



**Kipyegon v Kigen t/a Patriotic Guards and Sattelite Fleet Management Solutions (Employment and Labour Relations Cause 857 of 2015) [2024] KEELRC 1538 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1538 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 857 OF 2015**

**MN NDUMA, J**

**JUNE 13, 2024**

**JUDGMENT I ENTERED IN FAVOUR OF THE CLAIMANT AGAINST THE RESPONDENT**

**BETWEEN**

**DAVID KIMUTAI KIPYEGON ..... CLAIMANT**

**AND**

**MR TITUS KIGEN T/A PATRIOTIC GUARDS AND SATTELITE FLEET  
MANAGEMENT SOLUTIONS ..... RESPONDENT**

**RULING**

1. The suit proceeded on the basis of an amended memorandum of claim dated 14/6/2016 the claim having been filed earlier on 20/05/2015. The suit is against Mr. Titus Kigen T/A Patriotic Guard and Satellite Fleet Management Solutions.
2. After close of both the claimant's and respondent's case, the claimant moved an application to have the name of the respondent be amended to Patriotic Guards Company Ltd as respondent and strike out Titus Kigen T/A Patriotic guards and Satellite Fleet Management Solutions as defendant.
3. The court found that it was too late in the hour to introduce a new party, which is a limited liability company at that advanced stage of proceedings.
4. The claimant testified as CW1 and adopted a witness statement dated 15/5/2015. CW1 testified he was employed by a company owned by Mr. Titus Kigen as a driver from the year 2007 up to the year 2014 at a monthly salary of Kshs.13,500/= exclusive of house allowance and overtime. That on or about 1/3/2014 while working at Bungoma/Eldoret station, a supervisor stopped CW1 from continuing to work without any warning or notice. That at the time of separation he had accrued salary arrears of Kshs.212,690 because Mr. Titus Kigen paid him in bits and pieces at any time.



5. That the claimant presented a cheque for payment of one-month salary in the sum of Kshs.22,500/= which was dishonoured upon separation. That he has not been paid his arrear salary to date.
6. In the amended statement of claim, CW1 claims arrear salary for December 2006 to March 2014 in the sum of Kshs.1,411,000/=. The claimant had sought reinstatement but during hearing CW1 stated that he no longer wished to be reinstated due to his advanced age. The claimant also sought general damages for unlawful dismissal and costs.
7. Under cross-examination, CW1 admitted having caused an accident on 11/1/2010 but did not get a warning letter. Claimant said he only got one warning letter. Claimant denied that he was a drunkard and could not work. CW1 stated that he got sacked for demanding arrear salary. That he needed to pay school fees. CW1 said he wrote letter of resignation after he had been sacked. CW1 said he was not paid any terminal benefits after being sacked.
8. CW1 said he sued Titus Kigen because he is the one who employed him and was the owner of the company.
9. RW1 Titus Kipkoech Kigen adopted a witness statement dated 19/7/2021 as his evidence in chief. RW1 said the claimant was employed by the company as a driver but not by himself. That it was a limited liability company and not a partnership.
10. RW1 said the claimant was a drunkard and had no home. That he slept in the car. That at the time CW1 resigned, he had 3 warning letters. That the company refused to take his resignation and summarily dismissed him. RW1 said that he be struck off in the case because he was only a director of Patriotic Guards Ltd which provides security services.
11. Under cross-examination he stated that a driver cut across various services of the company including security, cash in transit and so on. That the drivers did shifts both day and night. That CW1 was drunk and disorderly and was also disobedient. That CW1 caused several accidents and slept in the company car at night. That he had a written warning dated 25/9/2013 and several verbal warnings.
12. That CW1 was dismissed from work after several warnings. RW1 said he is not sure of the exact date of dismissal. CW1 said he does not know if the claimant was paid his salary and terminal benefits as he was not the company.

### **Determination**

13. The court has considered the evidence adduced by the claimant and that by RW1 and the submissions filed. The issues for determination are:-
  - i. Whether the summary dismissal of the claimant was for a valid reason following a fair procedure.
  - ii. Whether the claimant has proved the terminal benefits sought including damages for unfair dismissal.
14. RW1 stated that the claimant was dismissed from work for gross misconduct. The respondent did not adduce evidence to demonstrate that they had issued the claimant with a notice to show cause against any charges preferred against him. There is no evidence tendered by the respondent that they had a disciplinary hearing in which the claimant was given opportunity to answer to charges preferred against him.
15. RW1 simply said that the claimant was a drunkard, disobedient and had caused several motor vehicle accidents in the cause of his employment. That the claimant had several verbal warnings and had



received a final written warning dated 25/9/2013. RW1 stated that the claimant tendered a letter of resignation date 6/3/2014 after he already had been summarily dismissed.

16. Considering the circumstances of the case, the respondent failed to prove that it had adhered to section 41 of *Employment Act*, by providing the claimant with opportunity to answer to allegations of misconduct that led to his dismissal. Indeed, the respondent was unable to demonstrate what valid reason caused it to summarily dismiss the claimant other than the general allegations made by RW1.
17. The court finds that the respondent did not discharge the onus placed on them under section 43(1) and 2 of the *Employment Act*. The respondent failed to demonstrate that they had a valid reason for which they summarily dismissed the claimant.
18. The court finds that the respondent did not follow a fair procedure before summarily dismissing the claimant.
19. The court therefore finds that the summary dismissal of the claimant was unlawful and unfair and in violation of sections 36, 41, 43 and 45 of the *Employment Act*, 2007.
20. The claimant is entitled to compensation in terms of section 49(1) (c) and 4 of the *Employment Act*, 2007. In this respect, the claimant had served the respondents from 1<sup>st</sup> December 2001 up to March 2014, a period of about 8 years.
21. The claimant has proved that from the year 2006, to March, he was not paid his full salary as set out in paragraph 8 of the amended claim. RW1, did not tender any evidence to counter this claim. Indeed, the claimant testified that he was summarily dismissed for persistently demanding to be paid his arrear salary which as at the time of dismissal amounted to Kshs.1,411,000/=.
22. RW1 did not rebut the claim for unpaid arrear salary as set out by the claimant. The court is left with no choice but to find that the claimant was owed by the respondents Kshs.1,411,00/= as at the time of summary dismissal and grants him the amount as claimed.
23. The claimant dropped the claim for reinstatement preferring to be paid damages for unlawful dismissal. The claimant has not prayed for payment in lieu of notice and the claim centres on payment of arrear salary.
24. The claimant suffered loss and damage as a result of the dismissal that emanated from his demand to be paid dues lawfully owed to him by the respondents.
25. The claimant did not therefore contribute to the summary dismissal since the respondent did not provide the claimant with a hearing to face any charges preferred against him for which he was summarily dismissed.
26. The claimant was not compensated or paid terminal benefits upon the summary dismissal.
27. The court awards the claimant the equivalent of 8 months' salary in compensation for the unlawful dismissal in the sum of Kshs. (15,000 x 8) 120,000.
28. In the final analysis judgment is entered in favour of the claimant against the respondent as follows:-
  - a. Kshs.1,411,000/= being payment of arrear salary.
  - b. Kshs.120,000 compensation Total award Kshs.1,551,000/=
  - c. Interest at court rates from date of judgment till payment in full.
  - d. Costs of the suit



**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF JUNE, 2024**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearance:

Mr. Chesaro & Co. Advocates for claimant

Mr. Wachakana & Co. Advocates for respondent

Mr. Kemboi, Court Assistant

