



**Wandor v Riley Falcon Security Services Ltd (Cause 497 of 2017)  
[2024] KEELRC 1670 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1670 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 497 OF 2017  
HS WASILWA, J  
APRIL 4, 2024**

**BETWEEN**

**DAVID OTIENO WANDOR ..... CLAIMANT**

**AND**

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

**JUDGMENT**

1. The claimant instituted this claim against the Respondent vide a Memorandum of Claim dated 20<sup>th</sup> December, 2017, alleging that he was unfairly terminated and seeking for compensation for the alleged unfair termination. He seeks the following reliefs; -
  - a. One-month salary *in lieu* of Notice.
  - b. 11 days worked for in the month of May 2015.
  - c. Annual leave for 3 years and 6 months.
  - d. Underpayment for the 3 years and 6 months worked.
  - e. Compensation for unfair termination in accordance with section 49(1)(c) of the [Employment Act](#).
  - f. Certificate of service.
  - g. Costs of this suit.
  - h. Uniform refund of Kshs 4200.



## Claimant's case

2. The summary of the claimant's case is that he was employed by the Respondent sometimes on 7<sup>th</sup> January, 2012 as a day watchman earning a monthly salary of Kshs 5200. That he reported to work every day at 6am and clocked out at 6pm clocking 12 hours every day without overtime pay.
3. He however states that he was granted 4 days off duty each month but was not granted any leave days contrary to provisions of section 28 of the Employment Act, despite him requesting to go for the said leave.
4. The circumstances leading to his termination is that on the 4<sup>th</sup> June, 2015, while he was on duty he was asked by the manager of Eco-bank to guard their ATM in addition to National Bank of Kenya ATM which the Respondent had instructed him to guard. That he refused on the basis that he had not been given such instructions by his employer.
5. He states that he proceeded for his off duty the next day on 5<sup>th</sup> June, 2015 and while on off duty he received a report from the Respondent's controller, one Mr. Paskal that the client, National Bank of Kenya, had withdrawn instruction and he would therefore not work for them anymore. He was then directed to report to the Respondent's office at section 58 Nakuru in the morning of 6<sup>th</sup> June, 2015 for further direction.
6. Upon reporting to the said office, the manager, Mr Olima informed him that he would be guarding Catholic Diocese of Nakuru(CDN) and that he would be reporting to the new assignment at 2 pm same day. Before he could report to the new work station, he was advised that his work station had been changed and he was now on transfer to Nyahururu to work at Kenya Commercial Bank effective the next day. That a deployment letter was send to the manager which indicated that the claimant was to be deployed as a reliever to go to Kenya Commercial Bank at Nyahururu Njabini area and the assignment was to be undertaken the next day. Being a family man, with children in school, the claimant states that he requested for more time to organize his family and see how to transfer them to Nyahururu, however the request for more time fell on deaf ears and instead he was given an ultimatum to either report to Nyahururu the next day or lose his job.
7. Caught up between and a rock and hard place, the claimant rushed to the labour office to stop the looming termination and sought to be granted time to relocate his family to Nyahururu, however the matter was not resolved with the urgency the claimant anticipated and therefore he was terminated from employment on the 6<sup>th</sup> June, 2015 though the letter of terminated was drawn on 2<sup>nd</sup> July, 2015.
8. During hearing the claimant testified as CW-1 and adopted his witness statement of 10/6/2022 and produced the documents filed as his exhibit. He added that he never went for leave during his employment with the Respondent. He stated that he used to work from 6pm to 6am without payment of overtime, that he was not refunded uniform money upon termination and also that he was underpaid throughout his employment with the Respondent.
9. Upon cross examination by Kaminza Advocate, he testified that he was employed on contract though he did not know when the contract was to end. He told this Court that he worked till 5th June, 2016 when he was directed to go to Ol Kalou on transfer. That he did not go to Ol Kalou and thus his services were terminated. He stated that he was directed to go for his terminal dues but he refused because the said dues had not been calculated properly.
10. On re-examination, the witness testified that he did not go to Ol Kalou because he had a family and needed more time to organize for the transfer to Ol Kalou. He also clarified that the latest contract he had was run up to 25th May, 2016.



