBLIC OF KENYA



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**Nyaora v Riley Falcon Security Services Ltd (Employment and Labour Relations Cause E564 of 2021) [2024] KEELRC 526 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 526 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E564 OF 2021**

**BOM MANANI, J**

**MARCH 7, 2024**

**BETWEEN**

**DISMAS BOSIRE NYAORA ..... CLAIMANT**

**AND**

**RILEY FALCON SECURITY SERVICES LTD ..... RESPONDENT**

**JUDGMENT**

**Background**

1. The instant suit is founded on the alleged unfair termination of the Claimant's contract of service. The Claimant asserts that the Respondent improperly terminated his aforesaid contract in September 2019. As a consequence, he prays for inter alia, an order for compensation for unfair termination of the contract.
2. The Respondent does not admit the claim. According to the Respondent, the Claimant's contract lapsed by effluxion of time. Therefore, the instant action is unmerited and ought to be dismissed with costs.

**Claimant's Case**

3. The Claimant contends that he was employed by the Respondent as a security guard in 2008. He avers that he served the Respondent in the same capacity until September 2019 when his contract was summarily terminated.
4. The Claimant contends that on 24<sup>th</sup> September 2019, the Respondent's management asked him to proceed on his annual leave which was to run up to 23<sup>rd</sup> October 2019. He avers that after his leave days ended, he reported back on duty only to be told to undergo a medical test to confirm his fitness to continue in service.



5. The Claimant avers that in compliance with the above directive, he visited a hospital where he was examined and certified as fit to continue in service. He contends that after he presented the certificate of fitness to the Respondent's management, he did not receive any response regarding continuation of his contract.
6. The Claimant avers that after he realized that the Respondent was unwilling to allow him to continue in service, he asked to be paid his terminal dues. However, the request did not elicit any response. And hence the decision to institute these proceedings.
7. The Claimant avers that during his term of service, he was not allowed to take his annual leave. Therefore, he prays for an order that the Respondent pays him the accrued leave dues. He also prays for service pay.

### **Respondent's Case**

8. On its part, the Respondent denies that the Claimant was summarily dismissed from employment. The Respondent avers that the Claimant's contract of service lapsed by effluxion of time on 25<sup>th</sup> September 2019.
9. According to the Respondent, it engaged the Claimant's services in 2017 on affixed term contract for one year. This contract ran between 26<sup>th</sup> July 2017 and 25<sup>th</sup> July 2018 when it lapsed.
10. The Respondent contends that the parties entered into another fixed term contract for one year on 26<sup>th</sup> September 2018. The contract ran up to 25<sup>th</sup> September 2019 when it lapsed.
11. The Respondent contends that before the latter contract lapsed, it wrote to the Claimant on 24<sup>th</sup> September 2019 notifying him of the fact that his contract was due to lapse on 25<sup>th</sup> September 2019. Further, it asked the Claimant to apply for a fresh contract in writing if he wished to be re-employed.
12. The Respondent states that in reaction to its letter of 24<sup>th</sup> September 2019, the Claimant wrote to it on 26<sup>th</sup> September 2019 asking to be re-employed. However, his request was not successful. As a result, the Respondent wrote back to him on 29<sup>th</sup> October 2019 notifying him that his request had been declined. The Respondent contends that in the premises, the Claimant's contention that he was summarily dismissed from employment is misplaced.
13. The Respondent denies that the Claimant was in its service since 2008. According to the Respondent, the Claimant was initially employed by Riley Services Ltd until July 2017 when he was hired by it (the Respondent). Therefore, the Respondent denies that it bears responsibility for the Claimant's accrued leave dues before July 2017. Similarly, it denies that it is bound to settle the Claimant's service pay for the period before July 2017.

### **Issues for Determination**

14. After evaluating the pleadings and evidence on record, I am of the view that the following are the issues that require determination:-
  - a. Whether the Claimant's contract was unlawfully terminated.
  - b. Whether the Claimant is entitled to the reliefs that he seeks.



## **Analysis**

15. The evidence on record shows that the Claimant was initially employed by an entity called Riley Services Ltd. However, on 26<sup>th</sup> July 2017, he entered into a one year contract of service with the Respondent. The parties executed a written contract to evidence this arrangement.
16. The record shows that on 3<sup>rd</sup> September 2018, the Claimant lodged a fresh application for employment after the contract of 26<sup>th</sup> July 2017 came to a close. The parties yet again, entered into another contract for a period of one year running from 26<sup>th</sup> September 2018 to 25<sup>th</sup> September 2019. They signed a written contract to evidence this arrangement.
17. The evidence on record shows that on 24<sup>th</sup> September 2019, the Respondent wrote to the Claimant advising him that his contract was due to lapse on 25<sup>th</sup> September 2019. In the same letter, the Respondent asked the Claimant to lodge a fresh application for re-employment if he wished to be considered for further engagement.
18. The evidence further shows that the Claimant wrote to the Respondent on 26<sup>th</sup> September 2019 applying for re-employment. On 29<sup>th</sup> October 2019, the Respondent wrote to the Claimant declining the request.
19. It is thus evident from the record that the Claimant was not summarily dismissed from employment as he contends. His contract of service lapsed by effluxion of time. Therefore, the Claimant's contention that he was a victim of unfair or summary dismissal from employment is without merit.
20. The second issue for determination relates to whether the Claimant is entitled to the reliefs that he has prayed for. The Claimant has prayed for service pay from the Respondent for the period running between 2008 and 2019. Yet, the record shows that up to July 2017, he (the Claimant) was in the employment of Riley Services Ltd. The Respondent has produced a copy of the Claimant's pay slip for June 2017 evidencing this reality.
21. From the record, the Claimant was first engaged by the Respondent in July 2017. The evidence shows that the parties signed a contract of service dated 26<sup>th</sup> July 2017. Therefore, the Respondent cannot be responsible for the Claimant's service pay for the period before July 2017.
22. The Claimant has also claimed from the Respondent accrued leave from 2008. For the reasons aforesaid, this claim is also unmerited. The Respondent was not the Claimant's employer until 26<sup>th</sup> July 2017. Therefore, it (the Respondent) cannot be required to pay his accrued leave dues for the period before 26<sup>th</sup> July 2017, if any.
23. Regarding the period after 26<sup>th</sup> July 2017, the Respondent produced the Claimant's pay slips dated November 2018 and September 2019 both of which show that he (the Claimant) was paid his leave dues. Therefore, his claim for accrued leave for this period is unmerited.
24. The Claimant has prayed for compensation and exemplary damages for unfair termination. However, as noted earlier, his contract terminated by effluxion of time. Therefore, the above prayers are misplaced and incapable of being granted.

## **Determination**

25. Having regard to the evidence on record, the court finds that the instant claim is devoid of merit.
26. Accordingly, the action is dismissed with costs to the Respondent.



27. The Respondent is at liberty to process the Claimant's terminal dues, if any, for the period that he served it (the Respondent) in line with its letter dated 29<sup>th</sup> October 2019.

**DATED, SIGNED AND DELIVERED ON THE 7<sup>TH</sup> DAY OF MARCH, 2024**

**B. O. M. MANANI**

**JUDGE**

In the presence of:-

.....for the Claimant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the *ELRC Procedure Rules* which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M. MANANI**

**JUDGE**

