



Kenya National Private Security Workers Union v Watchdog Limited (Civil Suit 1308 of 2017) [2023] KEELRC 458 (KLR) (23 February 2023) (Judgment)

Neutral citation: [2023] KEELRC 458 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL SUIT 1308 OF 2017
MN NDUMA, J
FEBRUARY 23, 2023**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
WATCHDOG LIMITED RESPONDENT**

JUDGMENT

1. This suit was filed on July 11, 2017. The cause of action in this matter arose on October 1, 2013, when the respondent declared the claimant redundant and terminated his services.
2. The suit was filed (3) years and 10 months from the date the cause of action arose. The suit was therefore filed outside the three (3) years limitation period mandated by section 90 of the [Employment Act, 2007](#).
3. However, the respondent raised a preliminary objection and a ruling was made by Abuodha J on September 28, 2018, that time stopped running when the matter was the subject of conciliation under the Ministry of Labour and so this matter was not time barred.
4. The court is aware of Court of Appeal decision to the contrary, but since no appeal was preferred against the ruling of the court its hands are tied and will proceed to consider the merit of the suit.
5. The claimant testified that he was employed by the respondent on June 5, 2006 as a Security Guard earning Kshs 6,000 per month. That he worked continuously until he was declared redundant. That at the time of termination his salary was Kshs 10,000 per month but the minimum wage was Kshs 10,912. That he was not paid house allowance, overtime and in respect of public holidays worked.
6. That the claimant was not notified of the intended redundancy and so the same was wrongful and unfair.
7. That the claimant reported a dispute to the Ministry of Labour on September 14, 2014 and a conciliator was appointed on October 21, 2014. That the union submitted memoranda as requested



- by the Conciliator Mrs Emily Mukaya. That on March 25, 2015, the Conciliator issued findings and recommendations as per the *Employment Act*.
8. That the termination was unlawful and unfair and the claimant is entitled to both compensation and payment of terminal benefits sought in the statement of claim including:-
 - (i) Notice pay Kshs 10,912;
 - (ii) House allowance – Kshs 19,641
 - (iii) Service pay – Kshs 60,435 and
 - (iv) Compensation equivalent to 12 months' salary
 - (v) Costs and Interest.
 9. RW1 Dudley Stannah testified that he was the Managing Director of the respondent. That he was familiar with this matter. That at the material time, the company lost five (5) contracts and so it had to declare 30 employees redundant.
 10. RW1 produced letter dated October 1, 2013 which was a notice to the claimant on the redundancy. That all staff were given one month notice. That the claimant was paid salary for October, 2013 and other terminal benefits. That the claimant had gone on leave and was paid severance for four years served. That the claimant refused to take the terminal benefits by refusing to sign the discharge voucher dated March 15, 2013. That the respondent complied with the law. That labour office regularly visited the company and certified it compliant.
 11. That all employees got off days every month and went on annual leave as per the master roll. That the employees did not work during public holidays.
 12. Under cross-examination RW1 stated that he knew the claimant since 2006 when he was employed. That National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF) was deducted and remitted. That the company adhered to the minimum wage. RW1 stated that they paid the claimant 10,000 and not 10,900 due to the National Social Security Fund deductions. RW1 stated that he notified the union of the intended redundancy. RW1 stated he was not aware that the claimant was a union member. That the claimant worked for the clients whose contracts were terminated. That employees worked 6am to 6pm and had off days. That the claimant did not collect the calculated terminal dues totaling Kshs 15,000. RW1 said he did not know that gratuity was calculated at 18 days salary for each completed year of service and not 15 days. The respondent prays that the suit be dismissed with costs.

Determination

13. The parties filed submissions which the court duly considered together with the evidence adduced. The issues for determination are:-
 - (i) Whether the termination of the employment of the claimant was for a valid reason.
 - (ii) Whether the claimant is entitled to the reliefs sought.
14. The testimony by CW1 and RW1 is that the employment of the claimant was terminated on October 1, 2013 when the claimant with other employees were declared redundant. The court has considered the testimony by CW1 and RW1 and is satisfied that the reason for the declaration of redundancy was that the company which was in security business had lost five (5) clients at the time. That the claimant was a security guard for one of the clients who had terminated their contract with the respondent. The



court is satisfied that the respondent had a valid reason to terminate the employment of the claimant on grounds of redundancy.

15. The claimant reported a dispute to the County Labour office and the Labour Officer RAO Litaba conciliated on the dispute and made recommendations in his report filed before court. The court has considered this report together with the testimony by CW1 and RW1 and the court finds that the respondent had given the claimant and the labour office, one month notice of the intended termination. The respondent had calculated terminal benefits for the claimant who declined to receive the same since he disputed the amount offered.
16. The labour officer recommended that the respondent to pay terminal benefits to the claimant as per the protective security order.
17. The court is only obliged to grant the claimant the reliefs he has sought in his statement of claim. The court finds that the claimant is entitled to payment of notice pay in the sum of Kshs 10,912, house allowance in the sum of Kshs 19,641; service pay in the sum of Kshs 60,435 totalling Kshs 90,988.
18. Indeed, the respondent testified that, it was ready and willing to pay the terminal benefits but the claimant had declined to sign the discharge voucher in order to receive the payment.
19. The court awards the claimant accordingly. The court finds that the respondent had a valid reason to declare the claimant redundant and it followed a fair procedure in effecting the termination in terms of section 40 of the *Employment Act, 2007*.
20. In the final analysis, the claim for compensation lacks merit and is dismissed. Judgment is entered in favour of the claimant against the respondent in the sum of Kshs 90,988.
21. The amount is payable with interest at court rates from date of judgment till payment in full. The respondent to pay the costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF FEBRUARY, 2023.

MATHEWS NDERI NDUMA

JUDGE

Appearances

M/s Wanyama for claimant

M/s Nakholi for Respondent

Ekale: Court Assistant