## **Respondent's case**

11. The Respondent entered appearance and filed a response to claim on the 7<sup>th</sup> March, 2018 and an Amended statement of Response 31<sup>st</sup> January, 2024 pursuant to leave of Court granted on 20<sup>th</sup> December, 2023. In the defence, the Respondent denied all the contents of the claim and stated that the claimant was employed by the Respondent on 3 months fixed term contract from 7<sup>th</sup> January, 2012 to 6<sup>th</sup> April, 2012 on a monthly salary of Kshs 5,720. Upon lapse of the said contract, he applied for renewal which was allowed for further term of 3 months from 26<sup>th</sup> July, 2012 to 25<sup>th</sup> October, 2012 at the same salary. He further renewed his contract from 26<sup>th</sup> October, 2012 to 25<sup>th</sup> January, 2023 now on a monthly salary of Kshs 6,424. Another contract was issued to him from 26<sup>th</sup> January, 2013 to 25<sup>th</sup> April, 2013 on the same salary and on lapse of that contract, he was issued with a one-year contract commencing 26<sup>th</sup> May, 2013 to 25<sup>th</sup> May, 2014. Upon lapse of the one-year contract, he was issued with another contract of one year commencing 26<sup>th</sup> May, 2014 to 25<sup>th</sup> May, 2015. Therefore, that the claimant was employed on various fixed term contracts whose terms of service were distinct from each other and lapsed upon expiry of each contract.
12. It is averred that upon expiry of the latest contract on 25<sup>th</sup> May, 2015, the claimant was offered another fixed term contract on new terms but the Claimant declined the terms of the new contract as such, he left on his volition and not terminated as alleged.
13. It was further stated that there is another suit pending being Nakuru ELRC Cause Number 402 OF 2015 ,K.N.P.S Workers Union V Riley Falcon which touches on the claimant as a grievant.
14. It is averred also that the claimant was paid all his dues while on contract as such nothing is owing to him.
15. During hearing, the Respondent called Peter Olima, its branch manager, as RW-1. He adopted his witness statement dated 23<sup>rd</sup> October, 2023 and clarified that the letter informing the claimant of the non-renewal of his contract is the one dated 2<sup>nd</sup> July, 2015.
16. Upon cross examination by Opar Advocate, the witness testified that it is not true that the claimant worked for National Bank of Kenya till June 2015 because the assignment given to the Respondent by National Bank of Kenya ended on 30<sup>th</sup> May, 2015. Therefore, that renewal if any was to be done from June, 2015. He testified that the claimant contract ended and refused to take up a new assignment. He testified that they did not subject the claimant to any disciplinary hearing.
17. Upon further cross examination, he testified that the claimant used to take his annual leave, however he could not explain how the claimant was paid annual leave in May, 2015 salary and October, 2012. On uniform refund, the witness testified that a refund had been calculated on his terminal dues, which the claimant refused to pick the cheque.
18. On re-examination, the witness testified that the claimant was paid leave not taken as per the payslips produced in evidence herein. Therefore, that all years were leave was not paid indicates that he took such leave. He also stated that the claimant refused to sign the new contract that assigned him new assignment and reiterated that the older assignment expired.

## **Claimant's submissions.**

19. The claimant submitted on two issues; whether the claimant was unlawfully and unfairly terminated and whether the claimant is entitled to the reliefs sought.



20. On the first issue, the Claimant submitted that though the Respondent allege that he was employed on fixed term contract, the evidence before court is contrary to that view, because, at one point the respondent allege that the latest contract expired on 25<sup>th</sup> May, 2025, while the record show the claimant worked till 6<sup>th</sup> June, 2015 and issued with a termination letter of 2<sup>nd</sup> July, 2015, therefore that the employment was not within the alleged contract period. He argued that any termination of employment must be done in adherence to both substantive and procedural fairness as provided for under the Employment Act and reiterated by the Court in the case of Walter Ogal Anuro V Teachers Services Commission [2013] eklr.
21. The claimant also relied on the case of Mary Chemweno Kiptui Vs Kenya Pipeline Company Limited [2014] eklr where Mbaru J held that:-

“...when an employer exercises their right to terminate the contract of an employee, there must be valid reason or reasons that touch on grounds of misconduct, poor performance or physical Incapacity. Once this is established the employee must be issued with a notice, given a chance to be heard and then a sanction decided by the respondent based on the representation made by the affected employee.”
22. Accordingly, the claimant submitted that his services were terminated for failing to report to a new assignment when he had requested for more time to relocate to the Ol Kalou considering that he had school going children, a request which was declined and instead his services were terminated as such, the claimant urged this Court to find that the termination was done without proper reason.
23. On the reliefs sought, the claimant stated that since the termination was done devoid of reason and procedure, he ought to be paid notice pay, maximum compensation for the unfair termination in line with section 49(1)(c) of the Employment Act, underpayments, annual leave pay for 3 years and 6 months , uniform refund of Kshs 6,000, as the Respondent was deducting Kshs 100 each month, 11 days worked in the month of May, 2015 and not paid, certificate of service and costs and interest of the suit herein.
24. At the time of writing this judgement, the Respondent’s submissions were not on record.
25. I have examined all the evidence and submissions of the parties herein. The claimant’s position is that the Respondents terminated him unfairly having served them 7<sup>th</sup> January 2012 to 6<sup>th</sup> June 2015 on various contract terms.
26. The Respondents contend that the Claimant had been employed on contract terms and was not terminated. That his contract lapsed and he was offered a fresh contract which he declined.
27. I have looked at the documents produced before court and it is clear that the issue of the claimant’s contract expiring does not arise. The Claimant was terminated by the Respondents as there is a letter of termination from the Respondents to the Claimant indicating that they were terminating his services for refusing to report to a new assignment.
28. The argument that the contract expired is therefore not true. No contract is also exhibited by the Respondents to prove that fact.
29. Having found as above, it follows that the Claimant could only be terminated by the Respondents after following due process. Section 41 of the Employment Act 2007 states as follows:
  - 41.



- (l). Subject to section 42 (l), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
30. It is apparent that the Respondents never followed the above procedure. Section 45 (2) of the [Employment Act](#) 2007 also states as follows;
- 45 (2) A termination of employment by an employer is unfair if the employer fails to prove—
- (a) that the reason for the termination is valid;
  - (b) that the reason for the termination is a fair reason—related to the employees conduct, capacity or compatibility; or (ii) based on the operational requirements of the employer; and
  - (c) that the employment was terminated in accordance with fair procedure.
31. Without a hearing, the validity of reason for the termination were also never established and without any formal disciplinary hearing.
32. It is my finding that the termination of the Claimant was unfair and unjustified.
33. On remedies to be granted, I award the Claimant as follows:
- 1. One-month salary in terms of notice = 11, 623.16/=
  - 2. One year leave not paid as pleaded for 2014/2015  
= 11,512/=
  - 3. Underpayment of wages as pleaded = 155,946.80/=
  - 4. 11 days worked in May 2015 and not paid = 5,108.80/=
  - 5. 10 months salary as compensation for unfair and unlawful termination being 116, 231/= given the manner in which the Claimant was bundled out without consideration of the fact that he was not subjected to a hearing.  
Total Awarded = 300,422.16/=  
Less statutory deductions
  - 6. The Claimant be issued with a Certificate of Service.
  - 7. The Respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

**JUDGMENT DELIVERED VIRTUALLY THIS 4<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of: -

Onyango for Respondent – Present



Opar for Claimant – Present

Court Assistant - Fred

